



THE COURT OF APPEAL

Neutral Citation Number: [2016] IECA 289

Birmingham J.
Mahon J.
Edwards J.

2015/412

IN THE MATTER OF SECTION 16 OF THE COURTS OF JUSTICE ACT 1947

BETWEEN

DIRECTOR OF PUBLIC PROSECUTIONS

PROSECUTOR

AND

TONY SKILLINGTON

ACCUSED

JUDGMENT of the Court delivered on the 13th day of October 2016 by Mr. Justice Birmingham

1. The matter comes before the Court on foot of a consultative case stated.

2. The question posed in the case stated is as follows:-

"Having regard to the facts as proved or admitted or agreed and as found by me and having regard to the law in this jurisdiction, as well as that of other jurisdictions, the opinion of the Court of Appeal is sought on the question as to whether the Court has discretion not to disqualify a person from driving in circumstances where the said disqualification would impair that person's or any other person's livelihood".

3. The background to the case stated is that Mr Skillington was summoned to appear before the District Court in Middleton to answer an allegation that he had driven a vehicle which was not covered by insurance. The matter came before the District Court on the 11th September, 2014, at which stage the accused was convicted in his absence and he was disqualified from driving for a period of two years. The accused lodged an appeal against the severity of the penalty and that appeal came on before His Honour Judge David Riordan in the Circuit Court in Cork on the 16th December, 2014. The appeal was one against severity only and in reality related only to the order which disqualified Mr. Skillington from driving. The accused admitted that he was guilty of the offence of driving without insurance and he also accepted that pursuant to s. 65 of the Road Traffic Act 2010, a consequential disqualification order follows upon a conviction. The object of the appeal was to urge that the judge exercise a discretion which it was contended that he had under s. 65(5)(b) of the Road Traffic Act 2010, not to disqualify. Section 65(5)(b) provides:-

"Where a person is convicted of an offence under s. 52 tried summarily or under s. 56, the court may, in the case of a first offence under the section concerned, where it is satisfied that a special reason (which it shall specify when making its order) has been proved by the convicted person to exist in his or her particular case to justify such a course -

(i) decline to make a consequential disqualification order, or

(ii) specify a period of disqualification in the consequential disqualification order of less than 1 year."

4. I will refer to information that was put before the Court about the circumstances of the offence and the circumstances of the offender presently. But at this stage, what is of significance is that counsel for Mr. Skillington submitted that the necessity of an individual driving for the purposes of that individual's work is a sufficient reason why a disqualification should not be imposed. Counsel cited in support of the arguments that he was making the case of *The People (DPP) v Peter O'Dwyer* [2005] 3 I.R. 134. As set out in some detail in this case stated, the judge conducted some research in the area and then drew the attention of the State Solicitor and defence counsel to various cases from other jurisdictions dealing with what amounted to a special reason not to disqualify. Somewhat unusually, the case stated sets out extracts from a number of court decisions from Northern Ireland, Scotland and from England and Wales. The Northern Ireland decision referred to is that of *R. v. Crossan* [1939] NI 106, which was a case where a magistrate had decided not to disqualify a motor cyclist for driving his motor cycle without insurance because he required the licence for the purpose of carrying on his business. The High Court disagreed, Andrews LCJ taking the view that a "special reason" was one which:-

"Is special to the facts of the particular case, that is, special to the facts which constitute the offence. It is in other words, a mitigating or extenuating circumstance, not amounting in law to a defence to the charge, yet directly connected with the commission of the offence, and one which the court ought properly to take into consideration when imposing punishment. A circumstance peculiar to the offender as distinct from the offence is not a special reason within the exception"

5. This distinction between a special reason that relates to the offence as distinct from the circumstances of the offender is a recurring theme in the various cases cited. It is clear that the learned Circuit Court judge was very conscious indeed of this line of jurisprudence and the question that he was posing was really designed to obtain an answer to the question:-

"Is it the case that in Ireland that for a special reason to be established the facts pointed to must relate to the circumstances of the offence as distinct from the circumstances of the offender."

6. A number of Scottish cases were referred to in the course of the case stated including *Adare v. Munn*, *Adare v. Brash* [1940] JC 69, *Murray v. MacMillan* [1942] JC 10, *Fairlie v. Hill* [1944] JC 53 and *Irvine v. Pollock* [1952] JC 51. Not all of the cases go the same way. So, in *Murray v. MacMillan*, a young medical practitioner who pleaded guilty to an offence of permitting a vehicle to be used without insurance was not disqualified while it was uninsured. From the case stated it emerged that the appellant was an assistant to two doctors in large practices, was often engaged in night duties, was the medical attendant to the employees at an aerodrome and at three collieries and was also in charge of first aid surgical services and air raid precautions at a post some distance from his residence. Ultimately the Court held that

"Appreciable prejudice to the public interest likely to arise from the offender's disqualification, such as suggested by the facts of the present case, was a 'special reason' which might entitle a court to reduce or refrain from imposing the period of disqualification."

7. A number of English authorities are referred to in the course of the case stated including *Whittal v. Kirby* [1947] 2 All E.R. 552, *Knowler v. Rennison* [1947] KB 488 and *R. v. Wickins* [1958] 42 Cr.App.R. 236. This latter case provides an example of where a special reason was found to exist. The appellant pleaded guilty to driving a motor vehicle while under the influence of alcohol. At the time of the offence he was suffering from diabetes, though he was unaware of this, and had consumed a small quantity of beer not exceeding the amount to which he was normally accustomed, and an amount which would not have affected his driving but for diabetes.

8. The case stated refers to a quotation from Archbold's *Criminal Pleading, Evidence and Practice* (2009) Thomson Reuters (Legal) Limited at page 2950 as follows:-

"There is no statutory definition of special reasons, but the accepted definition is that in *R. v. Crossan* [1939] NI 106, as approved in *Whittal v. Kirby* [1946] 1 AER 552, and interpreted in *R. v. Wickens* 42 Crim.App.R. 236 CCA. From this, four points emerge: it must be a mitigating or extenuating circumstance, it must not amount in law to a defence: it must be directly connected with the commission of the offence: it must be a matter which the court ought properly to take into account when considering sentence."

9. Before we turn to address the question posed, it is necessary to set out the facts that are recited in the case stated these were:-

(a) That the accused was the owner and managing director of "Skillman Asphalt Limited" which was primarily engaged in the business of constructing and/or repairing roofs and that given the nature of the business, the majority of the company's work is carried out away from its office and 'on site' at whatever particular contract the company was working on at any time.

(b) That on the day of the offence, the accused drove a van belonging to the company for the purposes of pricing a roofing contract in Cobh, Co. Cork, because he was the only person available at the time and this was the only vehicle available to him at the time.

(c) That the accused's financial circumstances were such that he could not afford to miss out on any available work.

(d) That the accused knew at all times that the van was uninsured.

(e) That this was the only time that the accused drove the van while the van was uninsured either before or since this offence was committed.

(f) That the accused has a wife and three young children.

(g) That the accused's wife is in part time employment and the accused pays the majority of their mortgage in respect of their family home.

(h) That the accused had no previous convictions and, in particular, that the conviction, the subject matter of this case stated is the accused's first offence under s. 56(1) of the Road Traffic Act 1961.

(i) That, excluding the accused Skillman Asphalt Limited employs five people and that the catchment area in which the company operates is throughout the whole of Munster.

(j) That driving from particular site to site is an integral part of the accused's business and in particular, for pricing contracts and supervising ongoing work.

(k) That a disqualification from driving would very seriously impair his business and livelihood and possibly the livelihoods of some or all of the employees of the company should they have to be made redundant and/or should the company be dissolved.

10. On behalf of the accused it was submitted that to disqualify him from driving would be disproportionate in the circumstances where this was his first offence and that there was little risk of the accused committing such an offence in the future. Disqualification would result in exceptional hardship: his right to earn a livelihood would be impaired and there is a possibility of the company going out of business. If that happened not only would his life and the lives of his family members be severely affected but so too would the lives of others who would also experience hardship. The DPP has submitted that on the facts of the present case there is no special reason present which would permit the judge to avoid a disqualification. A special reason must be one which is rare or unusual, and there is nothing unusual in the fact that disqualification from driving will give rise to employment difficulties.

11. However, the Director has not argued for the restrictive interpretation of the phrase "special reasons" that has found favour in Northern Ireland, in Scotland and in England and Wales. The Director accepts that there is nothing in the language of the statute which stipulates that the special reasons must relate to the offence, as distinct to relating to the offender.

12. The case stated raises the question of whether the Court has discretion not to disqualify a person from driving in circumstances where the disqualification would impair that person's or any other person's livelihood and does so in general and unqualified terms. The question can therefore be answered in the negative only if one can say with confidence that it is impossible to conceive of circumstances, however extreme, that would impact on an ability to earn a livelihood and could provide a basis for non disqualification. For my part I find it difficult to go that far. However, I find it very difficult to envisage what the circumstances would be which would constitute special reasons. Such cases, if they are ever found to exist and it may well be that no such case will ever

arise, would be truly exceptional indeed. Hardship, including hardship impacting on an ability to earn a livelihood is likely to be relevant as an additional factor to be considered if there are special reasons present also relating to the offence. So, if a genuine and reasonable mistake was made about whether a particular vehicle was covered by a policy of insurance, the judge could then have regard to the impact of the disqualification order in deciding how to exercise his discretion.

13. It is in any case for the judge in the District Court or on appeal the judge in the Circuit Court to decide whether special reasons are present, and so I am reluctant to express any view in relation to the facts. However, given the way in which the case stated is formulated, which strictly speaking would require the case to be answered in the affirmative if the impact on employment was just one of a number of factors present including factors relating to the offence itself which together amounted to a special reason. I feel bound to say that I cannot see any basis on which it could be seriously contended that there were special circumstances present in the case of Mr. Skillington.

14. As driving without insurance cases go, this was a bad case involving as it did a conscious and deliberate decision to drive a commercial vehicle in the full and clear knowledge that it was uninsured, a decision having been taken not to take out a policy of insurance.

15. The question posed is whether a court has a discretion not to disqualify a person from driving in circumstances where the disqualification would impair that person or any other person's livelihood. The Court has a discretion not to disqualify where there are special reasons present. Difficulties of an employment nature will, of themselves and in isolation rarely, if ever, amount to special reasons. That notwithstanding, the question posed should be answered Yes.