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IN THE COURT OF APPEAL

CRIMINAL DIVISION

[2024] EWCA Crim 476



No. 202400828 A1

Royal Courts of Justice

Wednesday, 27 March 2024

Before:

LADY JUSTICE WHIPPLE
MRS JUSTICE MCGOWAN
HIS HONOUR JUDGE PATRICK FIELD KC

REX
V
BILLY CHAMBERLAIN

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Ms. S. Kharegat appeared on behalf of the Applicant.
The Crown were not represented.

J U D G M E N T

LADY JUSTICE WHIPPLE:

1 The appellant was sentenced on 19 February 2024 by Mr Recorder Hunter to 9 months' imprisonment for a single offence of dangerous driving, to which he pleaded guilty. No separate penalty was imposed for two other offences of driving without a licence and driving without insurance which related to the same event. The appellant was disqualified from driving for 3 years and 4 months. He now appeals against his sentence with the leave of the single judge.

The facts

2 On 24 October 2021 police officers in a marked vehicle spotted a grey Volkswagen Golf being driven by the appellant. The vehicle drove on to the M25 and the police vehicle followed it, whilst officers carried out checks on the registration. The vehicle left the M25 at junction 13. As it did so, on arriving at the roundabout, it passed through red traffic lights. Police officers turned on their blue lights and siren to indicate that the vehicle should stop. The appellant did not stop and continued driving around the roundabout. He went through another set of red lights and then left the roundabout, heading towards the village of Wraybury. Whilst it was being pursued, the appellant's vehicle was travelling at speeds above the speed limit, initially at 50 miles an hour in a 30-mile-an-hour zone, and then up to 70 miles an hour in a 40-mile-an-hour zone. The vehicle overtook other vehicles and undertook a high risk manoeuvre when it mounted the off-side pavement in order to drive around an oncoming vehicle. The appellant then turned off the main road and drove down a poorly lit road and turned off his vehicle's lights. He drove for a short distance and then got out of his vehicle. He was found in the rear garden of a residential property, where he was arrested.

3 There was no damage or injury caused during the pursuit, but it was night time and it was dark. The road was wet due to recent rainfall. Traffic was relatively light.

Antecedents

- 4 These offences were committed on 24 October 2021, when appellant was 23 years old. By that date he had a number of convictions spanning the period from 2014 to 2023. His non-driving related offences included possessing a knife, using threatening behaviour, handling stolen goods and possession of class B drugs. He had one driving conviction which predated the index offending. That was drug driving and driving without a licence, insurance and MOT in February 2019, for which he was sentenced in July 2019 to a fine and disqualification from driving for 12 months. He had a second sentence imposed in January 2022, which was after these offences were committed, but that was for offending in January 2021 which predated these offences. That sentence was for drug driving and driving without a licence, insurance, and driving a vehicle in an unsuitable position. For that he was fined and disqualified for 3 years.

Pre-sentence Report

- 5 The recorder had the benefit of a Pre-Sentence report dated 6 February 2024 which noted that the appellant was on the autistic spectrum and has ADHD (Attention Deficit Hyperactivity Disorder). The author of the PSR said that he believed the appellant's difficulties "[...] greatly impact his consequential thinking and perception of his actions when he is stressed, panicked or angry"; further, that "It would appear that his unthinking actions and lack of real understanding of the consequences of his offending is partly due to these conditions." He was also on antidepressants and other medication. The author thought that lack of maturity played a part in this offending.
- 6 In the PSR it was noted that the appellant was living with his grandfather and that his accommodation was settled. He had previously worked doing some gardening, but was not currently working. He found the world of work difficult. The appellant had been living on benefits. He has two children, neither of whom live with him. His second child was a baby girl, born in January 2024. The appellant admitted to a significant cannabis habit. A

community order of 18 months' duration was recommended with certain requirements imposed.

Psychological report

- 7 Also before the recorder was the report of Dr Eldad Farhy, chartered psychologist, dated 11 September 2022. Dr Farhy recorded that the appellant had attended a special school until the age of 15, when he left without sitting any exams. Dr Farhy's view was that the appellant's IQ fell within the extremely low range. On an ASD (Autistic Spectrum Disorder) screening test the appellant was found to exhibit many symptoms of ASD. Dr Farhy said that the appellant appeared to exhibit significant autistic and ADHD symptoms, as well as cognitive limitations against a background of developmental delays. The ASD and ADHD were aggravated by using cannabis regularly and extensively, and alcohol occasionally. The ASD and ADHD were life-long impairments and they were associated with difficulties empathising with others. Dr Farhy pointed to academic literature which associated offending by people in this group with a deficit in their ability to understand the world from the point of view of others. Dr Farhy thought it was feasible that having been stopped by the police that night, the appellant reacted as he did in running from his car without any understanding of the results of doing that, that his low intellectual acumen would, in addition, have meant he was less able than most to reason out the effect of his actions. Dr Farhy noted that there was no report of suspected ASD in recent psychiatric reports or in the appellant's school report, so that his conclusions were dependent on the appellant's self-reported questionnaire and did not constitute a formal diagnosis; but still, it was Dr Farhy's view that "his claim to have acted in what can be seen as an idiosyncratic rather than logical manner and not paying attention to the strict letter of the law can be perhaps understood."

Sentence

- 8 In passing sentence the recorder put this offending into category 2A of the Dangerous

Driving Guideline which has a start point of 36 weeks and a range of high level community order to 18 months' custody. He said that the fact that the offence occurred a long time ago was not a mitigating or aggravating factor. He said the appropriate sentence would be 10 months' custody, which he reduced to 9 months, a discount of 10 per cent, to take account of the appellant's late guilty plea. He said that it was appropriate for the sentence to be one of immediate custody and that he had taken account of the medical report and everything that was said about the appellant's medical condition.

Grounds of appeal

- 9 By his grounds of appeal the appellant argues the following grounds:
- (1) Insufficient weight was given to personal mitigation and to the possibility of suspending the sentence.
 - (2) The recorder erred by not considering the Sentencing Council Guideline on Sentencing Offenders with Mental Disorders, Developmental Disorders or Neurological Impairments in view of the appellant's mental health issues.
 - (3) The recorder did not refer to the Sentencing Council Guideline on the Imposition of Community or Custodial Sentences. The recorder failed to explain his reasons for not suspending the sentence.
 - (4) The recorder erred in his understanding of the appellant's previous convictions and should not have considered a conviction in January 2022 relating to a driving offence as an aggravating feature of the index offence.
- 10 In her able oral submissions this morning Miss Kharegat has advanced these various grounds and in addition assisted us with the law relating to disqualification.

Conclusion

- 11 In our judgment, ground 2 is self-evidently made out. The recorder did not refer to the Mental Disorder Guideline. He ought to have done. The PSR and the psychological report both contained evidence that the appellant had a mental disorder which had or might have

had some bearing on the appropriate disposal for this offending. The guideline emphasises that culpability may be reduced if an offender was at the time of the offence suffering from an impairment or disorder (paragraph 9). Culpability will only be reduced if there is sufficient connection between the offender's impairment or disorder and the offending behaviour (paragraph 11). The sentencer must make their own decision (paragraph 13). The sentencer must state clearly their assessment of whether the offender's culpability was reduced, and if it was, the reasons for and the extent of that reduction, as well as stating, where relevant, the reasons for not following an expert report and expert opinion (paragraph 14).

12 We have considered for ourselves the evidence which was before the recorder relating to the appellant's mental disorder. We see no reason to depart from what was, as we understand it, unchallenged evidence given by Dr Farhy in his report, which is in large part reflected in the PSR. We approach this case on the basis that the appellant has ASD and ADHD. He is of low IQ with developmental delay. We also infer that his maturity is below average for a man of his age, now 26.

13 On the evidence before the recorder a connection was clearly established between the appellant's offending and his impairment. Dr Farhy identified in particular the way the appellant abandoned his car and tried to hide. More generally, the PSR reported that the appellant's consequential thinking was impacted by his ADHD and his ASD. The inference reasonably to be drawn is that the appellant's apparent failure to appreciate the danger that he was posing to other members of the public and to himself in driving in the way he did was related, at least in part, to a lack of empathy associated with his ASD and compounded by his low IQ and developmental delay. In our judgment, the appellant's culpability was reduced to a significant degree by his mental impairment.

14 The recorder's failure to consider the guideline and his resultant failure to engage with the issue of the appellant's culpability assessed in light of the evidence of mental impairment led

to a sentence that was wrong in principle, and, as shall become apparent, manifestly excessive. This appeal must therefore be allowed and the sentence imposed by the recorder quashed.

- 15 It is not necessary in those circumstances for us to address grounds 1 and 3. We note simply that the Recorder did not explicitly refer to the imposition guideline, but may impliedly have done so in his reference to the "appropriate sentence", which he judged to be one of immediate custody.
- 16 As to ground 4, we think the recorder was entitled to take some account of the January 2022 sentence because it reflected conduct which pre-dated the index offending. The recorder was entitled to say that this was the third time the appellant had put the public at risk by his driving. We would not have allowed the appeal on ground 4, but that point does not matter much in light of our earlier conclusion on ground 2.
- 17 We turn to consider the appropriate sentence. Under the Dangerous Driving Guideline, in our judgment this offending properly falls in the lower culpability bracket, bracket B. That is not to diminish the seriousness of what occurred but to accept the appellant's culpability was lessened by reason of his mental disorder. The harm was 2. That bracket has a starting point of a high level community order in a range which went up to 36 weeks' custody. There were aggravating features. First, the appellant had previous convictions, including serious convictions for driving offences. Secondly, he was driving without a licence and without insurance at the time, ancillary offences which fell to be reflected in the lead dangerous driving sentence.
- 18 There was also some mitigation in the long delay in bringing the matter to court and in the appellant's personal circumstances. Late in the day, he had pleaded guilty.
- 19 In light of the comments in the PSR, we have considered whether the Youth Guideline

assists us, but we conclude that issues of immaturity in this case are really part and parcel of the issues going to mental disorder which we have already identified. This appellant was well past his chronological youth at the time of offending, and that guideline does not offer any further assistance.

- 20 In our judgment, the appropriate sentence which matches the seriousness of the offending and takes account of the fact the appellant has already served five weeks in custody is a community order of eighteen months, together with a rehabilitation activity requirement of twenty days.
- 21 The appellant must understand this: he must keep in touch with the officer responsible for his case, as instructed, and he must notify the officer if he changes his address. If he fails, without reasonable excuse, to comply with any part of this community order, he can be brought back to court when the court can alter the order to make it more demanding or sentence him for the underlying offences in a different way. He may then receive a custodial sentence. Further, if he fails to comply with this community order his state benefits may be stopped or reduced for a period of time. If circumstances change, the court may alter or cancel this community order or sentence him in a different way.
- 22 We deal then with disqualification. The appellant will be disqualified from driving for a period of two years. There is a mandatory minimum term of 12 months. However, an uplift from that is plainly required due to the extremely dangerous circumstances of this offending, and indeed, to protect the public. We consider an uplift to two years to be appropriate. The Recorder imposed a discretionary period of three years. We regard that as having been too long, given the appellant's age, his immaturity, and indeed, the wider public interest that drivers (including this appellant) should use the roads safely and legitimately; he must take an extended driving test before he is permitted to resume driving at the end of the period of disqualification.
- 23 In summary, we quash the sentence of 9 months' immediate custody together with the

driving ban originally imposed. We substitute a community order of eighteen months with a rehabilitation activity requirement of twenty days, disqualification for 2 years and an extended driving test required. To that extent the appeal is allowed.

CERTIFICATE

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the Judgment or part thereof.

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