IN THE COURT OF APPEAL

CRIMINAL DIVISION

CASE NO 202202882/A4

NCN: [2022] EWCA Crim 1577

Royal Courts of Justice
Strand
London
WC2A 2LL

Thursday 13 October 2022

Before:

LADY JUSTICE WHIPPLE DBE
MR JUSTICE HILLIARD
MRS JUSTICE ELLENBOGEN DBE

REX
V
ROOPA KUMAR

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MR B SINGH appeared on behalf of the Appellant

J U D G M E N T

LADY JUSTICE WHIPPLE:

1. The appellant was sentenced at Wolverhampton Crown Court by His Honour Judge Berlin on 27 June 2022 for a single offence of causing serious injury by dangerous driving on 6 March 2021. The judge imposed a sentence of 18 months' immediate imprisonment and disqualified the appellant from driving for 28 months with an extension period of nine months.

2. The appellant now appeals her sentence of imprisonment. She has permission to appeal on the ground that the sentence should have been suspended. She renews her application for permission to appeal on other grounds, which we shall shortly come to, but which in broad terms go to the length of the sentence imposed.

3. The facts of the offence are these. At approximately 6.15 pm on 6 March 2021 the complainant, Jiri Dort, was walking to an Aldi supermarket. He crossed Newton Road, a three-lane road, by the Scott Arms. The traffic lights with pedestrian crossing were around 40 metres away. The road conditions at the time were good. It was dark but it was also dry.

4. Mr Dort was struck by a Mercedes car driven by the appellant. He was thrown forward several metres in front of the appellant's car. Police and ambulance services attended the scene. The complainant was taken to hospital immediately. He was found to have a number of injuries. He had a depressed skull fracture, a left shoulder injury, a 2cm laceration to his foreskin, a significant bleed in his abdomen, multiple complex facial fractures extending to his orbits and fractures of his clavicle, left arm and ribs. He

underwent extensive care. He had long term care in the intensive care unit with breathing aids and organ supports, cranial pressure management and cranial surgery for the fractures, therapeutic circumcision for his penile injuries and a tracheotomy for a long term airway management. He was described as having a long term prognosis of mild disability and referred to ongoing physical therapy.

5. A forensic investigation report stated that the appellant had been travelling at 64 mph as she approached the traffic lights. The speed limit for that section of road is 30 mph. The appellant's vehicle was seized for inspection and no faults were found.

6. The appellant was voluntarily interviewed on 28 April 2021. She said she had been on her way to a night shift at the hospital where she worked as a nurse. She said she had braked as soon as she had become aware of someone crossing the road. She said that she had not looked at her speedometer and did not know whether or not she had been speeding. She could not remember if she had sped up as she had approached the traffic lights.

7. She pleaded guilty on 18 May 2022 at a pretrial review having originally pleaded not guilty in November 2021. The trial date was fixed for November 2022, some six months afterwards. An interim disqualification was imposed on her at the pretrial review on 18 May 2022.

8. At the sentencing hearing the judge heard mitigation advanced by Mr Martin, who was then counsel for the appellant. The judge had before him not just Mr Martin's

submissions but also a pre-sentence report and a number of other pieces of evidence submitted on behalf of the defence. In passing sentence the judge noted that the appellant was 42 years old. She had for 19 years worked as a nurse in the NHS. On the evening in question she was driving to her place of work to start a night shift at 7 o'clock that evening. The judge held that there was no chance of her getting to her shift on time given that she was passing the Scott Arms at 6.50 pm. In his judgment she was rushing to work. She was doing 64 mph which was more than twice the speed limit in that busy built-up and densely-populated residential and business area. The judge quoted from an expert report provided by a defence expert, Mr Loat whose view was that the appellant had slowed down prior to the collision and when she saw the complainant she had reacted quickly so that the speed of impact was around 35 mph. He accepted that that was the speed at the point of impact. The judge found she was travelling at 64 mph in order to jump the traffic lights at the busy junction ahead. He said she should have taken the approach cautiously and not at high speed and she should have kept an eye out for pedestrians. He recited the injuries of the complainant, which were very serious, and noted that the complainant could have died. The judge referred to the two victim impact statements which noted the ongoing and permanent problems which had resulted for the complainant.

9. The judge referred to the guidelines on causing death by dangerous driving and concluded this would have been a Level 2 offence under those guidelines because the appellant's driving created a substantial risk of danger. This was not just because of the excessive speed; it was also because of the nature of the area and the timing, taking all of these factors in combination. If death had resulted the starting point would have been

five years. The judge noted the aggravating factors: that the injuries were multiple and life-threatening, some were permanent and they were psychological as well as physical in nature. The judge noted that the mitigation advanced on behalf of the defendant was substantial. She had no previous convictions. She had been a nurse for 19 years and had worked through Covid to assist her patients. He noted that there was remorse. She had braked hard when she saw the complainant. He referred to the character references which showed her to be honest, hardworking and committed to charity work which she had done in the past. He referred to the guidance in the case of Manning and to the effect of Covid on the prison population. He noted the appellant's domestic circumstances: she had two children then aged 15 and 17, both of whom had already experienced educational difficulties during the pandemic and as they approached exams. He referred to R v Petherick [2013] 1 WLR 1102 in relation to mitigation of sentence to reflect the effect of custody on children and other family members. He said that he was "doing the very best I can for this awful case". He decided that the notional sentence after trial was one of 22 months' imprisonment. He allowed 18 per cent for the guilty plea. The resulting sentence was 18 months' imprisonment.

10. He considered whether he could suspend the sentence and referred to the guideline on community and custodial sentences. He noted the contents of the pre-sentence report which predicted a medium risk of harm to the public capable of reduction to lower levels with intervention. That risk was predicated on poor prediction of consequences and risks and a willingness to ignore legal obligations. He concluded that:

> "With great regret ... appropriate punishment in my judgment can only be achieved by immediate custody."

11. He imposed the sentence of 18 months' immediate imprisonment, together with the driving ban.

12. In written grounds of appeal drafted by Mr Tutt of counsel dated 23 September 2022 a number of grounds were advanced. Of those the appellant has permission to argue one, namely that the sentence should have been suspended. By email received in the Court of Appeal Office on 5 October 2022, Mr Tutt confirmed that he would seek to renew his argument about the length of the custodial sentence, whether suspended or not, and his argument in relation to the starting point being too high but that otherwise he abandoned his other various grounds.

13. On the court's prompt by email to the court yesterday Mr Singh (now counsel for the appellant) confirmed that the appeal would be narrowed in the way suggested in Mr Tutt's earlier email. In oral submissions before us this morning Mr Singh has helpfully focused on his two key points. The first of those is that the categorisation of this offence was wrong. This was significant but not substantial culpability, and it followed that the judge started with a sentence that was too high and manifestly excessive. His second point is that the sentence should in any event have been suspended.

14. Before coming to our conclusions, we record the further material that is before the court today. First, we have a prison report obtained in advance of the hearing which confirms that the appellant has done well while in prison. She has one negative comment for stealing food but is otherwise reported to contribute proactively, to be employed as a

healthcare champion and to be engaging with education in order to complete a maths course. Second, we have a note from the prison dated yesterday, 12 October 2022 confirming her work as a healthcare champion and her enthusiastic engagement with that work. Third, we have also been informed that she is currently the subject of disciplinary proceedings before the Nursing and Midwifery Council which have not yet concluded. We understand that she is currently subject to interim suspension on fitness to practice grounds and that this will be reviewed in due course.

15. Turning then to the substance of this appeal, we have watched the CCTV recordings of the collision. Like the judge we see an area busy with vehicles in the darkness of early evening. The junction is congested with quite a lot of traffic around. The junction is at an Aldi supermarket where people are stopping to do their shopping. The appellant was driving at 64 mph along this road in an area where the limit is 30 mph. That is an excessive speed by a considerable margin. Although the appellant braked when she saw the complainant and reduced her speed to 35 mph at the point of collision, that final speed even after braking remains in excess of the maximum speed for that road. The judge found based on the pre-sentence report that the reason for the appellant's speed was that she was racing as she approached the lights, hoping to go through the lights as they remained on green. Any driver knows or should know that that is a risky thing to do, the more so in a built-up area where the unexpected is to be expected.

16. By reference to the guideline on death by dangerous driving, which is of some assistance in this case, we agree with the judge's assessment that this is a Level 2 offence because it created a substantial risk of danger. We reject Mr Singh's submission that it is merely

within the significant category. We consider the culpability to have been relatively high.

17. Undoubtedly, the harm too is high. The injuries sustained by the complainant have been life-changing. We have had regard to his two impact statements which were before the judge dated 15 November 2021 and 27 June 2021. He is a man of 36 years old. He now has ongoing and significant physical difficulties, including compromised eyesight and mobility. He was struggling with the mental effects of his injuries too. This was a very serious incident which could have resulted in death and it has had lasting and significant impact on the complainant.

18. The judge identified the complainant's multiple injuries as an aggravating factor and he was justified in doing so. The judge also recognised there was substantial mitigation available to the appellant.

19. The question raised by Mr Singh this morning and in the grounds of appeal is whether the sentence of 18 months was itself manifestly excessive or took too high a start point. The judge did not express his starting point in terms but it must have been in excess of 22 months before reduction on account of mitigation. In a case such as this we would anticipate a starting point of between two and two-and-a-half years' custody for an offence of this seriousness. We do not consider that the notional sentence after trial of 22 months to be open to criticism and we are not persuaded that the judge left anything out of account or failed to give sufficient weight to any aspect of the case in arriving at his sentence. There is no challenge to the 18 per cent reduction in the guilty plea and we therefore conclude that there is no merit in the grounds that the sentence of 18 months

was either manifestly excessive or took the wrong starting point. We agree with the single judge that permission on those grounds must be refused.

20. We come to the central issue in this appeal which is whether the sentence of 18 months ought to have been suspended. That is the issue for which the appellant has leave.

21. The judge considered the guideline, as we have done. In its table it lists the factors which indicate whether it "may" be appropriate to suspend. Whether to suspend is in the end a matter of judgment based on the relative weight of all the factors present in the particular case. Looking first at the factors indicating that it may be appropriate to suspend a custodial sentence, this appellant has a reasonable prospect of rehabilitation. Her risk of re-offending is low, as was recorded in the pre-sentence report. This appellant has strong personal mitigation. We have recorded already what that mitigation comprises, but we do take account specifically of her work as a nurse over a very long career helping others, we take account of the particular pressures that were on her at this time working in the health care sector during a pandemic, we note that she is of good character and she has extensive testimonial report to that effect. She has an unblemished driving record through 12 years of driving. We note that she is very sorry about her actions and their consequences. Plainly any period of custody would impact on her family members. She has a husband and two teenage children. This is not a case where the children are very young or where the defendant is a sole carer, but still the impact on others would be substantial. These were all points recognised by the judge. They are all points tending to suggest the sentence may be suspended under the guideline.

22. We turn then to look at the other side of the table, factors indicating that it would not be appropriate to suspend a custodial sentence. There were factors under that heading. The judge alighted on one aspect of the pre-sentence report which suggested that the appellant did pose a risk to the public because the offending showed her to have certain risk factors of poor prediction of consequences and risks and a certain willingness to ignore legal obligations. In that sense it could be said that she did present a risk of some degree to the public, albeit one that could be mitigated by interventions. He was entitled to take that point into account when considering suspension.

23. As Mr Singh submits, and we accept, the judge's central reason for imposing an immediate term of custody was to achieve appropriate punishment. That is the second reason listed in the guidance and it was his judgment that on the facts of this case that factor outweighed the other factors that were in the mix.

24. We have considered very carefully the points advanced by Mr Singh this morning and all the features of this case. We are unable to fault the conclusion to which the judge came.

25. This is a difficult and unusual case. There is much to say in the appellant's favour. We commend her for her conduct and good behaviour while in prison and her willingness to look forward and learn, but the judge was entitled to conclude that the offence she committed was so serious that only a period of immediate custody could achieve appropriate punishment. We therefore dismiss this appeal.

proceedings or part thereof.

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