

## THE HIGH COURT

[2018 No. 708 S.S.]

## IN THE MATTER OF SECTION 52 OF THE COURT'S (SUPPLEMENTAL PROVISIONS) ACT, 1961

BETWEEN

THE DIRECTOR OF PUBLIC PROSECUTIONS (AT THE SUIT OF GARDA MICHELLE POWER)

PROSECUTOR

AND

FRANCISC PETROVICI

DEFENDANT

## JUDGMENT of Mr. Justice Noonan delivered on the 27th day of November, 2018

1. This matter arises by way of consultative case stated by Judge Haughton, judge of the District Court sitting in Wexford.
2. The defendant came before the court on the 20th December, 2016 charged with driving without insurance contrary to s. 56 of the Road Traffic Act, 1961 as amended. He pleaded guilty to that offence. On inquiry by the judge, the prosecuting Garda indicated that the defendant had previous convictions but these appear to be spent under the terms of the Criminal Justice (Spent Convictions and Certain Disclosures) Act, 2016 ("the 2016 Act"). In the normal way, a conviction for driving without insurance carries a consequential disqualification unless the provisions of s. 65 (5) (b) of the Road Traffic Act, 2010 are applied which provides:
 

"Where a person is convicted of an offence under section 52 tried summarily or under section 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."
3. Evidence was tendered on behalf of the defendant that he had a policy of motor insurance at the material time which he bona fide believed covered his driving but in fact did not. Consequently, the defendant's solicitor invited the judge to apply the provisions of the above subsection. It emerged that the defendant had two previous convictions for driving without insurance both dating from 2008 together with other road traffic related convictions from the same year.
4. Section 5 of the 2016 Act defines the type of convictions which may be regarded as spent in certain circumstances. Such convictions must be more than seven years old and not have resulted in an excluded sentence as defined by the Act. Not more than one conviction may be regarded as spent save in the case of certain road traffic offences dealt with in the District Court including s. 56 offences. In the present case, the defendant's previous convictions would be regarded as spent under the provisions of the Act. Section 6 of the Act provides that a person shall not be required to disclose a spent conviction in the context, for example, of an employment situation. Section 7 deals with the general effect of a spent conviction in the context of court proceedings. Sections 7 (1) and (2) apply to any proceedings before a court, which clearly includes both civil and criminal proceedings. Section 7 (1) provides that in any proceedings before a court, no evidence of a spent conviction shall be admissible. Section 7 (2) provides:
 

"(2) A court, in any proceedings before it and at any stage during those proceedings, may, notwithstanding *subsection (1)*, admit or require evidence relating to a person's spent conviction or the circumstances ancillary thereto if the court is satisfied in all the circumstances that justice cannot be done except by so admitting or requiring the evidence concerned but, where such evidence is admitted or required, the court may make such orders as the court considers necessary to prevent or restrict publication of that evidence."
5. Importantly however, s. 7 (3) (a) provides that nothing in the relevant part of the Act shall prevent the admission of evidence relating to a person's spent conviction in any criminal proceedings before a court where that person is a party.
6. Arising from the foregoing circumstances, the learned District judge posed two questions for determination by this court:
  1. Am I entitled being satisfied that it is in the interest of justice to do so to admit the details of the defendant's previous convictions for no insurance under s. 56 of the Road Traffic Act, 1961 as amended by s. 18 of the Road Traffic Act, 2006 in the context of the defendant's application for me to exercise my discretion not to disqualify him for the special reason which he submits exists in this case?
  2. Do the provisions of s. 7 (3) (a) make the defendant's previous convictions admissible, he being a party to the proceedings?
7. At the hearing of this matter, counsel for both parties indicated to the court that they were in agreement that both questions should be answered in the affirmative. I also agree with that view. It seems to me that s. 7 (3) (a) is clear in its meaning and intent. It effectively disapplies the provisions of the 2016 Act to any criminal proceedings in which, as here, the person with the spent conviction or convictions is the defendant. That is the plain meaning of the subsection. As submitted by counsel for the Director, had the Oireachtas intended to interfere with the centuries old practice of a sentencing court hearing evidence of previous convictions, it would be necessary to do so in very clear terms.
8. Clearly therefore, ss. 7 (1) and (2) can have no application to the facts of the present case. It seems to me that question 1 of the case stated is predicated on the basis that s. 7 (2) does apply but for the reasons I have explained, this does not appear to me to arise at all. I think perhaps a more appropriate reformulation of question 1 would be to exclude the words "being satisfied that it is in the interests of justice to do so" as there is no requirement for the learned District judge to be so satisfied in order to admit the evidence of previous convictions. In fact, the court is obliged to do so before passing sentence, whether or not in the context of any application by the defence.

9. For these reasons, I propose to answer the questions, amended as noted above, as follows:

1. Yes.

2. Yes.

10. It seems to me that in the light of these answers and for the avoidance of doubt, I should refer briefly to the operation of s. 65 (5) (b) cited above on which the defendant's application to the District Court was predicated. In my view, it is clear in the light of the findings in this judgment that the offence with which the defendant is charged in this case cannot be regarded as a "first offence" within the meaning of that subsection.