

27/91

SUPREME COURT OF VICTORIA — COURT OF CRIMINAL APPEAL

R v GEORGE

Crockett, O'Bryan and Gray JJ

21 September 1989

MOTOR TRAFFIC – SENTENCING – CULPABLE DRIVING – YOUNG OFFENDER/NO PRIORS/DESIRE TO WORK AS A TRADESMAN – DETENTION IMPOSED – DISQUALIFICATION FROM HOLDING A DRIVER LICENCE – FACTORS TO CONSIDER IN FIXING PERIOD OF DISQUALIFICATION – APPROPRIATE PERIOD.

1. In determining the period of disqualification of an offender from holding a driver licence, a court should bear in mind that the period selected should reflect the combined effect of punishment for the offence and the protection of the public from the offender's possible future lawless driving. When considering the punitive element, some nexus should exist between the length of the disqualification and the sentence to be served (if any). Further, a court should take into account the offender's need (such as economic) for a driver licence together with the aggravating/mitigating aspects of the offending.

2. Where a 20-year-old tradesman without prior convictions pleaded guilty to a charge of culpable driving and was ordered to be detained in a Youth Training Centre for 2½ years the appropriate period of disqualification from holding a driver licence was 3 years.

CROCKETT J: [1] The applicant pleaded guilty in the County Court to one count of culpable driving. After hearing a plea for leniency the Judge imposed a sentence of two years and six months' detention in a Youth Training Centre and ordered that the motor car driver's licence held by the applicant be cancelled and that the applicant be disqualified from obtaining such a licence for five years. The applicant now seeks leave to appeal in respect of that sentence and the single ground upon which he relies is expressed as follows: In all the circumstances the length of the period of disqualification of the applicant's licence was excessive having regard to—

- (1) the age of the applicant;
- (2) his individual circumstances;
- (3) the need for rehabilitation;
- (4) the fact that the learned sentencing Judge imposed a custodial sentence."

It was expressly conceded by counsel on behalf of the applicant of a term of two years and six months' detention in a Youth Training Centre was within the sentencing discretion open to be exercised by the Judge in the circumstances of the case. It was, however, contended that the period of licence disqualification was excessive. In support of that submission it was contended that in determining the period of disqualification which must necessarily be imposed [2] having regard to the provisions of s95 of the *Penalties and Sentences Act*, and which period is to be not less than two years, 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. Those 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.

The argument was further refined by a submission that consideration of the punitive element required regard to be had to three different aspects. The first was that the length of the period of disqualification necessarily had to bear a relationship to the period in custody required to be served by the offender. It was said that obviously the longer the period of custody the less

would be the effective deprivation for a given period of the benefit of a driver's licence by that offender, and conversely, of course, the shorter the period of custody to be served the longer would be the degree of deprivation. The second matter referred to was the need to examine the degree of dependency, particularly economic [3] dependency, of the offender on the possession of a driver's licence. Thirdly it was said that the usual matters that are looked at both in respect of aggravation of the offence as well as in mitigation have to be borne in mind in assessing the extent of the punitive effect that the disqualification is designed to achieve.

In the present case the Court's attention was of course drawn to the fact that the applicant has had a period of detention of two and half years imposed upon him, and it is uncertain how much of that period the applicant will be called upon to serve. The Court was also told that the applicant is an apprentice bricklayer who ordinarily works at different building sites scattered over a wide area in the course of his employment. He is dependent upon motor transport to reach those building sites and to convey the tools of trade that he needs for his employment. He first commenced employment at about the time he first obtained his driver's licence, which of course was a probationary licence. He was then eighteen years of age. He is continuing the academic aspect of his trade studies whilst an inmate of the Malmsbury Youth Training Centre, and can be expected in due course to complete what is required to become a qualified tradesman in the building trade. It was thus said that on release he will suffer considerably and possibly economically if he [4] is without a licence to drive a motor vehicle when he resumed his employment in the building industry.

Finally the Court's attention was drawn to the matters in aggravation of the offence as well as those considerations which operate as mitigating factors. It is quite unnecessary to rehearse either the facts of the commission of the offence, which bear an all too familiar aspect about them, or to repeat the various matters which both aggravated the offence and served to extenuate it. It is sufficient to say that the applicant is a young man now of about twenty years of age, that he had no previous convictions and bore a very good character. His prior good character was established in the plea for leniency by a number of witnesses called on his behalf. It was also accepted by the trial Judge that the applicant was genuinely contrite. On the other hand, the offence, of course, is a most serious one and is one which excites in the community the strongest demands for retribution.

When all those matters to which the Court's attention has been drawn are had regard to and the matter is examined within the framework of the submissions which have been put before the Court and which I think represent an appropriate approach for consideration of the matter, it does appear to me that the period of five years selected as the period of disqualification is excessive in the circumstances. [5] Having regard to the particular matters relevant to be borne in mind in this case, I would propose that there be substituted for that period a period of three years' disqualification.

O'BRYAN J: I agree.

GRAY J: I agree.

CROCKETT J: The application will be granted. The appeal will be treated as instituted and heard *instanter* and allowed. The period of disqualification from holding a driver's licence ordered in the Court below will be set aside. In lieu it is ordered that the motor car driver's licence held by the applicant under the *Motor Car Act* 1958 be cancelled and that he be disqualified from holding any such licence for a period of three years. The sentence is otherwise affirmed.

APPEARANCES: For the Crown: Mr G Silbert, counsel. JM Buckley, Solicitor to the DPP. For the applicant George: Mr G Flatman, counsel. Gorman & Storer, solicitors.