



Criminal Appeal No. 4 of 2025

**IN THE COURT OF APPEAL  
ON APPEAL FROM THE SUPREME COURT OF BERMUDA  
BEFORE ACTING JUSTICE ELIZABETH CHRISTOPHER  
CASE No 8 OF 2022**

Dame Lois Browne-Evans Building  
Hamilton, Bermuda

Date: 18/11/2025

**Before:**

**THE RT HON SIR CHRISTOPHER CLARKE, PRESIDENT**

**THE RT HON DAME ELIZABETH GLOSTER DBE, JUSTICE OF APPEAL**

**And**

**THE RT HON SIR GARY HICKINBOTTOM, JUSTICE OF APPEAL**

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**Between:**

**THE KING**

**Appellant**

**- and -**

**COREY SOUSA**

**Respondent**

**Appearances:**

**Mr. Adley Duncan & Mr. Matthew Frick** of the Department of Public Prosecutions for the Appellant  
**Ms. Terry-Lynn Griffiths** for the Respondent

**Hearing date:**

7 November 2025

**Date of Judgment:**

21 November 2025

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**APPROVED JUDGMENT**

## CLARKE P

- 1 On 15 November 2023 Corey Sousa (“the Respondent”) was found guilty of (i) driving his motorcycle whilst impaired contrary to section 35 AA of the Road Traffic Act 1947 (“the RTA”); and (2) driving it after consuming so much alcohol that the proportion of it in his breath exceeded the prescribed limit contrary to section 35A of the RTA. The offences were committed on 28 July 2022.
- 2 After this conviction the Learned Magistrate – Magistrate Sofianos (“the Magistrate”) – imposed a sentence consisting of (a) a \$ 1,500 fine and (b) disqualification from driving all vehicles for 18 months.
- 3 Prior to the 15 November 2023 conviction the Respondent had previously been convicted of impaired driving contrary to section 35AA of the RTA. That conviction had been made on 9 October 2017. On that occasion the Respondent had been fined and disqualified for 18 months<sup>1</sup>.
- 4 It was, and remains, the contention of the Crown that, on account of the October 2017 conviction, the Magistrate should have imposed a disqualification of 3 years. The Magistrate disagreed, as did Assistant Justice Elizabeth Christopher, on the appeal by the Crown to the Supreme Court. Her decision was given on 21 January 2025, following a hearing on 31 May 2024. The Crown now appeals to this Court.

### ***The Penalties Act***

- 5 Section 2 of the *Traffic Offences (Penalties) Act 1976* (“the Penalties Act”) provides as follows:

#### ***“Prosecution and punishment of traffic offences***

- 2 *(1) Schedule 1 shall have effect with respect to the prosecution and punishment of traffic offences.*
  - (1) *In relation to any traffic offence—*
    - (a) *head 3 of the Schedule indicates the general nature of the offence.*
    - (b) *head 4 of the Schedule shows whether the offence is punishable on summary conviction or on indictment or either in one way or the other.*
    - (c) *head 5 of the Schedule shows the maximum punishment by way of fine or imprisonment which may be imposed on a person convicted of the*

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<sup>1</sup> In paragraph 4 of the Supreme Court judgment the sentence is wrongly referred to as one of 18 months imprisonment.

*offence in the way specified in relation thereto in head 4, any reference in head 5 to a period of months or years being construed as a reference to a term of imprisonment of that duration;*

- (d) head 6 of the Schedule shows the type and length of disqualification in relation to which offences the court is required or empowered to order the person convicted to be disqualified from holding or obtaining a driver's licence, any reference in head 6 to obligatory disqualification importing such a requirement and any reference therein to discretionary disqualification importing such a power;*
- (e) head 7 of the Schedule shows the demerit points to be recorded under section 4A in respect of a person convicted of the offence.*

*(2) Where in head 5 of Schedule 1 different penalties are specified for second, third or subsequent offences against the same section committed within two years of the date of conviction of a first offence, only offences committed—*

- (a) within the two years immediately preceding the coming into operation of this Act; or*
- (b) after the coming into operation of this Act, shall be taken into account for the purpose of determining whether the offence in question is to be treated as a first, second, third or subsequent offence, as the case may be, and any offence committed at an interval of more than 2 years after the date of conviction of a previous offence shall for such purposes be treated as a first offence:*

*Provided that nothing in this subsection shall be construed to derogate from any rule of law under which evidence of previous convictions may be given to a court".*

6 Schedule 1 to the *Penalties Act* is headed “*Prosecution and Punishment of Offences*”. It contains the relevant details under Heads 1 to 7 for a large number of Road Traffic offences. In relation to section 35AA of the RTA it provides:

**“Head 1: Road Traffic Act 1947**

**Head 2: section 35AA**

**Head 3: Driving when under the influence of alcohol or drugs**

**Head 4: summary**

**Head 5: if first offence - \$1,500 or 12 months, or both**

**if second offence - \$2,500 or 18 months, or both**

**if third or subsequent offence - \$5,000 or 2 years or both**

**Head 6: if first offence - obligatory - 18 months**

**if second offence - obligatory - 3 years**

**if third or subsequent offence - obligatory - 5 years**

**Head 7: if first offence - 8 to 10 points**

**if second offence - 10 to 12 points**

**if third or subsequent offence - 12 points”**

7 Section 4 of the *Penalties Act* provides as follows:

**“Disqualification; obligatory and discretionary**

**(1) Where a person is convicted of a traffic offence in relation to which there appears in head 6 of Schedule 1—**

**(a) the word “obligatory”, the court shall order him to be disqualified for such period as is specified in that head as the period of obligatory disqualification in relation to that offence unless the court for special reasons thinks fit to order him to be disqualified for a shorter period or not to order him to be disqualified;**

**(b) the word “discretionary”, the court may order him to be disqualified for such period as the court thinks fit, not exceeding the period specified in that head as the period of discretionary disqualification in relation to that offence;**

**(c) both the word “obligatory” and the word “discretionary”, the court shall, subject to paragraph (a), order him to be disqualified for the period of obligatory disqualification and may, subject to paragraph (b), order him to be disqualified for a further period, the aggregate of such periods not exceeding the period of discretionary disqualification.**

**(2) Where a person is convicted of a traffic offence, other than an impaired driving traffic offence and the court orders him to be disqualified, the court may order him to be disqualified for driving the class of motor vehicle in respect of the use of which the offence is committed or may order him to be disqualified for driving all motor vehicles, including auxiliary bicycles, and may, in addition to any other order under this section, order him to be disqualified until he has, since the date of the order, passed the test of competence to drive prescribed under the Motor Car Act 1951.**

(3) *Where a person is convicted of an impaired driving traffic offence and the court orders him to be disqualified, the court shall order him to be disqualified for driving all motor vehicles, including auxiliary bicycles and may, in addition to any other order under this section, order him to be disqualified until he has, since the date of the order, passed the test of competence to drive prescribed under the Motor Car Act 1951.*  
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(4) *A disqualification ordered by the court under this section may be in addition to, or in lieu of, any other punishment imposed by the court in respect of the offence.”*

8 If one looks at section 2 and Schedule 1 alone it is plain that the obligatory period of disqualification in the Respondent’s case was 3 years, the period laid down in that Schedule for a second offender under section 35AA. Neither section 2 of the Act nor Schedule I contain any provision that, in order for the 3-year disqualification period to apply, the second offence must have been committed within any specified period after the first conviction.

9 There is, in section 2 (3), a provision whereby the increased penalties provided for by Head 5 of Schedule 1 are only applicable if the second, third or subsequent offence is committed within two years of an earlier conviction. But that does not apply to Head 6.

10 Further, Schedule 1 contains some provisions under which the period of disqualification prescribed differs according to the time between a first offence and a second one. Thus, in relation to section 34A of the RTA the Schedule provides:

***“Head 1: Road Traffic Act 1947***

***Head 2: section 34A***

***Head 3: Causing death, or grievous bodily harm, by driving: disqualification***

.....

***Head 6: causing death –***

***first offence - obligatory - 5 years***

***second offence - obligatory - 8 years***

***third offence - obligatory - 10 years***

***causing grievous bodily harm [on indictment] –***

***if first offence - obligatory - 3- years, discretionary - 4 years***

***if second offence - obligatory - 5 years, discretionary - 6 years***

*if third offence - obligatory - 8 years, discretionary - 9 years  
causing grievous bodily harm [summary] -  
if first offence - obligatory - 2 years  
if second offence committed within 2 years of date of  
conviction of first offence - obligatory - 4 years  
if third or subsequent offence - obligatory”*

This is not the only example. Appendix 1 to this judgment lists the offences in Schedule 1 of the *Penalties Act* which provide for a different sentence under either Head 5 or Head 6 if the second offence is committed within 2 years of the date of conviction of the first offence.

11 It is, thus, apparent, that the draftsman of Schedule 1 distinguished between circumstances where the second offence obliged the court to order a longer period of disqualification and those in which such an obligation only arose if the second offence was committed within a specified period after the conviction for the first offence.

#### ***The Respondent's case***

12 The Respondent contends, and the Courts below accepted, that the above analysis ignores the specific provisions of section 3 of the *Penalties Act* which provides as follows:

#### ***“Reckonable offences***

*3 (1) In this section “reckonable offence” means an offence against a provision of law specified in heads 1 and 2 of Schedule 2 of a description specified in head 3 of Schedule 2.*

*(2) Where—*

*(a) a person is charged with a reckonable offence; and*

*(b) he has within the two years preceding the date of commission of such offence been convicted of a previous reckonable offence,*

*Such previous conviction shall, for the purpose only of determining the period of disqualification that may be imposed on his conviction of the offence charged, be deemed to be a previous conviction of the offence charged and the court may disqualify him accordingly:*

*Provided that in each group of Schedule 2 the offences therein specified shall be reckonable inter se, the offences specified in group 1 shall be reckonable with the offences specified in group 2 but not conversely.*

13 Schedule 2 then sets out two groups of Reckonable Offences. In the Schedule Head 1 refers to the relevant Act. Head 2 refers to the Provision Creating Offence and Head 3 refers to the General Nature of Offence.

14 Group 1 of Schedule 2 includes the following:

***“Head 1: Road Traffic Act 1947***

***Head 2: section 35(1)***

***Head 3: Driving or attempting to drive a motor car or auxiliary bicycle while under the influence of alcohol or drug***

***Head 1: Road Traffic Act 1947***

***Head 2: section 35 (2)***

***Head 3: Driving or attempting to drive, or having the care or control of a cycle (not being an auxiliary bicycle) or any other vehicle other than a motor car, while the ability is impaired to do so by alcohol or a drug***

***Head 1: Road Traffic Act 1947***

***Head 2: section 35A***

***Head 3: Driving or having the care or control of a motor car, auxiliary bicycle, cycle (not being an auxiliary bicycle) or any other vehicle other than a motor car where alcohol exceeds 80 milligrammes in 100 millilitres of blood***

15 As can be seen Schedule 2 does not include section 35AA but continues to include its statutory predecessors i.e. sections 35 (1) and (2) of the RTA as originally enacted.

16 As I understand it, the Respondent's case is, in essence, as follows. The *Penalties Act* has to be read as a whole. Section 2 cannot be looked at without regard to section 3, which contains specific provisions in relation to reckonable offences. It is apparent from section 3 that if the offence with which the offender is charged is a reckonable offence and the offender has been previously convicted of a reckonable offence, the second reckonable offence cannot be treated as a second offence for the purposes of Schedule 1 unless the previous conviction was no earlier than two years before the second offence. In the present case a conviction under section 35 AA was not in literal terms contained in Schedule 2. But Parliament must have intended that such an offence should be a reckonable offence – as is apparent from the reference to the offence “*Driving or attempting to drive, or having the care or control of a*

*cycle (not being an auxiliary bicycle) or any other vehicle other than a motor car while under the influence of alcohol or drug*" under section 35 (2). That offence remained in the Schedule but with what became an erroneous reference to the relevant section, and Schedule 2 should be construed so as to apply to the offence under section 35AA.

- 17 In my judgment the Respondent's basic contention is simply wrong, even if the construction relied on is to be made. Section 3 of the Act does not purport to specify what period of disqualification shall apply to second offences. What it does do is to provide for an earlier offence - Offence A - which is not the same as a subsequent offense – Offence B - to be treated as if it was the same, for the propose of deciding whether the subsequent offence is to be treated as a second commission of that offence.
- 18 That this is so apparent from the wording of section 3. Where the conditions in section 3 (2) are satisfied "*such previous conviction*" - i.e. of Offense A - "*shall, for the purpose only of determining the period of disqualification that may be imposed on his conviction of the offence charged*" - i.e. Offence B - ***be deemed to be a previous conviction of the offence charged***".
- 19 The section does not and cannot apply where Offence A and Offence B **are** the same. If an offender is convicted under section 35 AA on two occasions, there can be no question of **deeming** his conviction under section 35 AA on the first occasion as a previous conviction under section 35AA. His conviction on the second occasion **was** for the same offence as on the previous one. There is no deeming to be done.
- 20 Thus, even if the offence under section 35AA is to be treated as falling within Schedule 2, that will not, on the facts of this case, affect the provisions of Schedule 1. The Respondent was convicted twice of an offence under section 35 AA and was, therefore, subject to compulsory disqualification of 3 years.
- 21 It would be somewhat strange if it were otherwise. In relation to Head 6 of section 35AA the Schedule provides for obligatory disqualification of 5 years in respect of third or subsequent offences. Parliament can scarcely have contemplated that those third and subsequent offences had to be committed within 2 years of the conviction for the first, if the 5-year period of disqualification was to apply.

#### ***The Judgment of the Supreme Court***

- 22 In her judgment Assistant Justice Elizabeth Christopher referred, in paragraph [5], to section 2 (3) of the *Penalties Act*, which relates to Head 5. That section is, however, irrelevant because what we are concerned with here is Head 6. In paragraphs [6] – [10] she considered whether count 2 - under section 35A of having care and control of a vehicle when the alcohol in the driver's blood was over the prescribed limit - was caught by section 3. Even if both sections 35AA and 35A fell with Schedule 2, section 3 could not be applicable because the previous section 35AA offence was one in respect of which the conviction was more than two years before the commission of the section 35A offence.

23 In paragraph [11] and [12] the judge said the following:

***“11 The Appellant suggests that this court should not apply the same reasoning to section 3 that is applied to section 2. This court is unclear as to what is meant by that. (As am I). Section 3 refers specifically to periods of disqualification only whereas section 2 applies with respect to fine, imprisonment, points and disqualification.***

**(She then set out the provisions of Schedule 1 in relation to sections 35AA and 35A)**

***12 The above is the default position unless section 3 also applies. It can only apply if the 2017 conviction is within two years of the commission of the 2023 offences. Clearly it is not.”***

24 As is apparent, I do not accept that what the judge described as the “*default position*”, i.e. Schedule 1, can only apply if the 2017 conviction is within two years of the commission of the 2023 offence. Section 3 has no application when the offences committed in 2017 and 2023 were the same. And Schedule 1 is not a default position; it is the primary provision in relation to sentencing, particularly where the same offence has been committed more than once.

25 This conclusion renders it strictly unnecessary to decide whether section 35AA is to be regarded as incorporated in Schedule 2. In relation to that in *Lamont Marshall v Fiona Miller* [2022] SC 32 App Justice Shade Subair Williams said the following:

***“24 The absence of the offence of driving under the influence/whilst impaired under section 35AA from Schedule 2 is an obvious drafting error in the legislation. This is readily apparent from the erroneous reference to “section 35(1)” in the below statement of offence under Schedule 2:***

***“Head 1: Road Traffic Act 1947 Head 2: section 35(1) [my emphasis]  
Head 3: Driving or attempting to drive a motor car or auxiliary bicycle while under the influence of alcohol or drug[s]”***

25. *Section 35 of the RTA was repealed by the Road Traffic Amendment Act 2012 (“the 2012 Amendment Act”). Under the 2012 Amendment Act section 35 was replaced by the offence of “causing death, or grievous bodily harm, when driving under the influence of alcohol or drugs”. Further, the RTA was amended by the 2012 Amendment Act to insert section 35AA (Driving when under the influence of alcohol or drugs) after section 35.*

26. *By assigning a section “35(1)” to the description of “driving or attempting to drive a motor car or auxiliary bicycle while under the influence of alcohol or drug” the draftsman inadvertently obscured Parliament’s intention for section 35AA (driving or attempting to drive, or having care or control of a vehicle...when the offender’s ability to drive is impaired by alcohol or drugs) to be included under Schedule 2.*

27. *This gives rise to the need for the Court to arrive at [a]corrected version by applying a constrained<sup>2</sup> construction of this part of Schedule 2. (See Introduction to Part VII on Bennion on Statutory Interpretation and (Sixth Edition)). Comment on Code S 157:*

*“Using the term ‘literal meaning’ as comprehensively defined in Code s 156, this section of the Code can be summed up by saying that a strained meaning of an enactment is any meaning other than its literal meaning...*

*‘When the purpose of an enactment is clear, it is often legitimate because it is necessary, to put a strained interpretation upon some words which have been inadvertently used... [citing Sutherland Publishing Co Ltd v Caxton Publishing Co Ltd [1938] Ch 174, per MacKinnon LJ at 201]’”*

28. *In my judgment, it is plainly the case the Parliament intended section 35AA to be included under Schedule 2 as a reckonable offence. This drafting error is made even more visible by the fact that other similar road traffic offences involving impairment of alcohol or a drug are listed under Schedule 2. For that reason, I am bound to construe: “Head 1: Road Traffic Act 1947 Head 2: section 35(1) Head 3: Driving or attempting to drive a motor car or auxiliary bicycle while under the influence of alcohol or drug[s]” as meaning section 35AA in order to arrive at the “corrected version” of Parliament’s true intention.*

26 This analysis is not without difficulty. In [26] of the judgment above the judge referred to the draftsman assigning “section 35 (1) to the description of “driving or attempting to drive a motor car or auxiliary bicycle while under the influence of alcohol or drug” whereby he had “inadvertently obscured Parliament’s intention for section 35AA (driving or attempting to drive, or having care or control of a vehicle...when the offender’s ability to drive is impaired by alcohol or drugs) to be included under Schedule 2”,

27 That formulation begs the question as to which draftsman is being referred to. The draftsman of the *Penalties Act* did not in 1976 obscure Parliament’s intention at all, nor was the reference therein to section 35 (1) in any way erroneous. Parliament intended that the offence under what was then section 35 (1) of the RTA should be a reckonable offence, and such it was. If, however, Parliament intended what was

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<sup>2</sup> This should read “strained”.

previously an offence under section 35 (1) (or section 35 (2)) but became an offence under section 35AA to remain within Schedule 2, the draftsman of the *2012 Amendment Act* not merely obscured, but wholly failed to give effect to, Parliament's intention by failing to amend Schedule 2 of the *Penalties Act* so as to include section 35AA.

28 That however begs the question as to whether that was Parliament's intention. As to that there would seem to me to be only three realistic possibilities.

29 The first is that when the *2012 Amendment Act* was passed Parliament intended that the section 35AA offence should fall within Schedule 2 but never provided for it to do so in terms.

30 The second is that it had no such intention, being content that offences committed under sections 35 (1) and (2) of the RTA 1967 prior to the coming into force of the *2012 Amendment Act* (on 5 October 2012) would remain reckonable offences but that offences committed under section 35 AA after the coming into force of the *2012 Amendment Act* (which was on 5 October 2012) would not become reckonable offences.

31 The third is that no specific intention can be attributed to Parliament. The draftsman of the *2012 Amendment Act* simply failed to consider whether it was necessary to amend Schedule 2 to the *Penalty Act*.

32 Unless it is possible in some way to interpret section 35AA as falling within Schedule 2, there are significant consequences. In order for section 3 to apply there have to be two reckonable offences, the second of which is committed within two years of the conviction for the first. If after 5 October 2012 there could be no offence committed under the previous sections 35 (1) and (2), and an offence committed under the new section 35AA was not a reckonable offence, section 3 would be inapplicable after 5 October 2012 in respect of offences committed under these sections, even if the section 35 offence was committed no earlier than two years before the section 35AA offence.

33 In my judgment Schedule 2 cannot be interpreted as including (after 5 October 2012) section 35AA of the *Road Traffic Act 1947*. I say that for these reasons:

- (a) Schedule 2 is entirely clear. It specifies a number of offences by reference to Head 1 (the relevant Act): Head 2 (the relevant section): and Head 3 (the general nature of the offence):. Section 3 (1) provides that "*In this section “reckonable offence” means an offense against a provision of law specified in head 1 and 2 of Schedule 2 of a description specified in head 3 of Schedule 2.*"
- (b) In those circumstances there is no room for a so-called construction which incorporates section 35AA into the section. Such a

“construction” would not simply be “*strained*”. It would amount to an assumption by the Court of a legislative function which it does not possess.

- (c) In *Marshall v Miller* at paragraph [28] Justice Subair Williams construed “*Head 3: Driving or attempting to drive a motor car or auxiliary bicycle while under the influence of alcohol or drug[s]*” as meaning section 35AA in order to arrive at the “corrected version” of Parliament’s true intention”. I regard that as an impossible construction in the light of Head 2. Further if a construction of this sort were possible it would have been necessary to construe Head 3 as including and not simply meaning, 35AA. Were it otherwise an offence under section 35 committed before 5 October 2012 could not have been treated as the same as a reckonable offence committed after 5 October 2012 but within two years of the conviction for the earlier offence because, after 5 October 2012 section 35 would now mean section 35AA.
- (d) It is far from clear that Parliament had any relevant intention in relation to the content of Schedule 2 after the *2012 Amendment Act*. What appears to be the position is that the draftsman of the *2012 Amendment Act* simply did not address the question of what amendment might be needed to Schedule 2 of the *Penalties Act* (an amendment which could have been made by the *2012 Amendment Act* itself)
- (e) Section 3, when it applies, has the effect that, in certain circumstances, a person who has committed two different offences may be treated as guilty of the same offence on a second occasion, and may, therefore, be subject to a penalty or a disqualification greater or longer than would have been the case if there was no second offense of the same nature. If anything, any construction of Schedule 2 should be the one most favourable to the offender.
- (f) If Schedule 2 is, by the “*strained*” construction relied upon, to be regarded as extending to section 35AA (after 5 October 2012) it must presumably be regarded as extending to all replacement sections i.e. sections which replace those that are within Schedule 2 as passed. Such a construction would, itself be a very wide addition to the clear wording of the schedule. And in relation to new sections introduced by the *2012 Amendment Act* following the repeal of earlier sections, and to any new section introduced under further Amendment Acts subsequent to the 2012 Amendment Act, it may well be highly debatable whether a new section is properly to be regarded as a replacement of an old one or as something entirely new.

34 As to the point made in (f) above the changes effected by the *2012 Amendment Act* did not simply change the numbers of the relevant sections. In some cases, it

changed the wording of the substantive provisions. If one takes the Reckonable Offences in Group 1 the position appears to be as follows:

- RTA section 7 (4) This section is still in force.
- RTA sections 35 (1) – driving or attempting to drive a motor car or auxiliary bicycle whilst the drivers' s ability to drive is impaired by alcohol or a drug and 35 (2) - driving or attempting to drive a cycle (not being an auxiliary bicycle) or any other vehicle other than a motor car, whilst so impaired - have been repealed by section 9 of the *2012 Amendment Act* and are now, in effect, amalgamated into one section 35 AA which applies to any vehicle.
- RTA sections 35 (3A) and (3B) – offences of causing grievous bodily harm or death having consumed alcohol in such a quantity that the proportion thereof in the offender's blood exceeds 80 milligrammes of alcohol in 100 millilitres of blood or where there is present in the body any dangerous drug - have, by section 9 of the *2012 Amendment Act* been replaced by the new section 35.
- Section 35A – driving or having the care or control of a motor car when the alcohol in the blood is above the prescribed limit - has been replaced by a new section 35A which refers to “*a vehicle*” – see section 11 of the *2012 Amendment Act*
- Section 35B – driving or having the care or control of a motor car, auxiliary bicycle, cycle (not being an auxiliary bicycle) or any other vehicle other than the motor car while there is present in the body any dangerous drug - unchanged.
- Section 35C (7) – failure to comply with the demand of a police officer - unchanged.
- Section 36 (1) – dangerous driving - has, by section 5 of the *2012 Amendment Act* been repealed and replaced by a new and much shorter section 36 which simply says:

“*Any person who drives a vehicle dangerously on a road or other public place commits an offence*”.

Whereas section 35 said that

“*Any person who drives a vehicle on the road at a speed or in a manner which is dangerous to the public having regard to all the circumstances of the case including the nature, condition and use of the road, and to the amount of traffic which actually*

*is at the time or which might reasonably be expected to be on the road, commits an offence against this Act.”*

- Section 42 (2) – Failing to stop after accident, to give name and address, or to report accident - unchanged.
- Section 43 (1) – Driving auxiliary bicycle while disqualified - unchanged.
- Motor Car Act 1951 123 - Driving motor car while disqualified - unchanged

35 Accordingly, I would regard section 35AA as not falling within Schedule 2, and not therefore, a “*reckonable offence*”. On that basis, section 3 of the *Penalties Act*, even if potentially applicable (which it is not) could not in fact apply.

36 I would, therefore, allow the appeal and declare that the Learned Magistrate should have disqualified the Respondent for 3 years from 15 November 2023. A period of 18 months was inconsistent with the obligatory 3 years and for that reason manifestly inadequate.

37 That conclusion raises the question as to what period of disqualification, if any, we should now impose. Under section 4 the offender in the position of the now Respondent is “*to be disqualified for such period as is specified in that head as the period of obligatory disqualification in relation to that offence unless the court for special reasons thinks fit to order him to be disqualified for a shorter period or not to order him to be disqualified*”.

38 As to that Ms Griffins for the Respondent submitted that there were special reasons why no further period of disqualification should be imposed. Mr. Sousa had now had to go through three Court hearings. The first two had held that he should be disqualified for 18 months. That period of time came to an end in May of this year, when he became able to drive again. It is only now that we are deciding that he should have been disqualified for three years. Against that history he ought not now – in November 2025 some six months after the expiry of his earlier disqualification - be disqualified again.

39 Mr Adley Duncan for the Crown indicated that the Crown would not seek an extension of the disqualification already given. The appeal had been brought in order that the correct position in law could be determined. However, he, also, drew our attention to the Supreme Court case of *R v Tuzo* in which judgment was handed down on 18 June 2025. In that case AJ Kenlyn Swan Taylor held, following a number of Bermudian and UK authorities that “*special reasons*” within the meaning of section 4 (e) of the *Penalties Act* (which relates to mandatory disqualification when the aggregate of demerit points reaches or exceeds twelve) must be circumstances connected directly to the commission of the offence as opposed to

circumstances which make the imposition of disqualification a matter of hardship to the offender. I note, however that, in that case the Crown did not seek a variation to the Respondent's sentence and that, therefore, the judge made no further order.

40 I would accept that “*special reasons*” in section 4 of the *Penalties Act* should be given the meaning attributed to it in *R v Tuzo*. But I would also accept that we, as a Court of Appeal, having held that the Magistrate and the Supreme Court misconstrued the *Penalties Act*, have a discretion (inherent in our appellate function) as to what we should do in relation to penalty, having regard to the circumstances relating to the appeals.

41 In my judgment the appropriate order to be made in this case is that Mr. Sousa should be disqualified from driving any motor vehicle another, including auxiliary bicycles, from the day after the date upon which this judgment is handed down until 14 November 2026 being the date upon which a 3 year period beginning on November 15 2023 would expire.

**GLOSTER JA**

42 I agree.

**HICKINBOTTOM JA**

43 I, also, agree.

## APPENDIX 1

### **LIST OF OFFENCES IN SCHEDULE 1 TO THE PENALTIES ACT WHICH STATE “IF SECOND OFFENCE COMMITTED WITHIN TWO YEARS OF DATE OF CONVICTION OF FIRST OFFENCE”**

Some of these have the language for both head 5 (fine and penalty) and head 6 (disqualification)

- **section 7(4)** - exceeding speed limit (page 10)
  - **Heads 5 and 7**
- **section 34** - Causing death, or grievous bodily harm, by dangerous driving (page 14)
  - **Head 5 and 6**
- **section 34A** - Causing death, or grievous bodily harm, by driving: disqualified (page 15/16)
- **Section 37A** - Causing death, or grievous bodily harm by careless driving (page 20/21)
  - **This has the language for head 6 and 7**
- **Section 42(2)** - Failing to stop after accident, to give name and address or to report accident (page 21/22)
  - **Heads 5, 6 and 7**
- **Section 43(1)** - Driving auxiliary bicycle while disqualified (page 22)
  - **Heads 5, 6 and 7**
- **regulation 12 of Auxiliary Bicycles (Construction, Equipment and Use) Regulations 1955** - Driving or causing or allowing another person to drive an auxiliary bicycle while using a hand-held mobile telephone, a hand-held device or a hand-held electronic entertainment device (page 27)
  - **Heads 5, 6 and 7**
- **section 123 of MCA** - Driving motor car while disqualified (page 32)
  - **Heads 5, 6 and 7**
- **regulation 44 of MC(CEU)R** - Driving or causing or allowing another person to drive a motor car while using a hand-held mobile telephone, a hand-held device or a hand-held electronic entertainment device (page 33)
  - **Heads 5, 6 and 7**
- **regulation 45 of MC(CEU)R** - Driving or causing or allowing another person to drive a motor car equipped with a television, computer or other device with a display screen visible to the driver (page 34)
  - **Heads 5, 6 and 7**