



**SHERIFF APPEAL COURT**

**[2020] SAC (Crim) 7  
SAC/20-227/AP**

Sheriff Principal Turnbull  
Sheriff Ross

OPINION OF THE COURT

delivered by SHERIFF ROSS

in

Appeal against Sentence

by

KEVIN BOYD

Appellant

against

PROCURATOR FISCAL, INVERNESS

Respondent

**Appellant: J Keenan (sol adv); Paterson Bell  
Respondent: A Edwards QC, AD; Crown Agent**

7 October 2020

[1] On 6 August 2020 the appellant pled guilty at the first opportunity to a charge of drink driving under s5(1)(a) of the RTA 1988. The reading was 63 micrograms. He was fined £1000, reduced from £1500 to reflect the early plea. He was also disqualified for 4 years, but no discount was given. He was certified as suitable for a drink driving rehabilitation course, with a potential discount of 8 months, being a one-sixth or

approximately 16.6% reduction. The fine, and the disqualification starting point of 4 years, are not appealed.

[2] The only appeal point is the sheriff did not discount the period of disqualification to reflect the early plea. The sheriff accepts this was an oversight and that he ought to have done so. A discount applied to a disqualification should be at a similar level to that applied to any other part of the sentence (*Wilson v PF*), accordingly a one-third discount ought to have been applied. That would, arithmetically, take the disqualification to 32 months. However, the appellant has an analogous drink drive conviction dating from 2011. The statutory minimum for disqualification is therefore 3 years, due to similar offending within 10 years (RTOA s34(3)). The disqualification period must therefore be reduced from four years to three years.

[3] That leaves the issue of certification of suitability for reduction if a drink driver rehabilitation course is arranged and completed.

[4] The purpose of such certification is to encourage an errant driver to undergo training and education in order to reduce the risk of further offending, and with it the risk to the road-using public. There is considerable public benefit in such an initiative, and accordingly s34A of the RTOA provides an incentive, in the form of a reduction in the disqualification period.

[5] The scheme of the legislation allows up to one-quarter discount from a disqualification. The incentive to take such a scheme, which itself involves significant financial and time commitment, will inevitably lessen with the restriction of any reduction. As there is a clear public purpose to the driving course, we would expect any reduction to be imposed at a level sufficient to present a reasonable incentive. As a one-quarter discount is available, we would expect any lesser discount, in ordinary circumstances, to require some

justification. In the present case, the sheriff cites both the alcohol reading and the length of the journey undertaken. We consider that these factors indicate a heightened benefit in such a driving course, and that a lesser reward for doing so is counterproductive. There appears no reason in the present case to restrict the reduction to one-sixth, which is likely to diminish the incentive to attend such a course, particularly when set against the cost, effort and challenge to the appellant of doing so.

[6] We accordingly quash the disqualification of four years, and substitute the statutory minimum of 3 years' disqualification. We will certify the appellant as suitable for a reduction in this sentence of disqualification in the event that he attends and passes an appropriate course in terms of s34A of the RTA. The level of potential reduction will be fixed at 9 months, or one-quarter."