SHERIFF APPEAL COURT

[2020] SAC 009
SAC/2020/255/AD

Sheriff Principal Pyle
Appeal Sheriff Tait

OPINION OF THE COURT

delivered by SHERIFF PRINCIPAL D C W PYLE

in

Appeal against Sentence

by

WALTER JAMES DUNCAN GRANT

Appellant

against

PROCURATOR FISCAL, ELGIN

Respondent

Appellant: Keenan (sol adv); Paterson Bell (for James McKay, Elgin)
Respondent: A Prentice QC (sol adv) AD

18 November 2020

[1] The appellant pled guilty to two charges in contravention of Section 5(1)(a) of the Road Traffic Act 1988 at the first calling. The first offence occurred on 4 June 2020. The reading was 108 micrograms. The second offence occurred 12 days later. The reading was 75 micrograms. The sheriff in cumulo fined the appellant £2,500 and disqualified him for obtaining or holding a driving licence for 42 months. She accepted that she had

miscalculated the discount for the early plea, which she considered should be 15%. No appeal was taken against the headline sentences before discount, namely a fine of £3,000 and a disqualification period of 48 months. The appellant was aged 69 years and otherwise had no previous convictions.

Discount

[2] The sheriff's reasoning for the 15% discount was "to reflect the utilitarian value on the basis of the nature of the offending and there being no civilian witnesses".

[3] While we accept that appeals against the level of discount should be rare and that there is no automatic right to a particular level, we find the sheriff's reasoning, which is brief, difficult to reconcile with the approach taken in the authorities and indeed the general practice in so far as that can be judged. For example, in one of the conjoined appeals in *Gemmell* v *HMA* 2012 JC 223, (*HMA* v *Ogilvie*) the court did not interfere with a one third discount for a first conviction for drink driving. (Lord Justice-Clerk (Gill) at p 244). The Lord Justice-Clerk was careful to scotch the idea that a one third reduction in sentence at the first calling was an entitlement (at p232), but that statement of the law has to be qualified by the remarks of Lord Eassie (at p 260) that while there is no entitlement to a certain level of discount practitioners should be able to give advice to their clients with a degree of confidence about the likely amount.

[4] We do not know what the sheriff meant by "the nature of the offending", but if that is to do with the seriousness of the charges in our opinion that should properly have been a consideration only at the point of determining the headline sentence before discounting. Otherwise, there is a risk of double counting which *Gemmell* disavowed.

[5] Nor do we think, in so far as we can glean from the sheriff's brief reasoning, that she has sufficiently taken into account the utilitarian value of the avoidance of police officers giving evidence. In *Gemmell*, Lord Eassie (at p 261) explained that value thus:

> "While it may no doubt be that giving evidence is not an 'ordeal' for, at least most, police officers, the fact that by virtue of the early plea the police officers in question are freed not only from the need to attend at the trial, but also from the need to programme their activities to take account of that possibility, and are thereby available to perform other duties, seems to me to be a matter of important public benefit, increasing the protection of the public from crime and thus a material factor in the equation of discounting sentences against utilitarian benefit."

[6] For these reasons we decided that both the fine and the period of disqualification should be reduced by one third, but in doing so recognised that the latter could not fall below the statutory minimum of three years.

Drink Driver Rehabilitation Course

[7] The sheriff allowed the appellant the opportunity to participate in the drink driver rehabilitation programme, but restricted to 10% the reduction of the period of disqualification in the event that he successfully completed the course.

[8] Section 34A(7) of the Road Traffic Offenders Act 1988 provides that the reduction be not less than 3 months and not more than one quarter of the unreduced period, ie the whole period of disqualification. The sheriff acknowledged that the reduction of 10% was "modest". In so far as we can understand the sheriff's reasoning, she appears to have considered that the gravity of the offending meant that the reduction should be at that percentage.

[9] In *Boyd* v *PF, Inverness*, unreported, 7 October 2020, this court (Sheriff Principal Turnbull, Appeal Sheriff Ross) considered the underlying purpose of the course:

> "The purpose of such certification is to encourage an errant driver to undergo

> training and education in order to reduce the risk of further offending, and with it the risk to the road-using public. There is considerable public benefit in such an initiative…
>
> The scheme of the legislation allows up to one-quarter discount from a disqualification. The incentive to take such a scheme, which itself involves significant financial and time commitment, will inevitably lessen with the restriction of any reduction. As there is a clear public purpose to the driving course, we would expect any reduction to be imposed at a level sufficient to present a reasonable incentive. As a one-quarter discount is available, we would expect any lesser discount, in ordinary circumstances, to require some justification."

Applying that purpose to the instant case, in our opinion the nature of the offending reinforces, rather than diminishes, the need in the interests of public safety for the appellant to attend the course and thereby be incentivised to do so. Much of the content of the course is to emphasise to offenders the risks they take by driving under the influence of alcohol, not just to themselves but also, more importantly, to members of the public. At first sight, it might appear counter intuitive that an offender with a cavalier attitude to drink driving should be offered the maximum incentive to attend the course, but that is to misunderstand its underlying purpose, namely the safety of the public.

[10] A further reason given by the sheriff was that "the 'usual discount' of 25% was not appropriate in all the circumstances, but also due to the fact that it would result in the disqualification being below the statutory minimum". We do not agree. If any reduction should not result in the reduced period falling below the statutory minimum it would mean that the scheme would be unavailable to any driver who was given the minimum as the starting point. That would undermine the whole purpose of the scheme and would be contrary to the intention of Parliament.

[11] For these reasons we certified the appellant as suitable for a reduction of one-quarter, namely 9 months.