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SUPREME COURT OF VICTORIA — COURT OF APPEAL

R v BAZLEY

Phillips CJ, Batt JA and Vincent AJA

21 August 1997

CRIMINAL LAW – SENTENCING – DISQUALIFICATION FROM OBTAINING A DRIVER LICENCE – CONSIDERATIONS WHERE PERSON IMPRISONED.

HELD: The length of disqualification from obtaining a driver licence must bear a relationship to the period of custody required to be served and the degree of dependence, particularly economic, of the offender upon possession of a licence.

VINCENT AJA: “... [6] The sentencing judge also cancelled the licence of the applicant to drive a motor car and fixed a disqualification period of six years. As Crockett J stated in relation to the determination of an appropriate period of disqualification in his judgment in *R v George* (unreported, Court of Criminal Appeal, 21 September 1989):

“The court should have regard to two separate considerations. They are, first, the need for the period of cancellation itself to serve its part as a punitive element in the context of the total punishment imposed and, secondly, the need to provide protection to the public from the dangers of possible future lawless motor vehicle driving by the offender. These two considerations have each to be given such weight as the court considers is appropriate bearing in mind it is their combined effect which will determine the ultimate length of the disqualification.”

I would add that it is also important to have regard to the rehabilitation of the offender. [7] In the present matter there is no suggestion of the need to protect the public “from the dangers of possible future lawless motor vehicle driving” by the applicant which had to be considered by the court in the case of *George* or the later matter of *Vasiliadis* (unreported, 21 September 1990). It does not appear to me that the inclusion of the additional punitive element involved in the deprivation of the ability to drive a motor vehicle could be properly regarded as required upon the release of the applicant after a fairly substantial period of imprisonment. On the other hand, the inability to obtain the licence may well constitute a serious impediment to his prospects of successful reintegration into the community ...”

BATT JA: “... [8] The period of disqualification or suspension which may or must, as the case may require, be fixed is a matter of discretionary judgment according to the circumstances of the particular case, but two general observations may be made. First, such disqualification or suspension differs from the mandatory disqualification under s89(1) of the *Sentencing Act* 1991 in the case of manslaughter arising out of the use of a motor car, culpable driving or negligently causing serious injury through the driving of a motor car.

Ordinarily, at least in a case within s89(4), there will be applicable only one of the two separate considerations by reference to which the length of disqualification is to be determined that were identified in the culpable driving cases of *R v George*; *R v Vasiliadis*; and *R v Boeyen* (1990) 50 A Crim R 482. In other words, there will not, [9] ordinarily at least, be a need to provide protection to the public from the dangers of possible future lawless driving by the offender, but there will still be a need for a punitive element. As those cases show, there are three aspects of that element. Two of those aspects are, first, that the length of disqualification, or I would add, suspension, must bear a relationship to the period of custody required to be served and, second, the degree of dependency, particularly economic, of the offender upon the possession of a licence.

Those two aspects lead me to the second observation. In determining the period of disqualification or suspension, regard should be had to its effect on the offender’s rehabilitation. This is especially so where there is no need to protect the public. A period of disqualification or

suspension extending beyond the date of the offender's release from custody may well be counter-productive, for it will, or may, make it difficult for the offender to attend or even obtain employment ..."
