



SHERIFF APPEAL COURT

**[2017] SAC (Crim) 9
SAC/2017/000229/AP**

Sheriff Principal C D Turnbull
Sheriff N C Stewart

Ex Tempore OPINION OF THE COURT

delivered by SHERIFF PRINCIPAL C D TURNBULL

in

APPEAL AGAINST SENTENCE

by

REHMAN HAIDER

Appellant

against

PROCURATOR FISCAL, GLASGOW

Respondent

**Appellant: C Findlater; John Pryde & Co, Edinburgh
Respondent: M McFarlane, advocate depute; Crown Agent**

21 June 2017

[1] At an adjourned trial diet on 12 January 2017, the appellant pled guilty to contraventions of sections 103 and 143 of the Road Traffic Act 1988, both offences aggravated by reason of the appellant being on bail at the time.

[2] Sentence having been deferred for reports, on 9 February 2017, the appellant was sentenced to a community payback order with the requirement to complete 200 hours of

unpaid work within 12 months; and what appears to us to be a fairly modest restriction of liberty order in terms of which, for a period of 3 months, the appellant was to remain within his home address between the hours of 10pm and 8am the following morning. In addition, on charge 1, the section 103 charge, the appellant was disqualified from holding or obtaining a driving licence for a period of 30 months, with endorsement on both charges 1 and 2.

[3] The appellant was 48 as at the date of the offences. He had three previous convictions. Firstly, a contravention of section 2 of the Road Traffic Act from March 2009, in respect of which he was disqualified from driving for 12 months and until he passed the extended driving test. Secondly, directly analogous offences from December 2011, coupled with an attempt to pervert the course of justice, in respect of which he was disqualified on the section 103 offence for 12 months and made subject to a community payback order requiring him to perform 180 hours of unpaid work within 6 months. Thirdly, in September 2012, the appellant was found to have breached that community payback order and a new order was imposed in terms of which he was required to perform 175 hours of unpaid work within 6 months.

[4] It is argued on behalf of the appellant that, in the particular circumstances of the offences before the sheriff, the cumulative effect of the various aspects of the sentence is excessive. The appellant contends that by applying the now applicable part of the Sentencing Council for England and Wales Magistrates' Court Sentencing Guidelines relative to section 103 offences a far shorter period of disqualification should be imposed.

[5] The guideline relied upon by the appellant was not in force at the time of sentencing. The guideline we have been referred to was effective from 24 April 2017 whereas sentence was imposed in this case on 9 February 2017.

[6] A number of observations can be made in respect of the use of English sentencing guidelines in this case and more generally. Firstly, there is nothing to suggest that the then applicable guideline was referred to in mitigation before the sheriff. Secondly, there is an equivalent guideline in respect of driving without insurance which has not been referred to before this court. In *Sutherland v HM Advocate* 2016 SCCR 41 at paragraph 20 the court emphasised that guidelines from the Sentencing Council of England and Wales often provide a useful cross-check for sentences in Scotland especially where the offences are regulated by a UK statute and there are identical sentencing maxima. That is not the case here. Whilst we are concerned with a UK statute, different sentencing *maxima* apply in the magistrates' court as opposed to the sheriff court.

[7] The approach urged in relation to the use of the Magistrates Court Sentencing Guidelines is in our view misconceived. We do not propose to have regard to them.

[8] Having regard to the appellant's record, it cannot be said that the combination of community payback order and restriction of liberty order was in any way unreasonable. It would have been open to the sheriff to send Mr Haider to prison in relation to these offences, having regard to his record.

[9] The issue that does arise before us is the length of disqualification for what can fairly be categorised as a relatively modest example of driving while disqualified. Having regard to the fact that the appellant has previously been disqualified from driving on two occasions, once for directly analogous offending, and has now twice been convicted of driving while disqualified by reason of his failure to sit and pass the extended test, it cannot be said that the period selected by the sheriff was excessive.

[10] The appeal will accordingly be refused.