Regina v Richard Brian Kensit

[2017] EWCA Crim 2672

Before: The Lord Chief Justice of England And Wales (Lord Thomas of Cwmgiedd)
Mrs Justice Carr DBE and Mr Justice Gilbart

Wednesday 22nd March 2017

Representation

Miss P Grewal appeared on behalf of the Appellant.

Judgment

Wednesday 22nd March 2017 The Lord Chief Justice:

I shall ask Mr Justice Gilbart to give the judgment of the court.

Mr Justice Gilbart:

1 On 1st August 2016, following a trial in the Crown Court at Snaresbrook, before His Honour Judge Kaul QC and a jury, the appellant was convicted of dangerous driving, contrary to section 2 of the Road Traffic Act 1988 . He later pleaded guilty to failing to surrender to his bail, contrary to section 6 of the Bail Act 1976 . We shall, in due course, set out the chronology of what occurred with regard to the hearing of those charges.

2 On 18th October 2016, he was sentenced as follows: on the charge of dangerous driving, to twelve months' imprisonment and disqualified from driving for a period of three years, with a requirement to take an extended driving test; and on the charge of failing to surrender, he was sentenced to six months' imprisonment, which was ordered to run consecutively, thus making 18 months' imprisonment in all.

3 The appellant appeals against sentence by leave of the single judge.

4 The facts of the dangerous driving are as follows. On 2nd November 2014, at about 4.25am, two police constables who were on patrol came across two vehicles parked next to each other in Braemore, Ilford. One of them was parked and empty, but its doors were open, its engine was running and its headlights were on. The other car, a Lexus, was occupied by four men. Because of concerns about the taking of vehicles in the area, the suspicions of the police were alerted. The Lexus, which was being driven by the appellant, was reversed back and then

turned on the road. The driver of the police vehicle flashed his headlights to indicate to the appellant to stop, but the Lexus turned and drove towards them at speed in what appeared to the police officers to be an attempt to ram the police vehicle. The police car reversed so as to avoid a collision. The Lexus managed to squeeze through a gap by mounting the pavement and then making off. The officers turned the police car around and followed the appellant who turned into a single carriageway road with speed humps. By that stage, he was driving at a speed of 60mph on a residential road subject to a 30mph limit. Further on, he turned on to a main road, having failed to slow down at the junction. The police lost sight of the car for a few minutes, but then they came across it again. There was now no front seat passenger. The appellant subsequently stopped outside a hospital, where he was arrested. There were two other people in the vehicle. When cautioned, the appellant denied being the driver of the vehicle at the earlier stage.

5 The original hearings in the case took place in 2015, but the matter was not listed for trial until the middle of 2016. On 27th July 2016, the appellant was required to attend court, but did not do so. By that stage, he had not seen his solicitors for some considerable time in relation to the case. On 26th July, he informed them that he had been vomiting and had a headache; he had attended an appointment with his general practitioner two days earlier. The judge asked for a medical note. The case was adjourned to the following day, and the judge issued a bench warrant not backed for bail.

6 At a little after 2pm the court was told that the appellant's symptoms had worsened and that he was being taken to hospital in an ambulance. It transpired that he was also wanted for breach of probation requirements and potential recall to prison.

7 The following day, 28th July, the case was listed again, this time before His Honour Judge Kaul QC. The appellant did not attend. The case was adjourned until later that day for further enquiries to be made. The officer in the case went to the address of the appellant's mother, to be told that he was not there and had not been home for three days. She said that he was anxious and depressed, but said nothing about hospital or an ambulance.

8 The following day, 29th July, the appellant did not attend court. The judge ruled that the case would proceed in his absence. The court heard the prosecution case, but adjourned to give an opportunity for him to give evidence on 1st August.

9 The appellant did not attend on 1st August. Counsel for the appellant told the court that he had been contacted the day before, had been informed that the trial was to go ahead, and that he could attend and give evidence. He was convicted in his absence. He was then subject to a bench warrant and a recall to prison.

10 On 15th August, the appellant was arrested in Bournemouth on an unrelated matter and was taken to court in relation to those proceedings. On 16th August, he denied the Bail Act offence. The matter was adjourned to 25th August for a trial in relation to the offence of failing to surrender. On 25th August, he sacked his counsel who had represented him up to that point.

11 On 18th October, now represented by Miss Grewal of counsel who has appeared before us, the appellant accepted the offence of failing to surrender to bail.

12 The sick note requested in July was subsequently produced. It referred to the appellant suffering from depression. A subsequent sick note said that he had been diagnosed with depression. However, there was no reference to any physical sickness to correlate with the explanation advanced on his behalf in July.

13 The appellant was aged 38 at the date of sentence. He had 19 convictions for 37 offences, which spanned between 1995 and 2011. Twenty of those offences involved driving or motor vehicles. On occasion, he had been convicted of driving whilst disqualified. He had a previous offence for failing to surrender, for which he received 28 days' imprisonment in 2007. Since the offence of dangerous driving had been committed in late 2014, he had been sentenced to suspended sentences for thefts from a motor vehicle and handling in January 2015; to a community order for an assault; and in July 2015, for theft from a motor vehicle, to a sentence of three months' imprisonment suspended for 15 months, with a programme requirement. On 16th February 2016, he was sentenced to ten months' imprisonment for the possession of a prohibited weapon, committed during the currency of that suspended sentence. No separate penalty was imposed for the commission of the offence during the operational period.

14 This court has no information as to whether or not those sentences passed after the date of the driving offence with which we are concerned had been committed while the appellant was on bail for it.

15 There was no pre-sentence report.

16 When passing sentence for the dangerous driving, the judge said that the appellant had a history of committing driving offences, although not offences of dangerous driving. He had been given chance after chance by the courts, before receiving a sentence of ten months' imprisonment in 2016, for which he had been recalled to prison during the course of the present proceedings. The judge said that he had shown no maturity or co-operation in relation to the Probation Service in the past.

17 As to the failure to surrender to bail, having rehearsed the history which we have already given, the judge said that the appellant had flagrantly wasted court time; that there had been unnecessary delay; that there had been an unnecessary number of appearances, with two firms of solicitors being instructed; and

that a consecutive term of imprisonment was appropriate.

18 Miss Grewal, who has argued her grounds with vigour today, submits first that insufficient credit was given for the specific circumstances of the dangerous driving; secondly, that there had been insufficient credit given to the appellant for his guilty plea to the Bail Act offence and that there should not have been a consecutive sentence, or, in any event, the totality of sentence was too long; and thirdly, that the period of disqualification was excessive. She draws attention to the fact that the appellant wishes to be able to ply his trade as an electrician and plumber upon his release from prison.

19 We will deal with the dangerous driving first. It was a short piece of very dangerous driving. Happily, no one was injured during the course of it, nor other vehicles damaged. However, there are two substantially aggravating factors: first, the evidence of the police officers was that the Lexus car had been driven towards their vehicle at speed, as if to ram it; secondly, the appellant is a man with a terrible record of criminal convictions, and in particular for driving offences. We are satisfied that only a custodial sentence was appropriate. True it is that a sentence of twelve months' imprisonment is a substantial one, but in the circumstances of this case we do not consider that it was excessive.

20 A consecutive sentence was inevitable for the Bail Act offence. As to its length, we refer to the Definitive Guideline. For a first time offender, a deliberate failure to attend which causes delay and/or interference with the administration of justice has a starting point of 14 days' imprisonment, with a range from a medium community order to 40 weeks' imprisonment. However, the guideline lists four additional aggravating factors: first, a lengthy absence; secondly, serious attempts to evade justice; thirdly, a determined attempt seriously to undermine the course of justice; and fourthly, previous relevant convictions and/ or repeated breach of court orders or police bail.

21 By paragraph E4 of the guideline, where the failure to surrender to custody was deliberate, at or near the bottom of the range will be cases where the defendant gave no thought at all to the consequences, or there are other mitigating factors, and the degree of delay or interference with the progress of the case was not significant in all the circumstances. At or near the top of the range, will be cases where any one of the aggravating factors are present, if there is also a significant delay and/or interference with the progress of the case.

22 The delays which actually occurred here, due to the appellant's failure to surrender, were from 27th July until mid-August 2016. The delays after that were due to his maintaining his not guilty plea to the offence. The trial for dangerous driving had taken place in his absence. It is, of course, right to note that the judge had bent over backwards to try to make sure that the trial was fair and to allow the appellant to attend.

23 We agree with the judge that the appellant sought to avoid an appearance in

court. But, in our judgment a consecutive term of six months' imprisonment was excessive. In our judgment, the appropriate sentence is a consecutive term of three months' imprisonment.

24 Finally, we turn to the question of the disqualification to be imposed upon the appellant as a result of his conviction for dangerous driving. This is patently a case where there must be a disqualification because of his disregard for the law on driving, and not for the first time. We also have to take into account the extensions required as a result of section 35A of the Road Traffic Offences Act 1988 .

25 We accept Miss Grewal's point that some allowance must be made so that the appellant has some chance of pursuing his occupation when he is released; but there must be a period of disqualification which extends beyond his release date, which is May 2017. Accordingly, we impose a discretionary period of 12 months' disqualification for the dangerous driving. There will be a six month extension period, pursuant to section 35A(4)(h) for the disqualified driving, and there will be a three month uplift in that for the purposes of the Bail Act offence. That makes a total of 21 months' disqualification in all.

26 To that extent, this appeal is allowed.