

6 pages.

ROYAL COURT
(Samedi Division)

7th June, 1995.

103A.

Before: The Bailiff and
Jurats Le Ruez and
Potter.

The Attorney General

-v-

José Arlindo de Freitas,
Jason Malcolm Hamon.

Sentencing by the Inferior Number following not guilty pleas entered on 9th December, 1994, which were subsequently withdrawn and guilty pleas substituted by de Freitas on 29th March, 1995, and by Hamon on 25th April, 1995 to the following counts laid against them in separate indictments.

de Freitas.

1 count of manslaughter.

Hamon.

1 count of reckless driving, contrary to Article 14 of the Road Traffic (Jersey) Law, 1956.

de Freitas.

AGE: 19.

DETAILS OF OFFENCE:

In the early hours of the morning the accused drove along Victoria Avenue at grossly excessive speeds, racing with another driver. (That other driver was sentenced for reckless driving - see Hamon 7.6.95). The accused drove into the Bel Royal 30 m.p.h. limit at a speed subsequently calculated to have been 77 m.p.h. plus or minus 10%. The accused lost control on the bend, the car overturned, and a teenage passenger in the rear seat was thrown from the car and died shortly thereafter from the injuries which he suffered.

DETAILS OF MITIGATION:

18 at the time of the offence; alcohol not a feature of the case; entirely good character; emotionally shattered by the event - the victim was his closest friend; intense remorse, plea of guilty. A single episode of teenage folly.

PREVIOUS CONVICTIONS:

Nil.

CONCLUSIONS:

2½ years' imprisonment and 5 years' disqualification from driving.

SENTENCE AND OBSERVATIONS OF THE COURT:

Superior Number has stated its future policy in Hall. These facts pre-date Hall and are not therefore within the new guideline. The driving in the instant case was completely unacceptable, but the Court was prepared to give greater weight to mitigation than had been applied in the conclusions, therefore accused sentenced to 2 years' youth detention, and disqualified from driving for 3 years.

Hamon.

AGE: 25.

DETAILS OF OFFENCE:

In the early hours of the morning, the accused drove along Victoria Avenue at grossly excessive speeds, racing with another driver (the other driver was sentenced for manslaughter, his car having overturned and the death of a passenger having resulted - see de Freitas 7.6.95). The accused drove into the Bel Royal 30 m.p.h. limit at a speed subsequently calculated to have been not less than 63 m.p.h., in close proximity to the car with which he was racing. The accused's car left the road and skidded into an earth bank, quite close to a pedestrian on the other side of the bank, who was showered with earth from the impact.

DETAILS OF MITIGATION:

Alcohol not involved; residual mitigation for youth; plea of guilty; married with one child; had recently given prosecution evidence, in difficult personal circumstances, in a contested rape case. (The latter point was not addressed by counsel on either side, but was mentioned spontaneously by the Court upon retiring).

PREVIOUS CONVICTIONS:

Lengthy record for dishonesty and motoring infractions. Second conviction under Article 14, thus opening up a statutory maximum sentence of 2 years in the instant case.

CONCLUSIONS:

15 months' imprisonment plus 5 years' disqualification from driving.

SENTENCE AND OBSERVATIONS OF THE COURT:

Court prepared to allow fuller weight to the mitigating features. Sentenced to 12 months' imprisonment plus 5 years' disqualification.

C.E. Whelan, Esq., Crown Advocate.
Advocate S.J. Willing for de Freitas.
Advocate Mrs. S.A. Pearmain for Hamon.

JUDGMENT.

THE BAILIFF: Although these two defendants are presented jointly, they are charged with different offences and we propose therefore to deal separately with each of them. We deal first of all with De Freitas.

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The Superior Number has set out the policy of this Court in relation to sentencing for offences of motor manslaughter in the recent case of Attorney General v. Hall (2nd May, 1995) Jersey Unreported. There is no need, therefore, for me to repeat that policy. Our function is to impose a sentence which reflects the criminality of the defendant. We agree with the Crown Advocate that the imposition of the guidelines laid down in the case of Hall might give rise to a justified sense of grievance on the part of the defendant, having regard to the very much lower sentences imposed recently by this Court in this type of case, if we were to follow them today. We were given to understand that sentencing in this case had been delayed, pending the decision of the Superior Number in Hall.

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We are entirely satisfied that De Freitas was racing with Hamon along Victoria Avenue at speeds which were grossly excessive and which caused great danger to the general public. It is not difficult to imagine that more than one person might have died as a result of this reckless escapade. To drive in this island at speeds which approached 70 miles an hour or more is completely unacceptable and is, in the context of sentencing for manslaughter of this kind, an aggravating circumstance which we are bound to take into account. The Court found the observations of the English Court of Appeal in R. v. Hudson (1989) RTR 206, to which we were referred by the Crown Advocate, very much in point:

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"It is said on his behalf first that there is absolutely no question of alcohol being involved in this, and second, that when he is not behind the wheel, he appears to be

responsible. He has a good character and work record, previously he had a clean licence, and he has shown contrition and remorse. All in all, what is known about him when not behind the wheel is difficult to reconcile with his driving that night. That driving can only be characterized as aggressive. On the road, aggression kills. When it does kill, it is little comfort to the victim's family or to society that the driver responsible does not behave in such a way when he is not behind the wheel. Deaths caused in circumstances like this are avoidable. As Lord Lane CJ in Reg. v. Boswell [1984] RTR 315, 319K pointed out, half the population, that is to say, women, are very seldom, if ever, convicted of this offence. That shows that such deaths are avoidable. When driving such as this causes such death, it must be punished. The public expects, and is entitled to expect, that this should be dealt with severely."

We accept in this case that De Freitas has imposed a severe punishment on himself by causing the death of his best friend. We accept all that was said by his Counsel as to his character; he appears to be a thoroughly decent young man with a bright future before him. His age is also a significant factor, as is the fact that he has pleaded guilty to the charge and faced up to the responsibility which he has for the consequences of his actions. Notwithstanding those factors the Court has no doubt that a custodial sentence should be imposed.

De Freitas, the Criminal Justice (Young Offenders) (Jersey) Law 1994 provides that I must explain to you, as a young offender, why the Court is going to impose a custodial sentence. The reason is that the Court regards the offence of manslaughter of this kind as being so serious that a non-custodial sentence cannot be justified. We have to mark society's disapproval of racing on the public roads to the great danger of other road users. I must also explain to you that on your release from youth detention, you will be liable to supervision by a Probation Officer. The Court has been able to make a slightly greater allowance than was made by the Crown in moving conclusions in respect of the mitigating circumstances of your age and your guilty plea to the indictment. You are sentenced on the single count on the indictment laid against you to 2 years' youth detention, and you are disqualified for holding a driving licence for a period of three years.

We turn now to the defendant Hamon. This defendant is not being sentenced for an offence of manslaughter. The Court cannot accept the submission of Counsel for De Freitas that both defendants were equally culpable in a legal sense for the death of Paul Bertalli. Morally that may be so, but as a matter of law, we are sentencing Hamon for an offence of reckless driving. It was indeed an appallingly bad piece of driving which might easily have resulted in death or serious injury to an innocent member of the

public. Indeed, the off-duty police officer at the fatal scene had a very lucky escape. Hamon has a bad driving record and has previously been convicted for dangerous driving.

5 In mitigation, we accept that he has pleaded guilty to the
indictment and that he is still a young man and entitled to some
credit for that. He has a wife and young family who will, of
course, unhappily suffer as the result of his recklessness. We
10 have again been able to make a slightly greater allowance for the
mitigating circumstances than was made by the Crown in moving
conclusions. Hamon, you are sentenced to twelve months'
imprisonment and you will be disqualified for holding a driving
licence for a period of five years. We have, in that respect,
15 taken note of the submissions of your Counsel that it would be
desirable for you to see some light at the end of the tunnel. We
therefore remind you, and your Counsel will explain this to you
more fully in due course, that the law provides that you may make
an application to the Court for the return of your driving licence
20 after a suitable period of time on the assumption that you have
subsequently shown yourself deserving of the privilege of holding
a driving licence.

Authorities.

A.G-v-Hall (2nd May, 1995) Jersey Unreported.

R.-v-Hudson (1989) RTR 206.

Boswell (1984) Cr. App. R. (S) 257.

Attorney General's References Nos. 14 & 24 of 1993
(1994) 15 Cr. App. R. (S) 640.

Attorney General's References Nos. 24 & 32 of 1994
(1995) RTR 119.

A.G-v-Hunter (19th September, 1988) Jersey Unreported.

A.G-v-O'Neill (4th December, 1992) Jersey Unreported.

Current Sentencing Practice:

Part B.1-7:

R.22 (8th April, 1992): pp.20810-20814.

R.26 (October, 1993) : pp.20815-20816.

R.28 (July, 1994) : pp.20816/1-20816/2.

Part B.12:

R.25 (1st March, 1993): pp.25801-25802.

R.22 (8th April, 1992): pp.25803-25808.

R.25 (1st March, 1993): pp.25809-25810/2.

R.26 (October, 1993) : pp.25810/3-25810/5.

Part H:

R.21 (31st March, 1991): pp.8028/2.

R.18 (21st March, 1990): pp.8029-8030.

Thomas: "Principles of Sentencing" (2nd Ed'n): pp.64-71;
350-354.

Wilkinson's Road Traffic Offences (15th Ed'n): para. 5/212-8.

A.G.-v-Whiteford (14th January, 1991) Jersey Unreported.

A.G.-v-Whiteford (20th September, 1991) Jersey Unreported.

A.G.-v-Whiteford (25th October, 1991) Jersey Unreported.