



In The Supreme Court of Bermuda
APPELLATE JURISDICTION
2026: No. 20

BETWEEN:

DAVID PILGRIM

Appellant

-v-

THE KING

Respondent

JUDGMENT

Date of Hearing: 24th July 2026
Date of Judgment: 24th July 2026
Date of Reasons: 6th August 2026

Appearances: The Appellant in Person
Ms Paula Tyndale, Acting Director of Public Prosecutions, for the
Respondent

Speeding – Disqualification by reason of demerit points – Special Reasons

JUDGMENT of Richards J

Introduction

1. This was an appeal against a disqualification imposed pursuant to section 4E of the Traffic Offences (Penalties) Act 1976 (“**TO(P)A**”). I gave brief oral reasons for dismissing the appeal on the day of the hearing and now expand upon those.

The Proceedings Below

2. The Appellant was issued with two speeding tickets, the first on 24th March 2026 and the second on 17th April 2026. He appeared before the Worshipful Senior Magistrate Maxanne Anderson (“**the Senior Magistrate**”) in Traffic Court on 11th June 2026. To his credit, he swiftly admitted both offences. For speeding at 66 KPH, he was fined \$360 and given 6 demerit points. For speeding at 72 KPH, the fine was \$420 and 7 demerit points were imposed.
3. Under the TO(P)A, the maximum penalty for a first offence of speeding is a fine of \$500 and/or 3 months’ imprisonment. The minimum number of demerit points that must be imposed is 4 and the maximum is 7. Higher maxima are established for a second or third offence “*committed within 2 years of date of conviction*”, but of course the Appellant was yet to be convicted of his first offence of speeding when he committed the second. The maxima for both offences were, therefore, the same as for a first offence.
4. The penalties imposed in this case were entirely standard. They were both lawful and within the ambit of the Senior Magistrates’ discretion. They certainly could not be described as manifestly excessive or wrong in principle. Given that the Appellant had been caught driving at an even greater speed less than a month after receiving his first speeding ticket, he was perhaps fortunate that the Senior Magistrate did not impose an even higher penalty for the second offence. Since the two offences had been committed on separate occasions, section 4D required that the demerit points for each be awarded cumulatively¹.

This Appeal

5. Wisely perhaps, the Appellant has never complained about the fines or points given to him. On the contrary, he has been commendably forthright in expressing that “*being caught speeding on multiple occasions reflects poor judgment on my part*”. His complaint on this appeal was instead about a disqualification from driving that the Senior Magistrate also imposed, which was for 6 months. He relied upon the fact that he needs to be able to drive,

¹ As distinct from the default position when two or more traffic offences are committed on the same occasion – see section 4C(1).

both in the course of his employment and in the course of voluntary work he does within the community (neither of which he was doing at the time the tickets were issued, when he was driving a private motor car).

The Law

6. Strangely perhaps, there is no power directly to disqualify for an offence of speeding². However, section 4E of TO(P)A provides as follows:

“4 Disqualification if too many demerit points

- (1) *Where a person is convicted of a traffic offence and the total unexpired demerit points recorded in respect of that person, including any demerit points to be recorded as a result of that offence, equals or exceeds 12 points, the court shall order the person to be disqualified from driving all motor vehicles, including auxiliary bicycles, unless the court for special reasons thinks fit to order the person to be disqualified for a shorter period or not to order the person to be disqualified.*
- (2) *A disqualification under subsection (1) shall be for a period of 1 month for every 2 unexpired demerit points, up to a maximum period of 2 years.”*

7. Thus, anyone who accumulates 12 or more demerit points must be disqualified from driving all motor vehicles for one month for every two demerit points on their licence. There is no discretion to do otherwise, unless the court finds “special reasons”. This caveat may appear to supply a discretion that the otherwise mandatory language precludes, but as it has been interpreted that discretion is limited and of no application to this case.
8. The concept of “special reasons” appears twice in the TO(P)A. By virtue of section 4(1)(a), an offence which carries an obligatory period of disqualification may result in a shorter period of disqualification or no disqualification at all, if a court finds special reasons. In that context, Bermuda’s courts have followed the interpretation of courts in the United Kingdom (“UK”). In *Grant v R and Lambe v Miller*³, Ground CJ wrote as follows (emphasis added):

² A third or subsequent offence could by itself attract sufficient demerit points to trigger section 4E of TO(P)A

³ [2012] Bda LR 17

“8. The expression "special reasons" occurs in various provisions of the United Kingdom legislation dealing with disqualification. Apparently there were divergent opinions on its meaning, as it was not statutorily defined, but these were resolved by the decision in *Whittall v Kirby* [1946] 2 All ER 552, a decision of the King's Bench Divisional Court presided over by the then Chief Justice, Lord Goddard. He endorsed the following statement of the law from *R v Crossan* [1939] 1 NI 106, at pp. 112, 113:

“A "special reason" within the exception is one which is special to the facts of the particular case, that is, special to the facts which constitute the offence. It is, in other words, a mitigating or extenuating circumstance, not amounting in law to a defence to the charge, yet directly connected with the commission of the offence, and one which the court ought properly to take into consideration when imposing punishment. A circumstance peculiar to the offender as distinguished from the offence is not a "special reason" within the exception.”

9. Lord Goddard CJ also made it plain that personal mitigation, such as the impact of disqualification upon employment, did not suffice:

"The limited discretion must be exercised judicially... That a man is a professional driver cannot, as it seems to me, by any possibility be called a special reason. The fact that drivers are professional drivers would of itself indicate that they are more likely to be habitually on the roads than people who drive themselves, so there is all the more reason for protecting the public against them. By exercising discretion in favour of an offender because he is a professional driver or merely because he drives himself for business purposes, it is obvious that the court is taking into account the fact that in such cases disqualification is likely to work greater financial hardship than in the case of a person who uses his car for social or casual purposes. There is no indication in the act that Parliament meant to

draw any distinction between drivers who earn their living by driving or who drive for purposes connected with their business and any other users of motor cars. That in many cases serious hardship will result to a lorry driver or private chauffeur from the imposition of a disqualification is, no doubt, true, but Parliament has chosen to impose this penalty and it is not for courts to disregard the plain provisions of an Act of Parliament merely because they think that the action that Parliament has required them to take in some cases causes some what may be considerable hardship. Had Parliament intended that special consideration was to be shown to professional drivers or first offenders they would have so provided.””

9. This approach was followed by Kewley CJ in *Petty v Miller*⁴ and *Flood v R*⁵. However, these cases all considered the meaning of the phrase in section 4(1)(a). As far as I am aware, there is no reported decision dealing specifically with its meaning in section 4E. That said, it does not seem to me that the Legislature can sensibly have intended the phrase to bear a different meaning in another, closely related provision of the same legislation. However, applying the *Crossan* definition to section 4E is not entirely straightforward. In the majority of cases in which the section is engaged (but not this one), at least some of the offender’s demerit points will stem from a past conviction. They could conceivably derive from a number of incidents over a 2-year period. In considering whether or not “special reasons” exist, is a court to look to the circumstances of the new offence(s) only or to the circumstances of all the offences from which the demerit points derive? Neither approach is without difficulty. The former may ignore the circumstances under which most of the points were accumulated, but a court will not generally be presented with much information as to the circumstances of past offences (beyond the charge and the number of points imposed).
10. The UK case law cannot assist here because the equivalent statutory mechanism does not employ the “special reasons” threshold. Section 35 of the UK Road Traffic Offenders Act

⁴ BM 2012 SC 67

⁵ [2016] SC (Bda) 77 App

1988 (“UKRTOA”) provides for disqualification upon receipt of 12 or more penalty points, but does so “*unless the court is satisfied, having regard to all the circumstances, that there are grounds for mitigating the normal consequences of the conviction...*”. Unlike “special reasons”, “all the circumstances” necessarily include circumstances relating to the offender. This is confirmed by subsection (4), which excludes from consideration not only circumstances that are alleged to make the offence(s) not serious, but also hardship that is not exceptional. “Exceptional hardship” is, therefore, often asserted in the UK by those seeking to avoid disqualification under this section and it is frequently said to arise from the impact that disqualification will have upon their ability to work.

11. There is another pertinent difference between the UK’s legislation and that enacted locally. Section 44(2) of the UKRTOA provides that a court before whom someone is convicted of a traffic offence and not disqualified need not endorse their licence with any penalty points if “*for special reasons it thinks fit not to do so.*” Section 4A of TO(P)A contains no such exception.
12. Like the UK Parliament, the Bermuda Legislature has ameliorated to some extent the harshness of the mechanism by which those who accumulate excessive penalty/demerit points fall to be disqualified, but it has clearly chosen to do so in a more limited way. Hardship which the offender may experience as a result (whether exceptional or not) cannot be regarded as relevant under Bermuda’s legislation. However, in answer to the question posed in paragraph 9 above, it seems to me the “special reasons” referenced in section 4E ought not to be restricted to those related to the offence(s) with which a court is dealing when the section arises for consideration. It should be open to an offender to assert that “special reasons” arise in connection with any of the offences from which their unexpired demerit points derive. It would logically be otherwise if any “special reasons” associated with a past offence could (and therefore presumably ought to) have been taken into account by a prior court when deciding whether or not to endorse the offender’s licence with any points (as is possible in the UK), but that is not possible here. Ultimately, however, the question under section 4E is whether “*the court for special reasons thinks fit to order the person to be disqualified for a shorter period or not to order the person to be disqualified*”. That seems

to me to suggest that points deriving from an offence in respect of which “special reasons” exist are not bound to be disregarded. That may be a sensible approach in most cases, but since such a finding confers a discretion not to disqualify (and does not preclude disqualification), a court must be entitled to decide how much weight to give the “special reasons” that it finds to exist and to do so having regard not only to that offence, but also the offences represented by the offender’s other relevant demerit points.

13. I recognise that this approach may entail some practical challenges, but the burden of establishing “special reasons” is on the offender and it would be unfair to deny them the benefit of any “special reasons” that might arise in connection with the majority of their demerit points just because none arise in connection with the offending that takes them over 11.

Decision

14. If section 4E of the TO(P)A had followed the approach taken in section 35 the UKRTOA, the Appellant may well have had an argument, based on the circumstances of his employment and voluntary work, that there existed “*grounds for mitigating the normal consequences of the conviction*” and sparing him the disqualification that the Senior Magistrate imposed. This may have been arguable on the basis that the disqualification would cause him exceptional hardship and/or that his voluntary work should itself constitute a sufficient mitigating circumstance.
15. However, it is clear that, these circumstances cannot amount to “special reasons” and thus that, under Bermuda law, the Senior Magistrate had no discretion but to impose the disqualification that section 4E required.
16. Ironically, if there had existed a discretionary power to disqualify for an offence of speeding, the Senior Magistrate might have chosen to exercise that power, particularly in respect of the second offence. If she had done so, she could have limited the effect of the disqualification to the class of vehicle that the Appellant was driving at the time of these

offences⁶ and thus enabled him to continue driving the vehicles his employment and voluntary work required of him. Such a disqualification could also have been shorter than 6 months. Unfortunately for the Appellant, a disqualification imposed by reason of section 4E is not so flexible.

Conclusion

17. As I expressed during the hearing, I have some sympathy for the Appellant. Based on the material before me, he is a decent man who pleaded guilty at the earliest opportunity and has never sought to minimise the seriousness of these offences. However, before I could have allowed this appeal I would have to have been satisfied not only that the Senior Magistrate had a discretion, but that she had not properly exercised it. This appeal failed at the first of those hurdles and so it had to be, and was, dismissed.

Dated this 6th day of August 2026


THE HONOURABLE MR JUSTICE ALAN RICHARDS
PUISNE JUDGE

⁶ See section 4(2) of the TO(P)A