



power of the Court to order a longer period of disqualification) be disqualified for holding or obtaining a licence under the laws for the time being in force relating to motor vehicles, for a period of twelve months from the date of conviction."

The Magistrate, in ordering disqualification, rejected her plea that there were special reasons meriting the favourable exercise of the discretion specifically conferred by the subsection. Her appeal to the Grand Court against the Order for disqualification having been dismissed, she appealed to this Court on substantially the same grounds. We dismissed this further appeal. Herein are the reasons for so doing.

The facts upon which the special reasons are said to exist were that she had been suffering with an eye infection for two days before the accident. On the day in question, the illness having become acute, she had called for a taxi but when the taxi did not come as expected, and her efforts to solicit assistance from neighbours having failed, she set out for the hospital, driving the uninsured vehicle. En route there was an accident, but through no fault of hers. The police, in checking the relevant papers relating to the car and its user, took note of the want of insurance coverage, and she was prosecuted.

Before us Mr. Murray, who argued the appeal before the Grand Court, did not pursue his criticisms of the Magistrate's failure to unreservedly accept the Appellant's statement that the sympathetic policeman permitted her to continue to the hospital.

Schofield, J., in exercising the appellate jurisdiction of the Grand Court, reviewed the evidence as he was entitled to do and placed his own assessment thus:

"I would look at the matter in this way. The Appellant asserted, without contradiction, that she drove the vehicle to get to the hospital because of an eye infection. That fact must be accepted by the Court and it must also be accepted that medical emergency may amount to a special reason for not disqualifying a defendant charged with driving without insurance. However, it is for the defendant to satisfy the Court that a

discretion must be exercised in her favour. Relevant to the exercise of that discretion is the severity of the illness or injury requiring the journey to the hospital. The fact of the illness is accepted; the degree of illness is an issue upon which the Court fails to be persuaded. In this case the Appellant did not bring any medical evidence to support her contention that it was necessary for her to drive on that Saturday. At the time the police officer allowed her to drive on the hospital we do not know whether he was aware that she was uninsured.

"In all the circumstances the Appellant did not do enough to satisfy the Court that it should not put into effect the mandatory sanction."

Notwithstanding this full and careful treatment, Mr. Murray urged a reconsideration as to whether or not there was an emergency amounting to "special reasons". In support, he referred to a number of English cases illustrating "special reasons", and urged that there was an emergency that in the circumstances amounted to "special reasons".

It is enough to say that there was not that urgent necessity which, even on a generous view, could amount to an emergency. The onus was on the defendant to show why she should not be disqualified. Accordingly, we are of the view that in the instant case, Schofield, J., was correct in his approach to the question of "special reasons", in his assessment of the facts urged on behalf of the Appellant, and the conclusion to which he eventually came.

As an alternative, Mr. Murray submitted that, in any event, the circumstances are sufficiently mitigating as to merit a reduction in the period of disqualification. He sought support from statements in the Cayman case of Welcome v. Regina - SCA 48/92 delivered 30th October, 1992 - judgment of the Grand Court.

In reply, Mr. Archie contended that in the absence of special circumstances the Court has no jurisdiction to impose a period of disqualification less than the minimum.

In Welcome v. Regina, Harre, J., quoted with approval the following observations of Schofield, J., in Kirk Christian v. Regina - SCA 215/91 (post) -

"The Cayman statutory provision is a severe one, reflecting as it no doubt does the severe approach which the Legislature would have the Courts take in relation to those who use or permit to be used uninsured vehicles. But the Courts have been given a discretion to mitigate the normal penalty and it would be wrong to import the very restricted interpretation placed by English Courts on the meaning of "special reasons" when interpreting those words in the context of statutory provisions which have no strict equivalent in England. The body of authority as to what amount to "special reasons" has evolved from a body of legislation far different from our own and whilst in some instances authorities from England may assist our Courts they should not be slavishly followed."

In the light of the absence of any provision to make a subsequent application to the Magistrate to remit a part of the period of disqualification, this approach is commended. However, we are of the view that the circumstances giving rise to "special reasons" may be so varied that any attempt to define or strictly categorise would be unhelpful, and the illustrations in the English cases, though often offering helpful guidelines, are not intended to be exhaustive.

The observations of Schofield, J., leave unaffected the basic essentials for a finding of "special reasons" as identified in R. v. Crossan [1939] 1 N.I. 106, and quoted with approval in Whittal v. Kirby [1946] 2 ALL ER 352 at p. 555 per Lord Goddard, C.J.:

"What then can be said to be a special reason beyond saying that it must be one that is not of a general character? This was expressly considered by the King's Bench Division of Northern Ireland in R. v. Crossan (2). In that case the court adopted a test that I had ventured to use in an address that I gave to the magistrates assembled at the Summer Assizes for Essex in 1937. I suggested that the reasons must be special to the

offence, and not to the offender, and the court in adopting what I had said used these words ([1939] 1 N.I. 106 at pp. 112, 113):

'A "special reason" within the exception is one which is special to the facts of the particular case, that is, special to the facts which constitute the offence. It is, in other words, a mitigating or extenuating circumstance, not amounting in law to a defence to the charge, yet directly connected with the commission of the offence, and one which the court ought properly to take into consideration when imposing punishment. A circumstance peculiar to the offender as distinguished from the offence is not a "special reason" within the exception.'

I respectfully and entirely agree with and adopt this passage."

Harre, J., however, in Welcome v. Regina, said:

"In my view that is what "order otherwise" in section 3(2) of the Motor Vehicle Insurance (Third Party Risk) Law means. It is not mandatory to order a 12 months disqualification or no disqualification at all.

"In the light of all the facts which I have mentioned, I find that special reasons existed on the basis of which the learned magistrate should have thought fit not to order a 12 months period of disqualification. The applicant is not entirely blameless and the seriousness of the offence and the awful consequences which may result from permitting even the shortest of drives by a person who is uninsured should never be lost sight of. The instances when no disqualification at all is required will be rare.

"All in all, I think that a 3 month disqualification will suffice in this case and I reduce the disqualification period accordingly."

The expressed opinion there is unhelpful to Mr. Murray's submission seeking a lesser period of disqualification. That case is clearly distinguishable on the important factual basis that the Court found that there were "special reasons", while in the instant case there are no "special reasons".

In our view, the clear interpretation of the subsection is that in the absence of "special reasons", disqualification for the minimum period of 12 months is mandatory. As we were in agreement with the finding that there are no "special reasons" the appeal was dismissed and the period of disqualification affirmed.

However, in deference to the arguments on both sides, we feel constrained to express an opinion as to whether on a finding of "special reasons" the Magistrate has a discretion to order no disqualification, or disqualification for a period less than the mandatory minimum of 12 months.

The practice in Jamaica, where the statutory provisions are the same, was that on a finding of "special reasons" no order for disqualification would be made, and we have reason to believe that the same practice obtained here prior to the recent opinions expressed in the Cayman cases. Now that the question is raised, an authoritative answer should be given.

The English statutory provisions - Section 93(1) of the Road Traffic Act, 1972, dealing with disqualification - provide that on conviction for an offence involving 'obligatory disqualification' "the Court shall order him (the convicted person) to be disqualified for such period not less than 12 months as the Court thinks fit unless the Court for special reasons thinks fit to order him to be disqualified for a shorter period or not to order him to be disqualified."

Against that background, we consider whether the Cayman provisions were for the same purpose and intended to have the same effect. In that regard, the word "otherwise" in the context in which it is used in the subsection, must be given meaning and effect. In our view, the clear intent by the use of the word is to widen rather than limit the discretion. The "special reasons" are mitigating circumstances, and it would be but consonant with common sense that some "special reasons" should carry more weight than others.

Accordingly, we are in agreement with the opinion of Harre, J., as he then was, that where "special reasons" are found, the Magistrate may order no disqualification, or disqualification for a period less than the mandatory minimum of 12 months.