

1 **IN THE GRAND COURT OF THE CAYMAN ISLANDS**
2 **CRIMINAL SIDE**

3
4 **SCA #: 0033/2015**
5 **CASE #: 03939/2012 & 3979/15**
6

7
8 **KEVIN MIKE LEVY**
9

10 **V.**

11
12 **THE QUEEN**
13
14

15 **Appearances:**

**Mr. Ben Tonner of Samson & McGrath for
the Appellant**

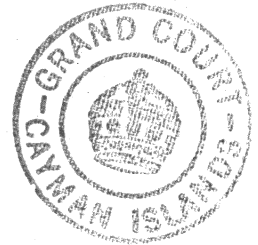
**Mr. Scott Wainwright for the
Crown/Respondent**

16
17
18
19
20
21 **Before:**

Justice Michael Mettyear (Actg.)

22 **Heard:**

6th November 2015



23
24
25
26 **JUDGMENT**
27

28 1. This is an appeal against a sentence imposed by Magistrate Kirsty-Ann Gunn sitting
29 in the Summary Court on the 5th November 2015. It is mainly the custodial sentence
30 that is the subject of appeal although I am asked to make a small change to the
31 provision relating to payment of the fines.

32 2. The sentences imposed were as follows:
33
34

- 1 a. She revoked a probation order and community service order that had been
2 imposed by her on the 2nd July 2014
- 3 b. For the offence of using a vehicle without a certificate of roadworthiness she
4 imposed a fine.
- 5 c. For driving with no insurance she imposed 7 days imprisonment to be served
6 consecutively to other terms hereinafter mentioned.
- 7 d. For driving a vehicle with an expired licence she imposed a financial penalty.
- 8 e. For driving under the influence of drink, approaching twice the legal limit, she
9 imposed a sentence of 7 days imprisonment to be served consecutively to the 7
10 days already mentioned and consecutively to a suspended sentence of 60 days'
11 imprisonment which had been imposed on the 2nd July 2014, which she brought
12 into operation for its full term.

13 3. All the driving offences were committed on the same day namely the 27th February
14 2015. That was the day, according to the appellant when his father died. Mr.
15 Tonner, who appeared for the appellant on the appeal (he represented himself
16 before the Summary Court) accepted that this was not mitigation although it did, he
17 claimed, explain why the appellant went so badly off the rails for that one day in
18 February.

19 4. In Magistrate Gunn's "Reasons for Sentence" she gives a detailed account of her
20 dealings with the appellant over the last three years. There is nothing to be gained
21 by repeating what she said. I shall be selective. I do need to say a bit about the
22 events of the 15th November 2012.

1 5. On that day the Appellant was sentenced for the offences set out in the “Reasons for
2 Sentence” under the heading Case #3939/2012. The main feature of the sentence
3 was the imposition of a Probation Order. That was a merciful sentence as the
4 offences were committed whilst the appellant was subject to an earlier suspended
5 sentence. It was the breach of that Probation Order which led to the sentences that
6 were passed on the 2nd July. It appears that the breach was not the result of any new
7 offence.

8 6. On the 9th July 2015 the appellant pleaded guilty to the offences on the 27th
9 February 2015 and the learned Magistrate adjourned sentence for an updated SIR
10 report. The Appellant didn’t want to cooperate with the making of that report -
11 although he vacillated on the topic. Further, a breach report was filed which
12 reported that of the 90 hours of unpaid work ordered to be done on the 2nd July
13 2014 just over 24 hours remained outstanding. The Appellant also vacillated over
14 whether or not he was prepared to do any more work.

15 7. The various reports that were before the Magistrate and before me give a helpful
16 and not entirely negative picture of the Appellant. He is 28 years old and in
17 responsible employment. He is said to be well thought of by his employers, but I
18 note that they have suspended him for excessive drinking. He has domestic
19 problems that sometimes overwhelm him. He says that he is keen to work abroad in
20 the USA and that his current employers could employ him there. This could be a
21 pipe dream.



1 8. The breach report dated the 29th October 2015 says:

2 “Since being sentenced (in July 2014) Mr. Levy has demonstrated a good
3 response to most of the conditions of his Probation Order; he has engaged well
4 with his supervising Probation Officer and in many aspects he has made good
5 progress evidenced by his attendance at supervision appointments, his
6 openness and honesty with his Probation Officer and having obtained full time
7 employment”. It goes on to note the practical difficulties he has faced
8 complying with the unpaid work requirement and that he is “...struggling to
9 cope with all the issues in his life.”

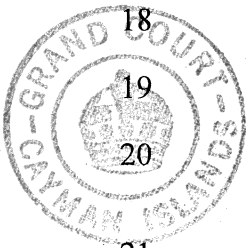
10 9. Looked at overall the learned Magistrate concluded that the Appellant remains
11 “reluctant to comply with the rehabilitation process”. I agree with that analysis.

12 10. The appellant has on occasions alleged that concerns for his and his family's safety
13 caused him not to complete his unpaid work requirement. The learned Magistrate
14 rejected this excuse. I agree with her for the reasons she gave.

15 11. The learned Magistrate concluded that only custody could be justified and passed
16 the sentences indicated.

17 12. This appellant has been given a number of chances, he continues to commit serious
18 motoring offences and he will not fully participate in rehabilitative penalties. I
19 agree with the view of Magistrate Gunn that the time had come when only custody
20 could be justified.

21 13. The only substantial submission that has concerned me has been on the question of
22 whether it was appropriate to implement the suspended sentence for its full term.
23 As Mr. Tonner has said, there was substantial compliance with the unpaid work
24 requirement despite practical difficulties in carrying it out and substantial
25 compliance with the supervision requirement.



1 He submits that had the Appellant done nothing pursuant to the Order on 2nd July
2 2014 then implementation for the full term would have been appropriate. The level
3 of compliance achieved by the Appellant should be acknowledged by a substantial
4 discount, I agree, and, as a result, reduce the 60 days to 30.

5 14. Mr. Tonner also submitted that the two offences committed on the 27th February
6 2015 for which imprisonment was imposed should have been ordered to be served
7 concurrently. The Crown agreed. I am not of the view that there is anything wrong
8 in principle with these two offences being ordered to run consecutively, but in view
9 of the Crown's concession, I will change the order made in the way requested. I
10 will do so, however as an act of mercy rather than an agreement with Mr. Tonner's
11 submission.

12 15. Finally, I adjust the payment of fines requirement from the 6th November 2015 to
13 the 5th February 2016. The Appellant's assertion that he could pay fines on the 6th
14 November 2015 was unrealistic in view of his immediate imprisonment.

15 16. The result of this Appeal therefore is:

16 a. Re Case #3939/2012:

17 i. The Suspended sentence (imposed on the 2nd July 2014) is made
18 operational but the term reduced from 60 days to 30 days;

19 ii. The probation order and the community service order (both made on
20 the 2nd July 2014) are discharged.



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20

b. Re Case #3979/2015:

- i. Offence (2): Using a vehicle without a certificate of roadworthiness: \$150 fine – payable by the 5th February 2016 – or 3 days’ imprisonment in default.

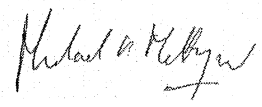
- ii. Offence (3): Driving without insurance: 7 days’ imprisonment concurrent with all other sentences of imprisonment.

- iii. Offence (4): Using a vehicle with an expired licence: \$1,935 (three times the expired license as provided by s.12(2) of the Traffic Law (2011 Revision) – payable by the 5th February 2016 – or 3 months’ imprisonment in default.

- iv. Offence (6): Driving whilst under the influence of drink: 7 days’ imprisonment concurrent to the sentence for Offence (3) (at 16 b(ii) above), but consecutive to the 30-day sentence in 16 a. (i.) above.

17. Total period of imprisonment 37 days.

Dated this the 10th November 2015



**Mr. Justice Michael Mettyear (Actg.)
Acting Judge of the Grand Court**