SHERIFF APPEAL COURT

[2016] SAC (Crim) 17
SAC/2016-000201/AP

Sheriff Principal C A L Scott QC
Sheriff S Murphy QC

OPINION OF THE COURT

delivered by the Vice President, SHERIFF PRINCIPAL C.A.L. SCOTT QC

in

APPEAL AGAINST SENTENCE

by

JOHN LAMONT

Appellant

against

PF, Kilmarnock

Respondent

Appellant: Ogg, Solicitor Advocate, Tod & Mitchell, Paisley
Respondent: McFarlane AD; Crown Agent

15 June 2016

[1] The appellant pleaded guilty to three contraventions of the Road Traffic Act 1988. In particular, in respect of a contravention of section 2 of the Act, he was fined £350 and

disqualified from driving for a period of 24 months. The appeal is brought to challenge the length of the disqualification.

[2] The appellant drove a tractor, travelling the wrong way on a one-way road and happened to be spotted by police officers as the tractor negotiated a blind bend. The sheriff was informed by the Crown that any vehicle travelling in the opposite direction would have had no chance to see the tractor's approach or to avoid a collision.

[3] The police having alerted the appellant to their presence, the tractor, nevertheless, continued at 30mph which was said to be its top speed. The carriageway was barely wide enough for the tractor. It repeatedly mounted the verge at times "bouncing back" onto the roadway. The road in question was said to be a single track road with a number of blind bends and was deemed an unsuitable route for a tractor.

[4] In approaching the issue of sentence as regards the section 2 charge, the sheriff records taking into account a number of factors. She considered it to be a serious contravention of the statutory prohibition against dangerous driving. She took the view that there was significant potential for harm to other road users and commented upon how fortunate it was that the appellant did not encounter any other vehicles en route. The sheriff held that the appellant could not be said to be an experienced driver and that he had driven "at speed, given the capacity of the tractor". The sheriff concluded that the gravity of the offence merited a period of disqualification of 24 months. Nothing had been said in mitigation that inclined her to the view that a more limited period of disqualification was appropriate. In particular, the sheriff was not addressed on any impact on his apprenticeship.

[5] On behalf of the appellant, it was argued that the statutory minimum of 12 months ought to have been imposed. It was submitted that the sheriff had afforded insufficient

weight to the fact that the applicant's driving had, in fact, given rise to no actual harm. When regard was had to the particular circumstances taken along with the fact that this court would, in any event, require to remedy the sheriff's failure to order that the appellant sit the extended test of driving competency (section 36) it was contended that the period of disqualification selected by the sheriff had been excessive.

[6] Whilst it appears that the sheriff was not addressed upon the impact a period of disqualification might have upon the appellant's employment, on appeal, we were advised that the appellant's apprenticeship would be significantly affected by the loss of his driving licence. A letter from the appellant's employers was produced to vouch that proposition.

[7] Separately, a letter from the appellant's father setting out the way in which the running of the family farm had been affected, firstly, by the incapacity of the appellant's grandfather and, secondly, that of the appellant's uncle was produced.

[8] The sheriff's failure to allow a discount in respect of the disqualification period (to reflect the utilitarian value of the appellant's guilty pleas) was also criticised particularly in light of the fact that the sheriff had discounted those fines imposed.

[9] It was plain to us that had the mitigatory material regarding the appellant's apprenticeship and his integral role in keeping the family farm business going by working at nights and at weekends been known to the sheriff, she most likely would have reflected those factors when it came to the period of disqualification imposed. Moreover, in the whole circumstances of the case, we consider that the decision to impose a disqualification period of 2 years can justifiably be characterised as excessive. Accordingly, we have determined that the disqualification imposed by the sheriff should be quashed and that, instead, the appellant should be subject to disqualification for the minimum period, viz. 12 months. We shall also order that the appellant must successfully complete the

extended test of driving competency all in terms of section 36 of the Act. For completeness, it does occur to us that the sheriff ought to have allowed a discount in regard to the disqualification period but that matter has, in any event, been taken account of in terms of the court's overall disposal.