IN THE COURT OF APPEAL

DOMINICA

Motion No. 1 of 1969

Between: JAMES TIMOTHY Defendant/Applicant

and

P.C. PIERRE LOUIS Complainant/Respondent

Before: The Honourable the Chief Justice
The Honourable Mr. Justice Gordon
The Honourable Mr. Justice St. Bernard (Ag.)

Dr. O.N. Liverpool for Applicant
N.I. Austin (Attorney General) for Respondent

1970, March 18

The judgment of the Court was delivered by -

LEWIS, C.J.

This is an application by James Timothy for leave to appeal to the Court of Appeal out of time against his disqualification for 12 months upon conviction for the offence of unlawfully using a motor vehicle, to wit, a truck No. H.1956 on a public road at a time when there was not in force, in relation to the user of the said motor vehicle, such a policy of insurance as is required by the law, contrary to section 3 (1) of the Motor Vehicle Insurance 3rd Party Ordinance Cap. 201. By section 3 (2) this period of disqualification is mandatory unless the Court for special reasons thinks fit to order otherwise.

The grounds of the application are that it would cause great hardship to him if the decision is allowed to stand and that the penalty is excessive.

As the Court pointed out to Dr. Liverpool, who appeared on behalf of the applicant, those are really not grounds for urging the Court to allow an extension of time. Nevertheless, the Court allowed him to argue the proposed grounds of appeal in order to see whether there was any reason whatsoever why this Court should grant an extension of time.

-The proposed-

The proposed grounds of appeal are the same as those set out as the grounds for obtaining leave to appeal out of time, but in a note called 'Case and Argument' it is set out that the applicant has driven for 19 years and has not had an accident or been convicted of any driving offence; he is a married man with 7 children of school age; his truck is their only means of transport, it is also his means of livelihood; he still owes on the truck; and the reason why his policy was not up to date is because the Company had not informed him that it had expired. In his able argument, learned counsel for the applicant has urged that although it is true that a special reason under section 3 (2) must, on the authorities, be one attributable to the circumstances of the offence, and not to the offender, this was nevertheless a case in which the Court would be inclined at least to reduce the period of disqualification, because at the time when the vehicle was being driven the applicant was not driving carelessly or in any way offensively; he was run into and damage was caused to his truck; apart from the fact that he was not insured, he was himself blameless.

The Court has been referred to the case of R. v.Crooks, 7 W.I.R. 83, and the judgment of Waddington, J.A. at p. 84, citing from Lord Goddard, C.J., in Lines v.Hersom (1951) 2 K.B. at p. 687, as follows:

> "I will not say that the conditions relating to the offender are to be left out altogether because that is almost impossible, but it is the circumstances which are special to the case which are to be the primary consideration."

The same Lord Goddard in the case of Whittall v. Kirby (1946) 2 All E.R. 552 dealt at some length with the kind of circumstance which is and which is not a special reason under the disqualifying section, and at page 555 referred to some of the very points that have been urged on behalf of the applicant today. He said -

> "The reasons inducing the Court to exercise it" (that is, its discretion) "must be special, and special is the antithesis of general. The facts that a man is a first offender or that he has committed no motoring offence for many years are reasons of the most general character that can be well imagined. Every year hundreds of first offenders are brought before courts. . It frequently happens that people who have driven for very many years have been doing so without offending against the provision of the Act. That a man is a professional driver cannot, as it

-seems to me,-

> seems to me, by any possibility be called a special reason."

At page 556 Lord Goddard refers to a proposition similar to that put forward in this case, that the applicant is willing to pay a heavier fine, and says:

> "The justices in this case have stated, though they can hardly have meant it as a special reason, that, as they were refraining from disqualifying, they imposed a heavier fine. With all respect to the magistrates there is no warrant for taking such a course. It is the very converse of what they are entitled to do. The Act has left the penalty whether of fine or imprisonment entirely in the court's discretion. It is, therefore, open to them, if they see fit, to mitigate the penalty because disqualification will follow, but there is nothing in the Act to entitle them to substitute a more severe penalty as the price of refraining from disqualifying the offender."

This Court respectfully agrees with and adopts what Lord Goddard has said. In the view of the Court, the reasons put forward on behalf of the applicant are not special reasons for removing the disqualification or even for reducing the penalty imposed by the magistrate. There being no merit in the proposed appeal it would be futile to grant leave to appeal and this application is therefore refused.

(Allen Lewis)
Chief Justice