JOHN VOTAIA -v- REGINAM

High Court of Solomon Islands
(Ward C.J.)
Criminal Case No. 14 of 1991
Hearing: 16 July 1991
Judgment: 16 July 1991

A. Radclyffe for the Appellant
J. Wasiraro for the Respondent

WARD CJ: This is an appeal against an order of disqualification from driving for a period of 18 month for an offence of careless driving. I allowed the appeal and reduced the period to one of 3 months and said I would give reasons later. I now do so.

The appellant was driving a pick-up truck and, at a point where the road surface is extremely bad by the entrance to Ranadi industrial estate, he overtook a motor cycle in such a manner that he hit it and caused the driver to fall injuring him and damaging the motor cycle. The appellant drove on and was later seen by the police. At that time he lied to try and explain away some scratches on the pickup but the evidence does not demonstrate whether or not he had been aware he had struck the motor cycle prior to the police telling him of the incident.

Failing to stop or report are, of course, separate offences and had he been charged with them this Court would have known the state of his knowledge. However in the absence of any clear evidence on that aspect of the case, I feel the sentencing court must take it in the appellant's favour that he was unaware of the accident when he did not stop. In fact the learned magistrate felt it was reasonable that he had not stopped for his own safety and only commented on the failure to notify the police.

The appellant pleaded not guilty, was convicted and sentenced to a fine of $150, disqualified for 18 months and his licence endorsed.

The court heard there were no previous convictions but the appellant was unrepresented and offered no further mitigation. The magistrate did not ask whether he needed his licence for his work. Magistrates who are considering disqualification should always attempt to ascertain whether the convicted man needs his licence for his

work as that may affect the length of disqualification. In this case the evidence the magistrate had heard suggested that the appellant needed to drive as, at least, a part of his work with the St. Martin's Rural Training Centre and I accept the magistrate had that fact in mind. Equally before the fine was imposed, there should have been an enquiry as to his income.

The appeal is against the disqualification only and is on two grounds:

1. that the disqualification was a wrongful exercise of the magistrate's discretion.

2. alternatively that in the circumstances the period of disqualification is excessive and outside the range of sentences for the offence of careless driving.

By section 28 of the Traffic Act, the Court is empowered to order a defendant to be disqualified from driving on conviction of various offences listed in the Schedule to the Act. Careless driving is an offence in Part II and so the court may order him to be disqualified for such period as the court thinks fit.

That section gives a clear discretion. Mr Radclyffe argues that the use of disqualification is so rare in cases of careless driving, particularly where the accused is a first offender, that it was a wrongful exercise of the magistrate's discretion.

I cannot accept that. It is not possible to lay down a hard and fast rule as to the exercise of any judicial discretion because once that is done the discretion will be fettered: *The Friedeberg* 10 PD 112. However this clearly does not mean the court may act capriciously and it will exercise its discretion on judicial grounds and for substantial reasons, *Re Taylor* 4 Ch D. 160. In this case, the learned magistrate clearly considered the case as a whole and decided it was appropriate to disqualify. He had ample evidence and information on which to base that decision and this Court will be reluctant to interfere in such circumstances.

The first ground fails.

The second ground deals with the period of disqualification and here the appellant is on firmer ground. Many cases of drunken driving and dangerous driving where disqualification is obligatory receive only the minimum period of 12 months. It is not apparent from the record just why the magistrate felt this was a more serious case. Counsel for the appellant suggested it was the fact the other driver was injured and it is difficult to find any other reason to explain such a long period.

Whilst the consequences of the driving must always be borne in mind, the court should not attach undue importance to them. The level of sentence must relate to the nature and manner of the driving itself. It is not unusual for a minor lapse by a driver to have very serious effects but, if the lapse was simply a lack of due care and attention, it remains careless and not dangerous driving. In this case, the failure to give a sufficiently wide berth when overtaking the motor cycle was a bad case of careless driving but it falls well short of the worst such case.

It is extremely rare to order disqualification in cases of careless driving and when it is done, it is not normally appropriate to order a long period. When the Court finds a case is a proper one to order disqualification, it should then consider the period appropriate to the facts of the case before it. The order is part of the punishment but the court should only impose a lengthy term if the driving was such or the defendant's driving record was so bad that there is a need to protect the public from his driving.

This was not such a case. The appellant had no previous convictions and the accident was the result of a moment's inattention when driving over a bad section of road. In such circumstances I feel an appropriate period of disqualification would be one of 3 months.

The appeal is allowed. The order of 18 months disqualification is quashed and an order of 3 months substituted.

(F.G.R. Ward)
CHIEF JUSTICE