SHERIFF APPEAL COURT

[2025] SAC (Crim) 8
SAC/2025/336/AP

Sheriff Principal A Y Anwar KC
Appeal Sheriff D A C Young KC
Appeal Sheriff S Reid

OPINION OF THE COURT

delivered by APPEAL SHERIFF S REID

in

Crown Appeal against Sentence

by

PROCURATOR FISCAL, KILMARNOCK

Appellant

against

MOHAMMED AKHTAR

Respondent

Appellant: Keenan KC, AD; The Crown Agent
Respondent: Deans, Advocate; John Pryde & Co

16 December 2025

Summary

[1] On 7 November 2024, Mr Akhtar, the respondent, drove a motor car on the A77 road north of the Grassyards Interchange, Kilmarnock, at speeds of up to 103mph, with both rear tyres "devoid of any tread", whilst overtaking other vehicles.

[2] On summary complaint, he was initially charged with dangerous driving, contrary to section 2 of the Road Traffic Act 1988 ("RTA 1988"). At the trial diet, the complaint was amended to a charge of careless driving, contrary to section 3 of the RTA 1988. The respondent pleaded guilty to the reduced amended charge.

[3] The sheriff heard a brief narration from the Crown. No plea-in-mitigation was invited or heard for the respondent. Instead, the sheriff proceeded to grant the respondent an absolute discharge.

[4] No disqualification order was made. No penalty points were endorsed on Mr Akhtar's licence. No other endorsement was ordered to be made on the licence. No express finding was made of "special reasons" not to endorse the licence.

[5] The Crown appealed against the disposal of absolute discharge. It did so, not because the sentence was unduly lenient but, rather, on the basis that, since careless driving was "an offence involving obligatory endorsement", the sheriff was obliged to endorse the licence with "particulars of the conviction" as well as either (a) particulars of any disqualification order, if such an order is made, or (b) if no disqualification order was made, the penalty points attributable to the offence (in this case, ranging from three to nine points), together with "particulars of the offence, including the date when it was committed", all as prescribed by section 44(1)(b) of the Road Traffic Offenders Act 1988 ("RTOA 1988").

[6] There was no dispute that, if no disqualification order is made, a court need not make an order for endorsement if, for "special reasons", it thinks fit not to do so (section 44(2), RTOA 1988). However, the Crown submitted that, in this case, the sheriff had failed (and was not entitled) to make any such finding of special reasons not to endorse the licence.

[7] We conclude that the Crown appeal should be upheld. In our opinion, the sheriff has fallen into three errors. First, he failed to follow the proper procedure applicable to "special reasons" cases. Second, he failed to make a proper finding of special reasons not to endorse the respondent's licence. Third, in any event, on the information available to him, he was not entitled to reach such a conclusion. We explain our reasoning below.

Procedural background

[8] On summary complaint, the respondent was charged originally with dangerous driving. However, on 15 August 2025, at the trial diet, the complaint was amended to read as follows:

> "On 7th November 2024 on a road or other public place, namely the A77 Northbound, north of the Grassyards Interchange, Kilmarnock, you MOHAMMED REHMAN AKHTAR did drive a mechanically propelled vehicle, namely motor car registered number Y8 VSC without due care and attention or without reasonable consideration for other persons using the road or public place, and did drive said vehicle with two tyres fitted to the rear axle which were devoid of any tread at speeds of up to 103 mph whilst overtaking other motor vehicles; CONTRARY to the Road Traffic Act 1988, Section 3 as amended"

[9] The respondent pleaded guilty to the amended charge. The plea was accepted. A schedule of previous convictions was produced and admitted.

[10] The Crown then tendered the following narration. At 8.30pm on 7 November 2024, uniformed police officers in a marked police vehicle were travelling northbound on the A77 dual carriageway near to the Grassyards Interchange, Kilmarnock. It was dark. The road was unlit at this point. The officers' vehicle was overtaken by the respondent at speed, in excess of the national speed limit of 70mph for that section of road. The officers followed the respondent, maintaining an even distance behind him for approximately 0.2 miles. At one point, the respondent's vehicle reached a speed of 103mph whilst overtaking other

vehicles. Police lights and sirens were activated. The respondent was stopped. On inspection, the rear tyres of the respondent's vehicle were found to be devoid of any tread. He made no reply when cautioned and charged with offences relating to driving in excess of the speed limit and with no tread on his tyres.

[11] No plea-in-mitigation for the respondent was invited or heard.

[12] The sheriff granted the respondent an absolute discharge.

[13] No disqualification order was made. No order was made for endorsement of the respondent's licence.

The minute of proceedings

[14] In its original form, the minute of proceedings dated 15 August 2025 (when the plea was tendered) makes no reference whatsoever to "special reasons" or to the issue of endorsement.

[15] However, about three weeks later, on 5 September 2025, the minute was corrected to append the following docquet:

> "The above minute was amended in terms of Section 299(2)(a) of the Criminal Procedure (Scotland) Act 1995, and the following was added: the Court was unable to assess the quality or standard of the accused's driving from the Crown narration provided therefore granted an absolute discharge and did not endorse the accused's driving licence."

The Crown's note of appeal

[16] The Crown appealed against the grant of an absolute discharge. In the Note, the grounds of appeal are stated thus: (i) that the sheriff erred in law by failing to endorse the respondent's licence, absent a finding that special reasons existed not to do so; (ii) that the sheriff erred by failing to consider imposing a discretionary disqualification order; and

(iii) having regard to the circumstances, and the respondent's poor record of road traffic offending, a discretionary disqualification was appropriate.

The sheriff's report

[17] In his report, the sheriff records that, having heard the Crown narration, he was "not persuaded that the respondent was guilty of the offence to which he had pled guilty". The sheriff opined that, in the absence of any suggestion in the narration of carelessness or inattentiveness, beyond the respondent travelling in excess of the speed limit on a dry, quiet road, without tread on his rear tyres, he could not convict him of the amended charge of careless driving. There were special reasons not to endorse the licence because the sheriff was "unpersuaded" that the respondent's driving fell below the standard required by section 3 of the RTA 1988, so the respondent "had not in fact committed the offence to which he had pled guilty". Reference was made to sections 3 & 3ZA, RTA 1988; *Wilson* v *McPhail* 1991 SCCR 170; *Brunton* v *Lees* 1993 SCCR 98; and *Hutton* v *Higson* [1999] 1 WLUK 168.

[18] The absence of an express finding of special reasons in the original minute was said to have been remedied by the subsequent corrective docquet, which reflected the reasons stated in open court.

Submissions

[19] At the appeal hearing, the advocate depute emphasised that the appeal was not advanced on the ground of undue leniency of the sentence. Instead, the appeal was focussed upon the defective procedure followed by the sheriff in finding special reasons (notably, the failure to afford the Crown a proper opportunity to address the issue); the absence of any adequate finding of special reasons to justify non-endorsement of the licence;

and the sheriff's erroneous conclusion on the narrated circumstances. His approach was said to be misguided. He should not have proceeded *ex proprio motu*, at least not without affording the Crown the opportunity to address the issue of special reasons. Besides, the narrated circumstances, though admittedly sparse, were said to be sufficient to constitute the offence of careless driving. The older authorities referred to by the sheriff were said to be distinguishable as they involved convictions after trial and were decided before section 3ZA, RTA 1988 came into force.

[20] For the respondent, it was submitted that the sheriff's finding should be respected. If the appeal were to be upheld, and the issue of sentence were at large, we were invited to adhere to the disposal of absolute discharge (or to substitute an admonition) with no more than three penalty points endorsed.

Decision

Obligatory endorsement

[21] Certain road traffic offences attract "obligatory endorsement". Such offences have attributed to them a specific number (or range) of penalty points (RTOA 1988, sections 28 & 98, & schedule 2). Where a person is convicted of an offence involving obligatory endorsement, the court must order there to be endorsed on his driving record "particulars of the conviction" and also:

(a) if the court orders him to be disqualified, particulars of the disqualification, or

(b) if the court does not order him to be disqualified, (i) particulars of the offence, including the date when it was committed, and (ii) the penalty points to be attributed to the offence (RTOA 1988, section 44).

[22] Pausing there, it will be observed that an "order for endorsement" goes beyond recording merely the number of penalty points attributable to an offence. It comprises endorsement on the licence of "particulars of the conviction" (section 44(1)) and particulars of the disqualification order, if any (section 44(1)(a)); or, if there is no disqualification, "particulars of the conviction" (section 44(1)) and "particulars of the offence" (including when it was committed), as well as the number of penalty points attributed to it (section 44(1)(b)).

[23] Careless or inconsiderate driving contrary to section 3 of the RTA 1988 is an offence involving obligatory endorsement. A range of between three to nine penalty points is to be attributed to that offence, if no discretionary disqualification order is imposed.

[24] Lastly, it is competent for an absolute discharge to be granted (in terms of sections 246(2) or (3) of the Criminal Procedure (Scotland) Act 1995) in combination with a disqualification order (discretionary or obligatory). In that event, for the purposes of *inter alia* ordering endorsement, the offender is to be treated as if he has been convicted of the offence in question, notwithstanding the grant of an absolute discharge (section 46(3), RTOA 1988).

"Special reasons" not to endorse

[25] However, where a person is convicted of an offence involving obligatory endorsement (such as careless driving), and no disqualification order is made in respect of the offence, the Court need not make an order for endorsement if, for special reasons, it thinks fit not to do so (section 44(2), RTOA 1988). A similarly worded formula exists under section 34 of the RTOA 1988 which allows the court to refrain from imposing an obligatory period of disqualification if special reasons exist not to do so. Whether or not a special

reason exists not to endorse (or not impose an obligatory period of disqualification) is a question of law, not of discretion (*Muir* v *Sutherland* 1940 JC 66).

[26] The proper procedure for advancing and considering a submission of special reasons is well-established. It is set out in *McLeod* v *Scoular* 1974 JC 28, *Tudhope* v *Birbeck* 1979 SLT (Notes) 47, *McNab* v *Feeney* 1980 SLT (Notes) 52, *Keane* v *Perrie* 1983 SLT 63 and *Heywood* v *O'Connor* 1993 SCCR 471. The principles to be drawn from these cases may be summarised as follows:

(1) The onus is on the accused to satisfy the court that special reasons exist.

(2) For that reason, it is for the accused, no later than the date of sentencing, *specifically* to advance and argue a submission that special reasons exist not to endorse the licence or not to disqualify for the minimum period; and it is for the accused to "place before the court" evidence to justify the court in holding those special reasons have been established (*McLeod, supra*, 30).

(3) In turn, the prosecutor must always be given a fair opportunity to challenge the defence submission, and, if so advised, to place before the court evidence which contradicts or qualifies the defence submission or evidence (*McLeod, supra*, 30-31).

(4) Critically, the court is not entitled to conclude that special reasons exist merely from submissions (or evidence) heard by it, without the issue of special reasons having been *specifically* advanced and argued for the accused, or without the prosecutor having been afforded a fair opportunity to respond to, and challenge, the submission.

(5) There is no fixed rule that the sheriff cannot *raise* the issue of special reasons *ex proprio motu* (for example, by enquiring whether such reasons might exist) (*Heywood, supra*, 474) but, in that event, it remains for the accused to adopt and

specifically to advance the submission – and the prosecutor must always be given a fair opportunity to respond to, and challenge, the submission.

(6) Consistent with that approach, it is considered good practice for the defence agent to indicate in advance of the date of sentence their intention to make a special reasons submission, in order to allow the prosecutor a fair opportunity to consider the nature of the asserted special reasons. If, on hearing the submission, the prosecutor needs further time to examine the special reasons so adduced, the court should normally grant a continuation for that purpose.

(7) Generally speaking, four situations might arise (*McLeod, supra,* 31):

(i) The first situation is when the prosecutor is in a position to agree that the facts advanced by the defence are true. In that situation, the court is entitled to proceed on the facts so stated (though it can always adjourn for fuller particulars, if that is thought to be necessary for the proper disposal of the accused's plea).

(ii) The second situation, less common perhaps, is if the case has already proceeded to trial, and the facts founded upon as special reasons have already been explored in evidence. In that scenario, it may not be necessary to have any further inquiry, and, again, the issue of special reasons, if specifically advanced, may be capable of being decided forthwith.

(iii) The third situation is when the prosecutor disputes any of the material facts relied upon by the defence in support of the special reasons submission. The court should not simply accept *pro veritate* the information provided by the defence. Unless the court can properly conclude that these facts, even if proved, do not constitute special reasons, the proper course is for the court to

assign a further hearing to allow the defence to lead evidence in support of these alleged special reasons, and for the prosecutor to cross-examine on such evidence, or to lead evidence in rebuttal.

(iv) The fourth situation is where the prosecutor is not in a position to admit or deny or to qualify the alleged facts advanced by the defence. Again, the court should not simply accept *pro veritate* the information provided by the defence. The proper course is for the court to assign a further hearing for evidence to be heard in support of the special reasons submission (as in the third scenario described above).

In each of these four situations, the onus lies on the accused to satisfy the court that special reasons exist – and the standard of proof that must be reached by the accused is proof on the balance of probabilities.

(8) A final observation. While the issue of special reasons (not to endorse or to disqualify) must be *specifically* advanced by the accused, a slight adjustment or relaxation to the strict application of that practice is allowable in cases involving pleas of guilty intimated by letter (*Keane, supra*, 64). In those cases, it is acknowledged that it may be unjust to expect an accused (who will usually be unrepresented at that stage) to make express reference in his letter to special reasons or specifically to advance a submission that, for example, his licence should not be endorsed. Instead, in such cases, if the letter intimating the plea contains matters which, if established might entitle the court to hold that there were special reasons (for not ordering endorsement or for not ordering disqualification for a minimum prescribed period), then the court should expressly and specifically draw the contents of the letter to the prosecutor's attention for the disclosed purpose of

inviting submissions on whether the court's special reasons powers should be exercised (*Keane, supra*, 65).

The sheriff's errors

[27] Against that framework, in our opinion, the sheriff has fallen into three errors.

[28] The first error is that he failed to follow the proper procedure described above. In the first place, the issue of special reasons was never *specifically* advanced by the defence, prior to sentence being imposed. No plea-in-mitigation was ever sought or heard. In the second place, no fair opportunity was afforded to the prosecutor to respond to any such specific special reasons plea, prior to sentence being imposed. Put shortly, the sheriff determined the issue *ex proprio motu*.

[29] While we accept that there is no fixed rule that the court cannot itself raise the question of special reasons, the better practice is for the court to leave it to an accused, if represented, to do so (*Heywood, supra*, 474, per Lord Justice General (Hope)). However, if, after hearing the Crown narration in this case, a question had arisen in the sheriff's mind as to whether special reasons might exist, he should have articulated that question expressly. Critically, he should then have afforded the defence the opportunity *specifically* to advance the submission, if so advised. In that event, the sheriff should then have afforded the prosecutor a fair opportunity to respond. From there, the procedure to be adopted would have depended upon the prosecutor's response. In the event, "the correct drill", as the Lord Justice General (Hope) described it, was not followed (*Heywood, supra*, 474).

[30] This case is similar to *Macnab, supra.* There, a sheriff failed to order endorsement, despite no reference whatsoever to the issue of special reasons in the accused's plea-in-

mitigation. Referring to *McLeod* and *Tudhope, supra*, the Lord Justice General (Emslie) stated (*Macnab*, *supra*, 53):

> "These cases make it abundantly clear that the issue of alleged special reasons must be introduced by the defender by a motion not to disqualify, or not to endorse. The reason for that is obvious. It is to enable the Crown to consider its position… It is not for the sheriff *ex proprio motu* in any case to exercise a power not to disqualify or a power not to endorse when the Crown has not had an opportunity of making representations upon that question, and, in particular, a sheriff ought never to exercise the power unless the issue has been raised specifically by the defender…"

[31] The second error is that the sheriff failed to make a proper finding that special reasons existed not to order the obligatory endorsement. Where a court exercises its power under section 44, RTOA 1988 (or not to impose an obligatory period of disqualification under section 34, RTOA 1988), the grounds for doing so must be stated in open court and entered in the minute of proceedings (section 47, RTOA 1988). In this case, the original minute is silent on the issue. The corrective docquet also makes no express reference to special reasons having been established. To the extent that the amendment purports to do so impliedly, and to record grounds for exercising the section 44 power, it is not, in its terms, sufficient to do so. The corrective docquet merely records that the sheriff was "unable to assess the quality or standard of the accused's driving from the Crown narration". That is not a special reason to refrain from ordering an obligatory endorsement. It is merely a complaint about the adequacy of a Crown narration.

[32] This error is compounded by the fuller reasoning in the sheriff's report. To explain, by their nature, special reasons are mitigating or extenuating circumstances relating to the offence itself, which do not amount to a defence to the charge but which may justify the court in not endorsing the offender's licence (or in imposing no disqualification or a lesser period of disqualification than the minimum prescribed). In other words, special reasons can only arise as a form of *mitigation* of an offence which has been committed. However, in

his report, the sheriff explains that special reasons (not to endorse) were established because he was "not persuaded that the respondent is guilty of the offence to which he pled guilty" and that "he had not in fact committed the offence to which he had pled guilty" (paragraphs [16] & [17]). That is a conceptually different issue. The sheriff has erroneously concluded that the non-commission of the offence was a special reason. As the Lord Justice General (Hope) explained in *Heywood, supra* (page 475):

> "…the proper approach is to ask whether there are special reasons as to why the offence was being committed and, in particular, whether it was being committed in circumstances where it would not otherwise have been committed. The reason must clearly already be special to the offence. But the starting point is that that an offence was being committed in terms of the statute…"

[33] Lastly, the sheriff fell into error in concluding, on the information available to him, that the offence of careless driving had not been committed at all. In our opinion, both the libel and the Crown narration amply disclose circumstances constituting careless driving (that is, driving without due care and attention), contrary to section 3, RTA 1988. Indeed, the libel (which must be taken to have been accepted by the respondent by virtue of his plea of guilty) would alone have sufficed.

[34] The combination of the respondent's recorded speed of 103mph, with rear tyres that were devoid of tread, while overtaking other vehicles, plainly constitutes driving in a manner falling below that which would be expected of a competent and careful driver (section 3ZA, RTOA 1988). It can readily be inferred that a speed of 103mph on this category of road is manifestly excessive, and that the handling and braking capabilities of a vehicle driven at that excessive speed on rear tyres devoid of tread are materially degraded. The sheriff fell into error in concluding otherwise.

Conclusion

[35] For the foregoing reasons, we shall uphold the Crown appeal and quash the sheriff's disposal of absolute discharge. We have been provided with details of the respondent's financial circumstances. We note his appalling record of repeat road traffic offending, including four previous convictions for careless driving and nine disqualification orders. He is presently subject to a further disqualification order (for four and a half years) imposed in January 2025 for a subsequent road traffic offence.

[36] Accordingly, we shall order the respondent to pay a fine of £1,125, discounted from £1,250 to reflect the timing of the plea, payable at £100 per month. A victim surcharge and fines enforcement order shall be imposed.

[37] We shall also order that the respondent be disqualified from driving for 22 months, discounted from 24 months. We note that the respondent was previously disqualified for four and a half years in January 2025, and that the two periods of disqualification will run concurrently. Following the approach set out in *Docherty* v *Procurator Fiscal, Aberdeen* [2023] SAC (Crim) 11, at paragraph 14, and noting the duration of the prior disqualification, we conclude that no further extension to the new disqualification period is necessary for the purposes of punishment, deterrence, or public protection. His licence shall be endorsed.