

CT
IN THE GRAND COURT OF THE CAYMAN ISLANDS
HOLDEN AT GEORGE TOWN, GRAND CAYMAN

SCA#17/95

19-06-95

LINVOL OVERLYN SMITH
MAKING A FALSE DECLARATION
DRIVING WITHOUT INSURANCE
DRIVING WHILST DISQUALIFIED

JUDGMENT

Mr. John Furniss for appellant
Mr. Adam Roberts for the Crown

Linvol Overlyn Smith ("the appellant") was convicted by the learned Magistrate sitting in Cayman Brac on the 16th March 1995 of the following three offences.

- 1) making a false declaration, contrary to section 79(c) of the Traffic Law;
- 2) driving without insurance, contrary to section 3 (1) of the Motor Vehicle Insurance (Third Party Risks) Law 1964; and
- 3) driving whilst disqualified, contrary to section 69(1) of the Traffic Law.

Although counsel initially sought to argue this appeal as one against sentence only it was noted that the appellant's notice of appeal filed in person, stated that he appealed against the convictions. The learned Magistrate dealt with the matter as on a plea of "guilty" but



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when the first Court was put to the appellant the record shows his response to have been "pleads with explanation". As the explanation amounted to a defence to the charge a plea of "not guilty" should have been recorded and the first Court should have gone to trial.

The facts very briefly are these. On the 7th January 1993 the appellant was disqualified for driving for a period of two years. On the 9th December, 1994, one month or so within the two year disqualification period he was found driving a motor car in Cayman Brac. When he was stopped by Police Constable Connolly the appellant produced a provisional driving licence issued at Cayman Brac on the 15th August, 1994.

Clearly the appellant was disqualified from driving at the time he was stopped by Police Connolly. Clearly he was uninsured. However the appellant stated to Court that he was confused and thought that he was disqualified for only one year. This is why he applied for a provisional driving license.

The particulars of count (1) read:

"Linvol Overlyn Smith, On Monday, August 8th, 1994 did unlawfully make a false declaration to Stephanie McCoon clerk of the licensing Department with intent to deceive the Authority by giving false statement to obtain a Driver licence (sic)."

The appellant told the Court that he thought he was not disqualified when he applied for the provisional driving licence. That being so he



was denying an essential ingredient of the offence in count (1) namely the intent to deceive. The learned Magistrate should not, then, have proceeded on the basis of a plea of "guilty" even though, as she so clearly did she disbelieved the appellant. The issue should have been put to the test in a trial, and accordingly the conviction in count (1) is quashed and the sentence imposed upon it, of a fine of \$100, is set aside.

Clearly the appellant drove whilst disqualified and clearly he was not covered by insurance to do so. The pleas of "guilty" in counts (2) and (3) were properly recorded and accepted. For count (2) the learned Magistrate imposed a fine of \$150 with one months imprisonment in default of payment. For Count (3) the learned Magistrate imposed a sentence of six months imprisonment and disqualified the appellant for a further 2 years. The sentence of imprisonment was no doubt chosen because the learned Magistrate did not believe the appellant's story that he thought he was qualified to drive in that his disqualification period had ended.

I now have to decide two matters. First, I should remit the matter for retrial on Count (1) and second, should I vary the sentences on Counts (2) and (3)? The appellant has already served more than three months of his six months prison sentence. He was denied bail pending appeal. He would be due for release, with remission, in less than a month. He was sentenced on the basis of facts which have yet to be proved. If the prosecution can prove the ingredients of Count (1), on a retrial resulting in conviction, it is unlikely that



the appellant will receive a substantially greater sentence than the one he has already served on Count (3) . If Count (1) is not proved then the sentence in Count (3) will have been shown to be excessive and disproportionate to the culpability of the appellant.

The justice of the case will be served by me making no order for retrial in Count (1), by dismissing the appeal against sentence in Count (2) and by allowing the appeal against sentence in Count (3) by varying such sentence to a term of imprisonment which will allow for the appellant's immediate release.

The disqualification stands. Orders accordingly.



Dated this 19th day of June, 1995.

A handwritten signature in dark ink, appearing to read "D. Schofield", is written over a faint, circular official stamp.

D. Schofield

Judge