

ORIGINAL

IN THE GRAND COURT OF THE CAYMAN ISLANDS

HOLDEN IN GEORGE TOWN, GRAND CAYMAN

SCA # 28/04

18/8/05

BETWEEN:

BROCK JAECK

Appellant

- and -

REGINA

Respondent

RULING

Delivered by The Honourable Mr. Justice Henderson,
on Friday, August 12, 2005, at George Town, Grand Cayman.

APPEARANCES:

For the CROWN:

MR. S. WILSON

For the DEFENDANT:

MR. A. AKIWUMI

REPORTED BY:

C. ROUSE
OFFICIAL COURT REPORTER

1 be altered to one which is intermittent,
2 thereby permitting Mr. Jaeck to continue to
3 work. Mr. Jaeck is a manager for Phoenix
4 Construction and I accept the assertion that he
5 requires a vehicle in the course of his
6 employment. He is normally allotted a company
7 vehicle for that purpose.

8 The threshold question is whether I have
9 jurisdiction to impose an intermittent
10 disqualification at all. I am advised by both
11 counsel that there are no authorities in the
12 Cayman Islands on this subject.

13 The *Traffic Law*, 1991, contained this
14 provision in Section 71(1):

15 "In any event any person
16 convicted of an offence under
17 this section shall be
18 disqualified from holding or
19 obtaining a drivers licence for
20 a period of 12 months or such
21 longer period as the Court in
22 its discretion may order and the
23 particulars of the offence shall
24 be endorsed on his driver's
25 record."

1 The offences referred to included the
2 offence of driving while under the influence of
3 alcohol.

4 In the 2003 Revision to the *Traffic Law*,
5 that was amended to read (in Section 71(2)):

6 "Whoever is guilty of an
7 offence, under subsection (1) is
8 liable on summary conviction ...
9 (c) in addition to the above, on
10 a first or any subsequent
11 offence, to disqualification
12 from driving for a period of
13 twelve months or such longer
14 period as the court may order."

15 The language in the 1991 version of the
16 law was mandatory. On any conviction for
17 driving while under the influence, the law
18 required the sentencing magistrate to impose a
19 driving disqualification for at least twelve
20 months. The magistrate was also given a
21 discretion to impose such a disqualification
22 for a longer period of time, but the
23 requirement for a 12-month disqualification was
24 absolute.

25 In the new legislation, the language has

1 changed. The language quoted from the 2003
2 Revision is that which is normally adopted by
3 the draftsman of criminal statutes when
4 specifying a penalty which may or may not be
5 imposed. Typically, that language is used to
6 specify a maximum penalty for a given offence,
7 although, in the context I have quoted, there
8 is no stated maximum at all.

9 The change in language adopted by the
10 legislature must, on normal canons of
11 interpretation, be taken to indicate a change
12 in the law.

13 What was that change? It seems to me that
14 the language of the 2003 Revision no longer
15 makes it mandatory for the magistrate to impose
16 a driving disqualification. While the language
17 is anything but clear, I take it to be the
18 intent of the legislature that the magistrate
19 would have a discretion, in appropriate cases,
20 to impose no disqualification at all. If a
21 disqualification is imposed, it must be "for a
22 period of twelve months or such longer period
23 as the Court may order".

24 What can be gleaned from this on the
25 subject of intermittent disqualification?

1 In my view, intermittent disqualifications
2 may, in a variety of cases, and depending
3 always on the circumstances, amount to an
4 appropriate penalty. They carry a considerable
5 potential to deter the offender and others.
6 They can serve to protect the public from the
7 danger of a repeat offence by covering the
8 hours during which a person is most likely to
9 be consuming alcohol.

10 At the same time, they serve a public
11 purpose. It is notorious that people who
12 experience long driving disqualifications
13 frequently lose their employment for that
14 reason. I think there is a public interest to
15 be served, in some cases at least, in
16 preserving the offender's ability to work and
17 support his family.

18 For these reasons, I would not read the
19 new legislation as prohibiting the ability to
20 impose an intermittent disqualification. If
21 that was the intent of the Legislature, it
22 would have said so clearly and expressly.

23 I would also note, in passing, that other
24 jurisdictions, such as England and Canada,
25 permit intermittent disqualifications. The

1 power, at least in Canada, has been available
2 for some considerable period of time and is
3 well known and widely used.

4 I conclude that the language of Section
5 71(2)(c) of the *Traffic Law* (2003 Revision)
6 does confer upon a sentencing judge or
7 magistrate jurisdiction to make a driving
8 disqualification intermittent; that is to say,
9 applicable during certain hours of the day or
10 certain days of the week only.

11 The question then becomes, "in what
12 circumstances should an intermittent
13 disqualification be available?"

14 Crown counsel points to the English
15 position. There is a statutory provision in
16 the UK requiring that an intermittent
17 disqualification be available only where the
18 defendant demonstrates that an absolute
19 disqualification would impose "exceptional
20 hardship". There is no analogous provision in
21 the Cayman Islands.

22 I am inclined to the view that the
23 discretion should be somewhat broader than is
24 implied by the phrase "exceptional hardship".

25 I think a sentencing judge or magistrate should

1 impose intermittent disqualifications with
2 restraint and only where some clear purpose in
3 so doing is made out. There will be cases
4 where it would be inappropriate, either because
5 of the facts of the case or the circumstances
6 of the offender, to impose an intermittent
7 disqualification. There will be others where
8 that sort of disqualification will be
9 appropriate. I see nothing to be gained,
10 however, in reading into the statute a
11 provision which is not there; that is to say,
12 that an intermittent disqualification may only
13 be imposed in cases where exceptional hardship
14 has been demonstrated.

15 In the instant case the disqualification
16 in absolute terms was for a period of two
17 years, a relatively lengthy period. The
18 request is that Mr. Jaeck be allowed to drive
19 during his normal working hours, which are 6:30
20 a.m. to 6:30 p.m, Monday to Saturday. The
21 proposal is that Mr. Jaeck will buy a bicycle
22 and ride to and from work each day on the
23 bicycle. He will ride that bicycle during his
24 personal time when he needs to transport
25 himself somewhere.

1 In the circumstances of this case, it is
2 appropriate to permit Mr. Jaeck to drive during
3 the course of his employment. I am persuaded
4 that that is a discretion which can properly be
5 exercised in his favour and, since the
6 legislation allows for it, I am going to set
7 aside the driving disqualification imposed in
8 the court below and substitute for it a
9 disqualification for a period of two years with
10 the exception that he may drive between the
11 hours of 6:30 a.m. and 6:30 p.m, Monday to
12 Saturday.

13 The disqualification was imposed in
14 August. I gather one month of it has already
15 been served. The rest of it will commence from
16 this day forward.

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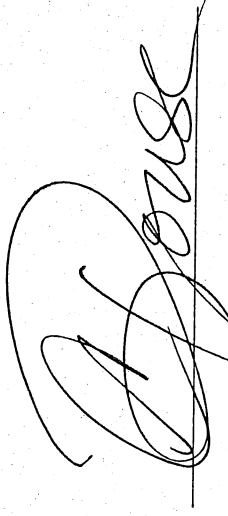
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REPORTER'S CERTIFICATE

I, **CAROL A. ROUSE**, Official Court Reporter, hereby certify that the foregoing pages are, to the best of my skill and ability, a true and accurate transcript of the proceedings had in the said Court and reported in machine shorthand by me on the date and place aforementioned.

DATED THE 18th DAY OF AUGUST 2005

A handwritten signature in cursive script, appearing to read 'CAROL A. ROUSE', written over a horizontal line.

CAROL A. ROUSE