

ORIGINAL

16/5/03

IN THE GRAND COURT OF THE CAYMAN ISLANDS

HOLDEN AT GEORGE TOWN, GRAND CAYMAN

SCA NO. 15/02

BETWEEN:

SCOTT STRANG

Appellant

- and -

HER MAJESTY THE QUEEN

Respondent

R U L I N G

Delivered by The Honourable Mr. Justice Henderson,
on May 16, 2003, in George Town, Grand Cayman.

FOR THE RESPONDENT

Ms. Smith-Andalcio

FOR THE APPELLANT

Mr. D. McGrath

REPORTED BY: C. ROUSE

OFFICIAL COURT REPORTER

2.
Ruling

1 Friday, May 16, 2003

2

3 R U L I N G

4

5 HENDERSON, J. (Orally):

6

7 The appellant, Scott A. Strang, brings this
8 sentence appeal from a sentence imposed upon
9 him in the Summary Court for driving while
10 intoxicated. He pleaded guilty to the offence.
11 He has no prior record for such offences.
12

13

14 On the day in question, he was found driving
15 his vehicle with a blood-alcohol level of some
16 265 mg of alcohol for 100 ml of blood, which is
17 more than two and a half times the legal limit
18 of alcohol in blood in the Cayman Islands.

19

20 The learned Magistrate fined the appellant
21 \$500, took note of his participation in the DWI
22 program, took note of his guilty plea and
23 imposed a disqualification from driving for 27
24 months. It is that latter aspect that is in
25 issue.

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3.
Ruling

1 A threshold question is when and in what
2 circumstances this Court should give effect to
3 an appeal from sentence. Where the sentence is
4 wrong in law or in principle, this Court must
5 interfere and correct the error. Where the
6 sentence is clearly excessive, the Court has a
7 jurisdiction to reduce it so that it conforms
8 with other sentencing norms prevalent in the
9 Cayman Islands. On the other hand, it must be
10 remembered that this Court is not the court of
11 first instance on a sentence appeal. It is not
12 open to the Court to simply reconsider all of
13 the facts and impose the sentence which the
14 Court would have imposed had the offender been
15 before the Court in the first instance. I
16 think the Court must pay some deference to
17 experience of the magistrates in the Summary
18 Court and refrain from interfering with
19 sentences unless they are wrong in law or in
20 principle or clearly excessive.

21
22 Mr. McGrath argues that this sentence is
23 clearly excessive. He also alludes to what he
24 says is an error in principle. He also says
25 that the learned Magistrate, rather than

Ruling

1 exercise her sentencing discretion, simply
2 applied a mathematical rule in order to arrive
3 at the driving disqualification for 27 months.
4 He says that she viewed the case this way: The
5 blood-alcohol reading was about two and a half
6 times the legal limit and, therefore, there
7 should be a disqualification of approximately
8 two and a half times the minimum of 12 months.
9 Having come to that conclusion, she then
10 reduced the disqualification to 27 months to
11 take account of the mitigating factors, the
12 early plea and the participation in the DWI
13 program.
14

15 It is not an error in law or in principle for a
16 sentencing court to pay heed to what might be
17 called the usual tariff. That is done in many
18 courts and the Court of Appeal from time to
19 time makes reference to that approach. It
20 would be wrong in law or in principle for a
21 sentencing judge to fetter her discretion and
22 apply a mathematical rule in a mechanical
23 fashion while shutting her mind to all of the
24 other factors mitigating or aggravating which
25 she must take into account.

5.
Ruling

1 I am not persuaded that there is anything wrong
2 with a magistrate advertng to the usual tariff
3 for a driving disqualification providing that
4 she retains the discretion to vary it upwards
5 or downwards in individual cases. I am also
6 not persuaded that the learned Magistrate here
7 fettered her discretion unduly or unlawfully.
8

9 Indeed, she reduced the disqualification period
10 to take account of the guilty plea and the
11 participation in the program. It follows that
12 there was no error in law or in principle.
13

14 Is the sentence clearly excessive? The driving
15 disqualification is often referred to as part
16 of the penalty. That is true, but I think it
17 has another and quite likely more significant
18 role to play. It protects the motoring public
19 in the Cayman Islands for the period of time of
20 the disqualification from the danger posed by
21 those who would drive while under the influence
22 of alcohol. When someone chooses to drive his
23 motor vehicle on Christmas Eve with two and a
24 half times the legal limit of alcohol in his
25 blood, I do not consider it clearly excessive

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6.
Ruling

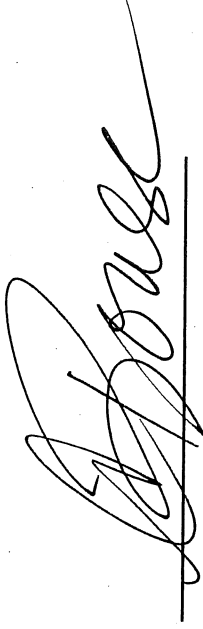
1 or unreasonable to disqualify that person from
2 driving in the Cayman Islands for a period of
3 27 months. For these reasons, the appeal is
4 dismissed.
5
6

7 Henderson, J.

8 The Honourable Justice Henderson
9

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13 REPORTER'S CERTIFICATE
14

15 Certified correct to the best of my skill and ability,
16 dated the 3rd day of June 2003.
17

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20 Carol Rouse
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