



**SHERIFF APPEAL COURT**

**[2019] SAC (Crim) 14  
SAC/2019/000332/AP**

Sheriff Principal M M Stephen QC  
Sheriff A Cubie

OPINION OF THE COURT

delivered by SHERIFF A CUBIE

in

SUMMARY APPEAL AGAINST SENTENCE

by

LAUREN BURKE

Appellant

against

PROCURATOR FISCAL, STIRLING

Respondent

**Appellant: Ogg, sol adv; Collins & Co  
Respondent: McFarlane; Crown Agent**

14 August 2019

[1] On 13 December 2018 the appellant drove after taking a considerable amount of alcohol and the resultant reading was 82mcg of alcohol in 100ml of breath, over the legal limit of 22mcg of alcohol in 100ml of breath. She pled guilty at the intermediate diet. It was accepted that this was a significant error of judgment and we do note, as it was confirmed

by the discussion, that the clean driving licence had only been held since May 2018, although that matter did not appear to form part of the sheriff's consideration.

[2] The issue for this court is whether the offence is serious enough to warrant the imposition of a level 1 community payback order (CPO).

[3] The imposition of a level one CPO requires the sheriff to consider the terms of s 227B(2) of the Criminal Procedure (Scotland) Act 1995 (the Act) as follows

“the court must not impose the order unless it is of the opinion that the offence or combination of the offence and one or more offences associated with it was serious enough to warrant the imposition of such an order”

[4] Having done so the sheriff turns to s 227A (3) and (4) of the Act which provides: -

“(3) Subsection (4) applies where—

(a) a person (the “offender”) is convicted of an offence punishable by a fine (whether or not it is also punishable by imprisonment), and

(b) where the offence is also punishable by imprisonment, the court decides not to impose—

(i) a sentence of imprisonment, or

(ii) a community payback order under subsection (1) instead of a sentence of imprisonment.

(4) The court may, instead of or as well as imposing a fine, impose a community payback order on the offender imposing one or more of the following requirements—

(a) an offender supervision requirement,

(b) a level 1 unpaid work or other activity requirement,

(c) a conduct requirement.”

[5] We observe that the court has the power to impose a level 1 unpaid work or other activity instead of or in addition to a fine, a matter often overlooked. That provision allows the court to impose both a financial fine and a fine on the time of the accused.

[6] The sheriff assessed the offence as serious and we find that he was entitled to do so.

The level of alcohol was significant. In the circumstances the level 1 community payback order is open to the sheriff with or without a fine. Such a community payback order is a legitimate alternative to a fine. The sheriff does not need to exhaustively consider and

discount the ability to pay a fine or to artificially elevate the nature of the offence; we are satisfied that a contravention of section 5(1)(a) of the Road Traffic Act 1988 can be regarded as a serious offence, a matter fortified by a reading of this level .

[7] In all the circumstances we consider that the offence was serious enough to warrant the imposition of a level 1 community payback order. We find no error in the sheriff's approach and accordingly refuse the appeal.