



APPEAL COURT, HIGH COURT OF JUSTICIARY

**[2018] HCJAC 51
HCA/2018/400/XC**

Lord Justice General
Lord Drummond Young
Lady Clark of Calton

OPINION OF THE COURT

delivered by LORD CARLOWAY, the LORD JUSTICE GENERAL

in the

REFERENCE BY THE SHERIFF APPEAL COURT

under section 175A of the Criminal Procedure (Scotland) Act 1995

of

NOTE OF APPEAL AGAINST SENTENCE

by

STEPHEN ANTHONY GALLAGHER

Appellant

against

PROCURATOR FISCAL, GLASGOW

Respondent

Appellant: Keenan (sol adv); Capital Defence Lawyes (for Graham Walker, Glasgow)

Respondent: Lord Advocate (Wolffe QC), K O'Mahony AD; the Crown Agent

4 September 2018

[1] This Opinion should be read in conjunction with that in *Wilson v Procurator Fiscal,*

Aberdeen [2018] HCJAC 50.

[2] On 6 April 2018, at a trial diet in Glasgow Sheriff Court, the appellant pled guilty to a charge of being in charge of a vehicle with an excess amount of alcohol in his breath; the reading being 74 microgrammes in 100 millilitres of breath (three times the legal limit). The sheriff imposed a fine of £325, discounted from £400 for an early plea, and disqualified him from driving for 18 months. The sheriff did not discount the period of disqualification because:

“I did not think that the circumstances supported a discount and in particular I had regard to the public interest when reaching that conclusion”.

[3] The Sheriff Appeal Court has referred the case to the court on the following questions, which are answered for the reasons given in *Wilson v PF Aberdeen (supra)* as follows:

(1) *What is the proper construction of section 196 of the 1995 Act in road traffic cases where the sentencing process involves the imposition of a fine or other penalty and separately the imposition of penalty points.*

Section 196 applies to both a fine and other parts of a sentence such as penalty points or disqualification from driving. All are penalties and, in a given case, should be discounted for an early plea of guilty at approximately the same rate. Other than in exceptional cases, such as where statutory minimums apply or a discount is otherwise impracticable, the rate of discount should be uniform across all parts of the sentence. Any differential would require to be fully reasoned in the event of a challenge.

(2) *In keeping with the court's discretion on matters of discount, may the court adopt a discriminating approach to discount over separate penalties in road traffic cases?*

No. A “discriminating” approach to discount, in so far as this is taken to mean the application of different discount rates for different parts in the one sentence, is not normally legitimate.

(3) May the court take account of public interest considerations such as road safety or public protection when considering whether to discount road traffic penalties, in this case disqualification, and in determining what level of discount to apply to same?

No.

[4] The court will remit the appeal to the Sheriff Appeal Court for further consideration in light of the court’s answers to the reference. In that regard, the sheriff has misdirected himself in not discounting the disqualification at the same rate as the fine.