

ROYAL COURT

2nd April, 1990

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Before: F.C. Hamon, Esq., Commissioner and
Jurats Blampied and Le Ruez

Police Court Appeal: Anthony John Cook

Appeal against sentence of six months'
imprisonment imposed following a
conviction under Article 16 (as amended)
of the Road Traffic (Jersey) Law, 1956,
(driving whilst unfit through drink
or drugs).

Advocate W.J. Bailhache for the Crown,
Advocate A. Hoy for the appellant.

JUDGMENT

COMMISSIONER HAMON: This was, by any standards, a serious drink driving offence.

At five past one on Saturday, 13th January, 1990, a police patrol saw the accused driving his car in an erratic manner and they followed it. The car was seen weaving along the centre white line on both sides of the road. The accused got out of the car and staggered about the road waving his arms. He was described as grossly drunk. He was taken to police headquarters. He provided urine samples but

refused a blood sample. He was abusive to the doctor and was unable to give an address to which he could be released. He was to be detained for his own safety overnight, but struggled with a police officer, a fight broke out and P.C. Sampson was kicked in the face by the appellant. The police officer sustained slight bruising and swelling to his right cheek and it is perhaps fortunate that his injuries were not more serious.

The appellant has what we can only describe as an appalling record of drink related offences over three years and two of these were for driving whilst under the influence of drink. He is now 21 years of age. We might point out that he had 292 milligrammes of alcohol in 100 millilitres of urine and one hour later it had altered to 293 milligrammes so that he was still retaining alcohol over the hour.

Advocate Hoy gave us a series of seven cases of which five perhaps can be regarded as being similar enough to assist us, but the problem that we faced on hearing this appeal, as Mr. Bailhache has quite rightly put to us, is that the sentence must have been wrong in principle or manifestly excessive before we could interfere with it. We cannot say it was wrong in principle, but whether or not it was manifestly excessive has now been brought to our attention by recent changes in the legislature.

We can say now that despite the fact that no references were supplied then nor now and despite the other points of mitigation urged upon us by Mr. Hoy, we would have had no hesitation in rejecting this appeal in all its aspects had it not been for the change in legislature.

The change in legislature came about because Article 16 used to hold that in the case of a second or subsequent conviction an accused could be sentenced to a term of imprisonment not exceeding two years, or to a fine not exceeding £500. However on the 1st March, 1990, Article 16A came into effect and this now says that an accused shall be sentenced to a fine not exceeding £2,000, or to imprisonment for a term not exceeding six months, or to both such fine and imprisonment. So that instead of this accused coming well within a minimal sentence of

six months in relation to two years, he is now as we can see sentenced to the maximum term of imprisonment.

Imposing a fine we do not think will help matters because he is on legal aid and he has sworn that he lives with his girlfriend in St. Saviour and earns £140 per week as a labourer and pays £25 per week for his rent.

Mr. Hoy suggested probation to us but we think that is far too late. We cannot possibly do anything about probation without calling a probation officer to assist us and we cannot do that now. Mr. Bailhache asked whether we might be minded to give bench marks but we do not think that we can give bench marks. This is a one-off case, it is very unusual but we cannot allow a six month term of imprisonment to stand in the light of the recent change in the legislation.

Without drawing any conclusions as to what our feelings are on what sentences of imprisonment a Magistrate should impose we are, in the very unusual circumstances of this case, going to reduce the term of imprisonment from six months to four months and I need only say that we are most grateful to both counsel for their assistance. Mr. Hoy, you shall have your legal aid costs.

Authorities referred to:

Drink, Drugs and Driving by Walls and Brownley at p.40.