



THE COURT OF APPEAL

**Birmingham J.
Sheehan J.
Edwards J.
116/13**

The People at the Suit of the Director of Public Prosecutions

Respondent

V

Marcin Kazinski

Appellant

JUDGMENT of the Court delivered on the 24th day of October 2016 by Mr. Justice Birmingham

1. The matter before the Court today is an appeal against an order of the Circuit Court of the 17th April, 2013, which disqualified the appellant from holding a driving licence for a period of ten years to date from the 17th October, 2013. The issue before the Court is whether the duration of the disqualification was excessive and whether this Court should intervene.
2. The background to the making of the disqualification order is a very sad and unfortunate one. On the 27th November, 2012, the appellant pleaded guilty to an offence of dangerous driving causing serious bodily harm, on the 23rd December, 2011, contrary to s. 53 of the Road Traffic Act, 1961, as substituted by s. 4 of the Road Traffic (No. 2) Act, 2011, and also pleaded guilty to the offence of driving a mechanically propelled vehicle while exceeding the alcohol limits contrary to s. 4(2)(a) of the Road Traffic Act, 2010. On the day of the offences, at approximately midday, the appellant was driving a motor vehicle in the Cappoquin area of Waterford. His twelve year old daughter was in the front seat of the car and his daughter's friends were in the backseat. The appellant was bringing the friends of his daughter home after a sleep over. He had dropped off one and was in the process of dropping off the other when the accident happened. None of the occupants of the car were wearing seat belts.
3. The suggestion is that the appellant turned to speak to his daughter, in doing so distracted himself and then when he refocused on the road ahead there was a pick up truck in front of him with which he collided. There was no suggestion of excessive speed or anything of that nature having been a factor. When the gardaí came on the scene the appellant was breathalysed and his blood alcohol reading was 167mm of alcohol per 100mm of blood which is just over three times the legal limit. It was accepted that the appellant had not drunk alcohol on the day of the accident. He had though drunk heavily on the day before, and whether he realised it or not, alcohol was still present in his bloodstream.
4. In the accident, the appellant's daughter Monica suffered horrendous injuries. She was in a coma for some three weeks and the medical reports that were before the Circuit Court for the sentencing hearing described her condition as "spastic quadriplegia".
5. The appellant immediately entered pleas of guilty to the charges that were preferred and the sentence hearing took place on the 17th April, 2013, before His Honour Judge Keenan Johnson in the Circuit Court in Waterford. It must be said immediately that the sentence hearing was conducted with great sensitivity by all concerned, by Inspector Paul Heffernan who was in charge of the investigation, by the lawyers on both sides and in particular by the sentencing judge. Compelling evidence was given by the appellant's wife and the mother of the injured party about the role of the appellant in caring for and supporting their daughter. The particular focus of the submissions on behalf of the appellant which were made with great force was that this was a case where a custodial sentence could be avoided and where custody would not achieve anything, but would simply add further to the family's enormous difficulties. Judge Johnson took time to consider the matter and returned and imposed a four year sentence, suspended for five years, on conditions which included that Mr. Kazinski not commit an offence under ss. 49 or 50 of the Road Traffic Act, during the period of the suspended sentence.
6. The "drunk driving" offence was dealt with by way of an order that Mr. Kazinski undertake 240 hours community service. Those parts of the order are not in dispute. However, on both offences, the judge imposed a ten year disqualification from driving and it is with that part of the order and that part of the order only that the Court is concerned today.
7. The question of the duration of the inevitable disqualification order was not the focus of particular attention during the course of the sentence hearing, rather the anxiety on the part of the appellant, or perhaps more accurately the appellant's wife, was that the disqualification which everybody realised was inevitable should be deferred so as to allow her learn to drive. At the time of the sentence hearing she was taking lessons, but had not by that stage obtained a driving licence. The point that was made and indeed accepted was that it was essential that there should be a driver in the house when Monica was to be brought to medical appointments, physiotherapy, the National Rehabilitation Centre and so on.
8. In a situation where all the attention was on the question of whether this was a case that could only be met with a custodial sentence or whether a non custodial disposal was possible, it is understandable that the question of whether it was necessary or appropriate to extend the period of the mandatory disqualification was not addressed in detail. The judge was not asked to focus directly on the question of whether adding to the period of disqualification would add to the family's difficulties and to that extent disadvantage Monica. There is in fact no doubt that the task of caring for Monica is made more difficult than it would otherwise be if there is only one driver rather than two in the household. The passage of time has simply confirmed what was the situation at the time of the sentence hearing.
9. In the Court's view, this was a case where a lengthy disqualification period which would otherwise be the expected outcome would simply increase and prolong the family's difficulties and made the task of Monica's parents in sharing the responsibilities of caring for her more difficult. In those circumstances the disqualification should not have been for a period longer than prescribed by statute. Accordingly this Court will now vary the disqualification period to one of three years.

