

**IN THE COURT OF APPEAL OF CAYMAN ISLANDS**

**Criminal Appeal No. 27 of 2010**  
**(Summary Court Appeal No. 26/09A-C)**  
(C#s: 4922/09, 4805/09, 4806/09 & 4807/09)

**Between:**

**HER MAJESTY THE QUEEN**

**Respondent**

**- and -**

**THEODORE O'NEIL MORGAN**

**Appellant**

**NOTIFICATION TO AUTHORITIES OF RESULT OF APPEAL**

**To: The Attorney General**

**This is to give you notice that THEODORE O'NEIL MORGAN** having appealed against the decision of the Grand Court dated **27<sup>th</sup> day of August, 2010** which allowed his appeal in respect of **period of disqualification- reduced**.

The conviction and sentence originally passed upon *him* by the Summary Court on the **8<sup>th</sup> day of July, 2009** were as set out below:

C# 04922/09 (1)	DRIVING WHILST DISQUALIFIED
1 week imprisonment.	Disqualified for a further 2 years from 19.1.10 until 18.1.12
C# 04922/09 (3)	DRIVING WITHOUT INSURANCE
Disqualified for 12 months concurrent with charge (1).	
C# 04806/09 (1)	DRIVING WHILST DISQUALIFIED
2 weeks imprisonment.	Disqualified for a further 2 years from 19.1.12 until 18.1.14
C# 04806/09 (3)	DRIVING WITHOUT INSURANCE
Disqualified for 12 months concurrent with charge (1).	
C# 04805/09 (1)	DRIVING WHILST DISQUALIFIED
3 weeks imprisonment.	Disqualified for a further 2 years from 19.1.14 until 18.1.16.
C# 04805/09 (3)	DRIVING WITHOUT INSURANCE
Disqualified for 12 months concurrent with charge (1).	
C# 04807/09 (1)	DRIVING WHILST DISQUALIFIED
4 weeks imprisonment.	Disqualified for a further 2 years from 19.1.16 until 18.1.18.
C# 04807/09 (3)	DRIVING WITHOUT INSURANCE
Disqualified for 12 months concurrent with charge (1).	

The Court of Appeal, **having adjourned the matter on 26<sup>th</sup> November 2010 due to the appellant not appearing** has finally determined the said appeals, and has this **30<sup>th</sup> day of November, 2010** given judgment therein to the effect following:

- 1. Appeal 27/10 dismissed. Appellant not appearing.**
- 2. Crown granted leave to appeal out of time. Appeal allowed.**
- 3. Sentences imposed by the Magistrate on 8<sup>th</sup> July 2009 restored:  
Theodore Morgan thus banned from driving until 18<sup>th</sup> January 2018.**
- 4. Transcript of the reasons given orally to be released.**

Dated this **13<sup>th</sup>** day of September, 201

*A. Bodin*  
Registrar



IN THE COURT OF APPEAL OF THE CAYMAN ISLANDS

CRIMINAL APPEAL NO. 27/10

BETWEEN:

THEODORE MORGAN

Appellant

and

THE QUEEN

Respondent

BEFORE: THE RT. HON. SIR JOHN CHADWICK, President  
THE HON. JUSTICE I. FORTE J.A.  
THE HON. JUSTICE E. MOTTLEY J.A.

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Court Proceedings on 30 November 2010

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APPEARANCES:

Mr. J. Masters

for the Respondent



1                   THEIR LORDSHIPS' RULING

2  
3 CHADWICK, President:

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5           The appellant, Theodore Morgan, was  
6 convicted, during the first six months of 2009,  
7 on a number of counts of driving whilst  
8 disqualified and driving without insurance.

9           The offences were committed on the 27th  
10 of February 2009, the 29th of April 2009, the  
11 29th of May 2009, and the 30th of June  
12 2009. They came before the Magistrate on the  
13 8th of July 2009. Mr. Morgan entered a guilty  
14 plea; and he was sentenced on that day.

15           Section 78 of the Traffic Law provides (so  
16 far as material) that:

17                   "Whoever drives or attempts to  
18 drive ... while under a period of  
19 disqualification is guilty of an  
20 offence and liable on summary  
21 conviction to a fine of one  
22 thousand dollars or to  
23 imprisonment for one year, and  
24 also shall be disqualified from  
25 holding or obtaining a driver's

1                   licence for a period of  
2                   twenty-four months extending  
3                   from the period of his previous  
4                   period of disqualification or  
5                   from the date of his conviction  
6                   whichever is the later; and the  
7                   particulars of the offence shall  
8                   be endorsed on his driver's  
9                   record."

10                   There are three features of note in that  
11                   section. The first is that the liability to a  
12                   fine or imprisonment plainly prescribes a  
13                   maximum penalty; and enables the Court to  
14                   impose either no fine or no imprisonment or a  
15                   lesser fine or a lesser period of imprisonment.  
16                   Second, in contrast with that first limb of the  
17                   section, the second limb begins with the  
18                   mandatory words "and also shall be  
19                   disqualified". There is no room, within that  
20                   limb, for a discretion to impose a lesser  
21                   period of disqualification than 24 months; nor,  
22                   I may add, to impose a greater period of  
23                   disqualification than 24 months. Third, the  
24                   period of disqualification is to commence on  
25                   the expiry of any previous period of

1       disqualification or the date of conviction, if  
2       later: so that, in circumstances where there  
3       are a series of offences and a series of  
4       convictions, the periods of disqualification  
5       must run consecutively and not concurrently.  
6       That is what the section requires: the  
7       Magistrate appreciated that.

8               In relation to the first of the  
9       convictions for driving while disqualified --  
10      that is the offence committed on the 27th of  
11      February 2009 -- the Magistrate imposed a  
12      sentence of one week's imprisonment and of  
13      disqualification for a period of two years from  
14      19th January 2010 until 18th January 2012.  
15      [19th January 2010 was the date on which a  
16      then existing period of disqualification under  
17      an earlier conviction and sentence would  
18      expire.] In relation to the offence of driving  
19      while disqualified on 29th April 2009, she  
20      imposed two weeks' imprisonment and a further  
21      period of disqualification of two years from  
22      19th January 2012 until 18th January 2014.  
23      In relation to the offence of driving while  
24      disqualified on 29th May 2009 she imposed  
25      three weeks' imprisonment and a further period

1 of two years from 19th January 2014 until  
2 18th January 2016. And in relation to the  
3 fourth offence of driving while disqualified --  
4 that committed on the 30th of June 2009 --  
5 she imposed four weeks' imprisonment and a  
6 further period of disqualification for a  
7 further two years from 19th January 2016  
8 until 18th January 2018.

9 The effect of those sentences was that Mr.  
10 Morgan was to serve a cumulative total of ten  
11 weeks' imprisonment and the periods of  
12 disqualification extended until the 18th of  
13 January 2018.

14 Mr. Morgan appealed from those sentences  
15 to the Grand Court. Justice Cooke, sitting in  
16 the Grand Court, allowed the appeal and varied  
17 the sentences of disqualification. He  
18 increased each period of disqualification to a  
19 period of five years and directed that those  
20 periods of five-year disqualification should  
21 run concurrently. The effect, therefore, was  
22 that Mr. Morgan was disqualified from driving  
23 for an overall period of five years from 18th  
24 January 2010.

25 Mr. Morgan appealed to this Court. He did

1 so on the grounds set out in his notice of  
2 appeal filed on the 10th September 2010:

3 "Even though [his] driver's  
4 [licence disqualification] was  
5 reduced from eight years to five  
6 years concurrently as of January  
7 19th 2010, [he was] appealing  
8 to the Court of Appeal to have  
9 the disqualification of [his]  
10 driver's licence hopefully  
11 further reduced by the judge, as  
12 well as to kindly ask the judge  
13 to be a little more lenient, in  
14 terms of hopefully reducing  
15 further the disqualification of  
16 my driver's licence, considering  
17 it is currently disqualified for  
18 five years as of 19th January  
19 2010."

20 I observe that Mr. Morgan's history does  
21 not suggest that it makes much difference what  
22 period of disqualification is imposed on him;  
23 because he seems to ignore any period of  
24 disqualification repetitively. But, I note  
25 that he has not been convicted since the middle

1 of 2009.

2 Mr. Morgan's appeal was listed for hearing  
3 before this Court on Friday, 26th November  
4 2010. Mr. Morgan did not appear at the hearing  
5 of that appeal. The Crown did appear by  
6 counsel, Mr. Masters.

7 In preparing to resist Mr. Morgan's appeal  
8 Mr. Masters had noticed that the sentence  
9 passed by Justice Cooke in the Grand Court  
10 seemed unlawful on two grounds. First, that  
11 the Grand Court judge increased the period of  
12 disqualification on each count from the  
13 statutory maximum of two years to a period of  
14 five years; and, second, that instead of  
15 providing for those periods to run  
16 consecutively -- as section 78 of the Traffic  
17 Law requires -- he directed that they should  
18 run concurrently. Mr. Masters came to this  
19 Court expecting to be able to advance those  
20 points on the appeal of Mr. Morgan; but, as I  
21 have said, Mr. Morgan did not appear to present  
22 his appeal. In those circumstances, the Crown  
23 might have asked this Court to dismiss Mr.  
24 Morgan's appeal on the basis that it was not  
25 being pursued. But to take that course would

1        have left in place a sentence which on its face  
2        was unlawful. In those circumstances, the  
3        Crown thought that the appropriate course was  
4        to seek leave of the Court to appeal against  
5        sentence out of time; on the grounds that the  
6        periods of disqualification substituted by the  
7        Grand Court were unlawful; and that a formal  
8        cross appeal had only become necessary because  
9        the appellant had failed to prosecute his  
10       appeal. It is said the Crown did not realise  
11       the error in the Grand Court's sentence until  
12       the appellant had filed his appeal; and that  
13       the appellant is not prejudiced by the timing  
14       of the application; coming, as it does, at the  
15       time when he was still pursuing an appeal of  
16       his own.

17                The Crown's application is supported by an  
18       affidavit sworn by Mr. Masters on 29th  
19       November 2010. We are satisfied from the  
20       material that has been put before us -- in the  
21       form of a series of e-mails, both from Mr.  
22       Masters to Mr. Morgan and from the Registrar of  
23       the Court to Mr. Morgan -- that Mr. Morgan is  
24       aware that this matter has been listed for  
25       hearing this morning. There have been

1 telephone calls in which he has been reminded  
2 of this hearing. There is no indication from  
3 Mr. Morgan that he is intending not to come  
4 this morning; or that anything has taken place  
5 which has prevented him from coming this  
6 morning. The reason given to the Registrar for  
7 his failure to appear on Friday was simply that  
8 he had forgotten. It is difficult to think  
9 that he could have forgotten again, having been  
10 reminded as recently as Friday, yesterday and  
11 this morning.

12 In those circumstances, we think it  
13 appropriate to dismiss Mr. Morgan's appeal  
14 against the judgment of the Grand Court; but to  
15 allow the Crown's application to appeal out of  
16 time from that judgment. And, further, on the  
17 Crown's cross appeal, to allow that appeal on  
18 the basis that the order made by the Grand  
19 Court substitutes for the lawful sentence  
20 passed by the Magistrate a sentence which is  
21 unlawful having regard to the provisions of  
22 section 78 of the Traffic Law. It seems to us,  
23 in the circumstances, that it would be wrong to  
24 allow a sentence to remain on the record when  
25 it is plain that it was a sentence which the

1 Grand Court had no power to pass. The  
2 appropriate course is to set aside the sentence  
3 passed in the Grand Court and to confirm the  
4 sentences imposed by the Magistrate on 8th July  
5 2009.

6 In the circumstances that Mr. Morgan has  
7 not appeared, and so has not been heard, I  
8 should indicate that it is open to him to apply  
9 to this Court for the matter to be reopened.  
10 But for such an application to succeed, he  
11 would need to persuade this Court: first, that  
12 there has been some good reason for his  
13 non-appearance; and second, that reopening the  
14 matter would be likely to, or at least might,  
15 lead to a different result.

16 But, as things are, we dismiss his appeal;  
17 we set aside the sentence imposed by the Grand  
18 Court; and we restore the sentences imposed by  
19 the Magistrate, so that the cumulative periods  
20 of disqualification run until 18th January  
21 2018.

