



**HIGH COURT OF JUSTICIARY**

**[2024] HCJ 2  
IND/2016-3002**

**OPINION OF LADY POOLE**

in the Petition of

**JAMES ROBERT HILTON**

Petitioner

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**Crown: Alan Cameron; Crown Agent  
Petitioner: Self representation; N/A**

29 August 2024

[1] The petitioner applied to the High Court for early restoration of his driving licence. In 2017 he plead guilty to an offence of causing death by dangerous driving under section 1 of the Road Traffic Act 1988 (“RTA”). The court minute recorded the sentence imposed on him on 19 May 2017 in the High Court as follows:

“imprisonment for a period of 4 years and 2 months, and disqualified from holding or obtaining a driving licence for a period of 9 years from this date and ordered that he sit the extended test of competence to drive and ordered endorsement”.

[2] Section 42 of the Road Traffic Offenders Act 1988 (the “1988 Act”) governs removal of disqualification. The court’s powers to remove disqualification are limited by section 42(6). This has the effect that removal of disqualification is not available under section 42 where disqualification was imposed under section 36(1) of the 1988 Act

(disqualification until test is passed). That type of disqualification is subject only to appeal under section 38(2) of the 1988 Act.

[3] Part of the sentence to which the petitioner was subject was disqualification imposed under 36(1), until the extended test of competence to drive was passed. The petitioner's case fell within section 36(2) of the 1988 Act, because disqualification for a period of 9 years had been imposed under section 34 of that Act on conviction of an offence under RTA section 1. It was therefore not competent for the petitioner to seek removal of the part of the sentence containing the requirement of sitting the extended test of competence to drive, because of the provisions of section 42(6) of the 1988 Act.

[4] However, part of the court's sentence was disqualification under section 34 of the 1988 Act (the 9 year period). Section 42(6) does not exclude applications for removal of disqualifications imposed under section 34 of the 1988 Act. It was therefore competent for the petitioner to seek removal of his disqualification from holding or obtaining a driving licence for a period of 9 years from 19 May 2017. This is consistent with the outcome of a number of previous court decisions (*R v Nuttal* 1971 RTR 279, *HMA v Murray McAllan* 19 December 2016, *HMA v Allan Duffus* 25 January 2017, *Grant Andrew Whyte* 28 March 2017, *HMA v Sandeep Singh* 19 December 2022, none of which contain reasons on this point).

[5] More than half of the 9 year period of disqualification imposed under section 34 of the 1988 Act had expired. The petitioner was therefore eligible to apply for removal of disqualification under section 42(3) of that Act. The matters a court must consider in deciding whether or not to grant the application are set out in section 42(2).

[6] Looking first at the petitioner's character and conduct, he is 32 years old. He has only two previous convictions, one for the index offence, and a prior offence of speeding dealt with by financial penalty. He has no further convictions since the offence. He has

completed the restorative justice programme in HM Prison Grampian, which has assisted him with better decision-making skills and a sense of responsibility. He has served his time in prison. He has undergone counselling to come to terms with the offence. He is remorseful for his actions. Within 2 weeks of being released from prison, he obtained employment in the hospitality industry. He has since moved into recruitment, where he is doing well. He has moved to Edinburgh for employment opportunities, although his family lives in the north of Scotland.

[7] Second, the nature of the offence. The offence was extremely serious and resulted in the death of an 81 year old man. A lengthy period of disqualification was merited. The petitioner has benefitted from his case pre-dating the introduction of extension periods under section 35C of the 1988 Act. However, the petitioner has been disqualified for about 7¼ years of the 9 year period imposed by the court. Even if the remainder of the period were to be removed, he would still be unable to drive without proper supervision until he has passed the extended test of competence.

[8] Finally, having regard to the other circumstances of the case, the court noted that the petitioner himself suffered serious injuries in the car crash which have given him long standing health problems of his own. His employer has written a reference which speaks very highly of him, his strong work ethic, and his proven track record of success. However, the reference also notes that the petitioner's lack of driving licence has impacted on his efficiency and ability to capitalise on new business opportunities. It requests the court to grant his application so he can make further contributions to the company and business community. In addition to work purposes, the petitioner wishes to drive for family reasons. He would like to be able to see members of his family in the north of Scotland who do not

live on public transport routes more easily, and his partner has current issues with being able to drive due to an eye condition.

[9] The court was satisfied, having regard to the character of the petitioner, his conduct subsequent to the order, the nature of the offence, and all the circumstances of the case, that it was proper to remove the period of disqualification with effect from 29 August 2024, the date it granted the application. The court removed the remaining period of the 9 year disqualification from driving imposed upon the petitioner by the High Court on 19 May 2017.

[10] The court did not order restoration of the petitioner's driving licence, as he requested. The court has no powers to make such an order, given the terms of section 42(6). The petitioner remains subject to having to sit the extended test of competency to drive. The practical effect of the court's order is that the petitioner may now apply for a provisional licence and then take the extended test of competency to drive (*Wilkinson, Road Traffic Offences*, paragraph 20-106). He remains disqualified from driving without proper supervision until he has passed that test.