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IN THE COURT OF APPEAL
CRIMINAL DIVISION

Case No: 2020/03228/A3

[2021] EWCA Crim 917



Royal Courts of Justice
The Strand
London
WC2A 2LL

Friday 11th June 2021

LADY JUSTICE CARR DBE

MRS JUSTICE CHEEMA-GRUBB DBE

HIS HONOUR JUDGE MARSON QC
(Sitting as a Judge of the Court of Appeal Criminal Division)

REGINA

- v -

BILLY MORRISON

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Miss J Heggie appeared on behalf of the Appellant

JUDGMENT

Friday 11th June 2021

LADY JUSTICE CARR:

Introduction

1. The appellant, Billy Morrison, is now 21 years old. On 6th November 2020, in the Crown Court at York, he pleaded guilty to two counts of causing serious injury to another by driving dangerously, contrary to section 1A of the Road Traffic Act 1988 ("the RTA") (counts 1 and 2), one count of dangerous driving, contrary to section 2 of the RTA (count 3), and one count of driving whilst disqualified, contrary to section 103(1)(b) of the RTA (count 4). He also pleaded guilty to related summary offences of using a vehicle without insurance, contrary to section 143 of the RTS, failing to provide a specimen for analysis, contrary to section 7(6) of the RTA, and driving whilst unfit through drugs, contrary to section 4(1) of the RTA.

2. On 4th December 2020 His Honour Judge Hickey ("the Judge") sentenced the appellant to an overall term of 45 months' detention in a Young Offender Institution. He was also disqualified from driving for a total period of eight years and ten months, of which one year and ten months was the extension period imposed under section 35A of the Road Traffic Offenders Act 1988 ("the RTOA"), with a requirement to sit an extended re-test.

3. The appellant appeals against sentence by leave of the single judge, limited to a challenge to the period of disqualification from driving. For reasons which will become apparent, however, it will be necessary for us to consider making an adjustment to the overall sentence of detention imposed in order to make the disqualification order lawful.

The Facts

4. The offending arose out of a lengthy police chase on the morning of Friday 18th September 2020. It is necessary to set out the facts in a little detail in order to understand our reasoning below.

5. A Shogun motor vehicle was picked up by Automatic Number Plate Recognition cameras on the A1(M) northbound because it had no insurance. It was being driven by the appellant who had a front seat passenger, Tylon Skelly. Two road policing officers in separate vehicles encountered the vehicle just after junction 49. The vehicle moved into the outside lane. The lights and siren of one police car were then activated. The appellant, however, failed to stop. The other police car took over the pursuit, travelling at speeds up to 111 mph in order to do so. The appellant drove down the hard shoulder of the A1(M) in an attempt to escape.

6. As he drove up the slip road for junction 50, he continued on the hard shoulder, undertaking a vehicle on the slip road as he did so. At that point his speed was 113 mph. He negotiated a roundabout at the end of the slip road, still at speed, before exiting onto the A61 towards Thirsk, on to the bridge crossing the A1. The speed limit here was 60 mph. He entered the opposing carriageway to overtake vehicles, causing oncoming traffic to brake so as to avoid what would have been a head-on collision. He drove straight across the next roundabouts, still trying to shake off the police pursuit. He swerved and carried out dangerous overtaking manoeuvres, again causing oncoming traffic to take evasive action. For much of this stage of the chase the police camera showed that the police vehicle was travelling at speeds of 77 to 85 mph to keep up with the appellant.

7. As the appellant entered a 40 mph speed limit zone outside the village of Baldersby, he accelerated up to 91 mph. He sped through a green light around mobile roadworks. He then negotiated a right-hand bend towards the village. He straddled the solid white hazard line in order to overtake vehicles ahead of him. As he headed uphill towards what was a blind summit, he again overtook vehicles as he crested the hill; this was at a stage when he would have had

no view of oncoming traffic. He continued to drive on the wrong side of the road, contravening double solid white lines and manoeuvring around a tight left-hand bend. That bend was part of a Z bend and, as he negotiated the right bend, his vehicle clipped the nearside kerb. He swerved onto the opposing carriageway, into the path of an oncoming vehicle which he narrowly missed. He drove through a red light at a set of mobile traffic lights. He continued to drive down the centre of the road, now passing pedestrians. He accelerated from 55 mph to 73 mph as he left the village. His vehicle was swerving all over the road.

8. On the final bend before the ultimate collision, on the approach to the location of the collision outside the village of Skipton-on-Swale, the appellant was still driving on the wrong side of the road. As a vehicle approached from the opposite direction, he swerved back onto his own carriageway. At this stage his vehicle appeared to rock and he lost control. He swerved back onto the opposing carriageway as it approached a stationary line of approximately four or five vehicles. At this point there was a bridge being controlled by traffic lights because it was a single carriageway. Just before the bridge the speed limit was 30 mph. On his approach to the line of traffic the appellant was driving at 86 mph. The stationary traffic started to move past a broken-down minibus being driven by Rebecca Jack. The appellant pulled into the opposing carriageway and collided with a Toyota Prius that was also negotiating around the minibus. The Toyota was being driven by Miss Denver. Her mother, Jennifer Steele, was in the front passenger seat.

9. The collision that then occurred caused the Prius to collide with a Vauxhall Zafira. In turn that vehicle shunted into another vehicle which then collided with yet another vehicle.

10. The appellant's vehicle rolled over and came to rest on its nearside. The appellant extricated himself via the sunroof. He was immediately arrested and a roadside breath test conducted. That indicated that he was twice over the legal alcohol limit for driving, with 71 micrograms of alcohol in 100 millilitres of breath. The appellant refused a subsequent evidential test in hospital. A drug swipe test was positive for both cocaine and cannabis.

11. Tylon Skelly told police afterwards that the appellant had been drinking from a bottle of vodka and had lit a cannabis cigarette. Just before the crash, the appellant had said to him, "Fuck it, we will both die".

12. Inevitably, several of those involved in the collision sustained injuries. Jennifer Steele had a broken right ankle, a small haematoma on her scalp, three vertebral fractures with minimal or no displacement, and three rib fractures. She required surgery for her ankle. Rebecca Jack suffered swelling and bruising to her right eye and a small subconjunctival haemorrhage. Tylon Skelley sustained bruising and a cut at the right side of his lower back, together with a fracture of the right side of his pelvis and a possible fracture of his sacrum.

The Appellant's driving record

15. The appellant had five convictions for seven offences spanning between 2018 and 2020, including for drug offences and breach of court orders. We focus on the offences relevant for present purposes.

16. On 25th April 2018, the appellant received a community order for dangerous driving and was disqualified from driving for 12 months and until an extended test was passed. He breached the community order on at least three occasions in the same year.

17. Having passed an extended test in October 2019, on 30th July 2020 he received a community order for failing to provide a specimen (driving or attempting to drive), contrary to section 7(6) of the RTA. No separate penalty was imposed for an offence of failing to stop on

the signal of a traffic constable. He was disqualified from driving for 17 months and was made the subject of a community order with electronic tagging.

The Sentencing Exercise

18. The Judge rightly described the driving offences as extremely serious. The appellant had five previous convictions for seven offences. His position was aggravated by the dangerous driving in 2018. Against that background, on 27th August 2020 there was a failure to provide a specimen of breath, for which he was disqualified) from driving for 17 months. The current offences were committed only three weeks later, on 18th September. The court was shown horrific graphic footage (which we have also viewed). The facts revealed a horrific series of manoeuvres.

19. The Judge cited those facts and noted that the appellant was driving without insurance and the presence of a passenger in his vehicle. He commented that there was a clear disregard for the safety of other road users and that the appellant had completely ignored, within three weeks, what the court had done to keep the public safe, namely disqualify him from driving.

20. Having rehearsed the facts, summarised the Victim Personal Statements, and arrived at the custodial sentences, he then ordered the appellant's licence to be endorsed and the need for an extended re-test.

21. As for disqualification, the Judge stated that for this type of driving, even though the appellant was young, there had to be a disqualification to keep him off the road for a significant period of time and to make sure that he reflected before he got back on the road. The Judge disqualified the appellant from driving for seven years, with an addition of one year and ten months to take into account the total custodial sentence.

22. It is clear to us that the Judge intended the period of disqualification from driving to apply generally, that is, to be imposed separately on each offence carrying disqualification, with all of the disqualification periods to run concurrently.

23. We note at this stage that the Judge had originally intended to impose an extended disqualification period of 22½ months, being half of the detention period of 45 months. However, at the time of sentence Miss Heggie suggested to him that he might not be able to disqualify for a period of half a month. This intervention, she tells us, was at the prompting of the court clerk. This led the Judge to reduce the extension period to 22 months. This, unfortunately, offends section 35A(4)(h) of the RTOA, because it is less than half of the detention period in question. We shall return to this later.

The Grounds of Appeal

24. Miss Heggie submits first that it was not foreseen that the Judge would depart so significantly from the obligatory minimum disqualification periods and that he should have given some indication of his intention to do so and invited submissions accordingly. Had she been so invited, she would have submitted that any disqualification period should be forward looking and preventive; that to have imposed a period which was double any mandatory period would be manifestly excessive; that a long period of disqualification can be counterproductive; and that would particularly be so in the appellant's case, given his youth.

25. In summary, Miss Heggie submits that for the Judge to have gone more than twice over what she describes as the "starting point" for disqualification by reference to the minimum mandatory periods, and then to have added an additional extension period, resulted in all the circumstances in a disqualification period that was manifestly excessive.

Discussion

26. It is helpful first to identify the relevant legislative regime. Disqualification from driving for a period of not less than two years in the absence of special reasons is obligatory for causing serious injury by dangerous driving: see section 34(4) of the RTOA. Disqualification from driving for a period of not less than 12 months, in the absence of special reasons, is obligatory for dangerous driving and driving whilst under the influence of drugs under section 4(1) of the RTA. Failure to provide a specimen carries an obligatory minimum one year disqualification and a three year minimum disqualification period where a defendant has been driving or attempting to drive, and has a conviction for failing to provide a specimen within the previous ten years. Disqualification until an offender passes an extended driving test is obligatory after conviction for causing serious injury by dangerous driving and for dangerous driving. Disqualification for driving whilst disqualified and whilst uninsured is discretionary.

27. Miss Heggie referred to the minimum mandatory periods for disqualification as "starting points". That, in our judgment, is not an apt description. The minimum periods for disqualification are not starting points; they are simply the minimum periods of disqualification below which a court cannot go (in the absence of special reasons where appropriate).

28. The correct approach to the imposition of orders for disqualification from driving under section 35A in circumstances where a custodial sentence is also to be imposed is now well established: see *R v Needham and Others* [2016] EWCA Crim 455 at [31] and [47] to [50]. The court is required to identify the appropriate discretionary period of disqualification, the extension period pursuant to section 35A(4), and any uplift pursuant to section 35B. Section 35A sets out how the appropriate extension period is to be calculated.

29. The Sentencing Council Guideline on Totality provides that where a person is convicted of two or more obligatory disqualification offences, the court must impose an order of disqualification for each, unless for special reasons it does not disqualify. The court should take into account all offences when determining the disqualification periods and should generally impose like periods for each offence.

30. Beyond the legislative requirements the relevant principles are now well established on the authorities. In summary, in assessing the appropriate period of disqualification, it is important to bear in mind, first, that the risk represented by the offender is reflected by the level of his culpability which attaches to his driving. There is a basic public protection purpose. Secondly, the main purpose of disqualification is forward looking and preventive, rather than backward looking. Disqualification is still an important element of the overall punishment for the offence and is intended to deter offenders and others. The court has a wide discretion in considering the appropriate length of disqualification. There is no formula by which a court can measure the right length. It is a judicial decision which should be tailored to the offender and the offence. It should not be so long that it disproportionately adversely affects the prospects of rehabilitation. In short, a balance has to be struck. The court should not disqualify for a period that is longer than necessary.

31. Against this background we turn to the substance of the appeal. Although the appellant was only 20 years of age at the time of offending, he had an egregious record in relation to driving offences. He had a recent conviction for dangerous driving in 2018, and only three weeks before the index offences had received a 17 month driving disqualification for failing to provide a breath specimen and failing to stop.

32. Disqualification from driving for seven years is a very long period for a young man. On the other hand, this was a truly appalling piece of sustained dangerous driving in a police chase, where the injuries could have been even more severe than they were; they could have been fatal, and the number of victims even greater. The appellant's level of culpability was

extremely high.

33. The Judge was entitled to take the view that the need to protect the public was the uppermost consideration and mandated a very long period of disqualification. It is particularly troubling that the appellant was disqualified at the time and twice over the legal alcohol limit when breathalysed, against a background of very serious driving offences. The appellant's past, coupled with the facts of this incident, demonstrated an entrenched readiness to imperil the public. His comment to his passenger, after swigging vodka, to the effect that they would both die shows the highest level of disregard for the law and the lives of others.

34. Thus, we are not persuaded that there are any good grounds to interfere with the period of disqualification from driving imposed. It is not manifestly excessive. It must have been obvious to all, given the gravity of the offending, that the Judge would have had a very significant period of disqualification in mind when considering sentence. We are, therefore, in principle minded to dismiss the appeal and uphold the disqualification period of seven years, and the 22 month extension period under section 35A of the RTOA.

35. As already indicated, the Judge intended that this disqualification period should apply in relation to all relevant offences, thus complying with the minimum disqualification requirements in respect of each.

36. We then need to deal with the issue arising out of section 35A(4) of the RTOA. Given that this case did not fall in any of the categories identified in section 35A(4)(a) to (g), the appropriate extension period was a period equal to half the period of detention under section 35A(4)(h). The Judge was aware of this because his original sentence included an extended period of 22½ months. There was, in fact, no good reason why the Judge could not have imposed such an extended period, provided that he identified the period (for clarity) as 22 months and two weeks. However, he acceded to the concern raised by Miss Heggie that he might not be able to do so, and so reduced the period to 22 months.

37. In terms of rectifying the position, we must bear in mind that, taking the case as a whole, we cannot deal with the appellant more severely than he was dealt with by the court below: see section 11(3) of the Criminal Appeal Act 1968. To address the problem, we therefore reduce the period of detention on the two counts of causing serious injury by driving dangerously from 45 to 44 months' detention on each, to run concurrently. This renders the extension period of 22 months lawful for the purpose of section 35A(4) of the RTOA.

38. To the extent necessary, and for the limited purpose of ensuring that the extension period does not offend section 35A(4), we thus grant leave to appeal against the sentence of detention on those two counts accordingly. The overall period of detention is now 44 and not 45 months. The overall disqualification period remains seven years, plus an extension period of 22 months.

39. For these reasons, we quash the sentences of detention on counts 1 and 2 of 45 months' detention and substitute therefor sentences of 44 months' detention on each, to run concurrently. We dismiss the appeal against the period of disqualification from driving. All other sentences of detention remain unaltered, as do the requirement for an extended re-test and the licence endorsements.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

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