

In the matter of the Application of Stephen Geoffrey MILLER for Removal of Driving Disqualification

DECISION with REASONS

1 Background

1.1 On 7th May 2015 Stephen Geoffrey Miller applied to the Magistrate's Court for the removal of the driving disqualification imposed by the Magistrate's Court on 18th December 2013. The application was heard on 28th May 2015.

1.2 The Magistrate's Court imposed a disqualification period of 24 months as part of a sentence in respect of four sexual offences committed in September 2013 and for which the court was satisfied Mr Miller had used a motor vehicle for the purpose of committing the offences. The offences were:

- sexual grooming of a person under the age of 16, contrary to Section 15, Sexual Offences Act 2003 in its application to the Falkland Islands by virtue of the Sexual Offences Ordinance 2005.
- incitement to take an indecent image of a child, contrary to Section 1(1)(a), Protection of Children Act 1978 in its application to the Falkland Islands by virtue of Section 4, Sexual Offences Ordinance 2005.
- incitement to distribute an indecent image of a child, contrary to Section 1(1)(b), Protection of Children Act 1978 in its application to the Falkland Islands
- Sexual touching of a person under the age of 16, contrary to Section 9(1) Sexual Offences Act 2003 in its application to the Falkland Islands by virtue of Section 2, Sexual Offences Ordinance 2005

1.3 Mr Miller's application for the removal of the driving disqualification was made on a non-prescribed form supplied by the Courts for use in applications for the removal of driving disqualifications imposed under section 6(16), Road Traffic Ordinance 1948.

2 The Law

2.1 The Magistrate's Court has power under section 60, Criminal Justice Ordinance 1989 (as amended) (see Revised Laws of the Falkland Islands at Title 24/66) to impose a driving disqualification where a person uses a vehicle is used for the purposes of crime and is convicted of an offence punishable with imprisonment for two years or more. The provisions are these:

"60 (1) This section applies where a person is convicted before the Supreme Court or the Magistrate's Court of an offence punishable with imprisonment for a term of two years or more or, having been convicted by the Summary Court of such an offence, is committed to the Supreme Court for sentence.

(2) If in a case to which this section applies the Supreme Court, or as the case may be the Magistrate's Court, is satisfied that a motor vehicle was used (by the person convicted or by anyone else) for the purpose of committing, or facilitating the commission of the offence in question (within the meaning of section 58), the court may order the person convicted to be disqualified, for such period as the court thinks fit, for holding or obtaining a licence to drive a motor vehicle granted under the Road Traffic Ordinance.

(3) A court which makes an order under this section disqualifying a person for holding or obtaining any such licence as is mentioned in subsection (2) shall require him to produce any such licence held by him; and if he does not produce the licence as required he commits an offence under section 6(12) of the Road Traffic Ordinance (failure to produce licence for endorsement)."

2.2 I note in passing that section 60(2) clearly contains an error. The reference to section 58 is must be incorrect as it makes no sense. Section 58 refers to the powers of the Supreme Court at committal for sentence. The relevant section for the purposes of section 60(2) appears to be section 59 which provides, under the heading "Power to deprive offender of property used, or intended for purposes of crime", as follows:

"(2) Facilitating the commission of an offence shall be taken for the purposes of this section and section 60 to include the taking of any steps after it has been committed for the purpose of disposing of any property to which it relates or of avoiding apprehension or detection, and references in this or that section to an offence punishable with imprisonment shall be construed without regard to any prohibition or restriction imposed by or under any enactment on the imprisonment of a young offender."

The reference in section 59(2) to section 60 appears to be correct.

2.3 Section 6(10), Road Traffic Ordinance 1948 (as amended)(see Revised Laws of the Falkland Islands at Title 63/12) provides:

"Any court before which a person is convicted of an offence in connection with the driving of a motor vehicle may order him to be disqualified from holding or obtaining a driver's licence for such period as the court thinks fit but where any provision of this Ordinance provides that a court shall so disqualify him, the court shall so disqualify him and where a minimum period of disqualification is specified in any such provision, the court shall so disqualify him for at least that period, but may disqualify him for any greater period the court thinks fit."

and at subsection(16):

*(16) Any person who by virtue of a conviction or order **under this Ordinance** [my emphasis] is disqualified from holding or obtaining a driver's licence may at any time after the expiration of whichever is relevant of the following periods from the date of the conviction or order, that is to say-*

- (a) six months, if the disqualification is for less than a year;*
- (b) one-half of the period of the disqualification, if it is for less than six years but not less than a year;*
- (c) ten years if the disqualification is for the person's lifetime;*
- (d) three years in any other case,*

apply to the court by which he was convicted or by which the order was made to remove the disqualification, and on any such application the court may, as it thinks proper having regard to the character of the person disqualified and his conduct subsequent to the conviction or order, the nature of the offence, and any other circumstances of the case, either by order remove the disqualification as from such date as may be specified in the order or refuse the application:

Provided that where an application under this subsection is refused, a further application thereunder shall not be entertained if made within three months after the date of the refusal."

2.4 I have looked for corresponding legislative provisions in the laws of England. Section 42, Road Traffic Offenders Act 1988 provides:

*"Subject to the provisions of this section, a person who by **an order of a court** [my emphasis] is disqualified may apply to the court by which the order was made to remove the disqualification."*

The Road Traffic Offenders Act 1988 was disapplied in the Falkland Islands by the Disapplication of Enactments No1 Order 2000 which, under the terms of Article 1 of that order, was deemed to have come into force 1st January 1993.

2.5 The law of the Falkland Islands in respect of the removal of driving disqualification is not the same as that of England.

3. **Decision**

Mr Miller's disqualification was imposed by the Magistrate's Court exercising its power by virtue of section 60, Criminal Justice Ordinance 1989. The Magistrate's Court has no power to remove a disqualification other than one imposed under Road Traffic Ordinance 1948.

In the circumstances, it is not appropriate for me to consider the merits of Mr Miller's application.

The application is **dismissed**.

Date:

Clare Faulds

Senior Magistrate