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THE COURT OF APPEAL

CRIMINAL DIVISION

Royal Courts of Justice

Strand

London, WC2A 2LL

Thursday 2nd May 2019

B e f o r e:

LADY JUSTICE NICOLA DAVIES DBE

MR JUSTICE SPENCER

MR JUSTICE MORRIS

R E G I N A

v

SIOBHAN HARPER

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MR GAVIN HOLME appeared on behalf of the **Appellant**

J U D G M E N T

(Approved)

1. **MR JUSTICE SPENCER**: Siobhan Harper, now 33 years of age, appeals by leave of the Single Judge against a total sentence of 20 months' imprisonment imposed by Mr Recorder Lennard in the Crown Court at Aylesbury on 15th February 2019 in respect of serious road traffic offences. The lead sentence of 20 months was imposed on count 2: causing serious injury by dangerous driving, contrary to section 1A of the Road Traffic Act 1988. The appellant pleaded guilty to that offence some six weeks before the trial date and was afforded 15% credit for her plea. On count 1, dangerous driving, contrary to section 2 of the Act, there was a concurrent sentence of eight months' imprisonment. The appellant had pleaded guilty to that offence on 10th September 2018. The appellant also pleaded guilty on that occasion to the summary offence of driving with excess alcohol, contrary to section 5 of the Road Traffic Act 1988. For that offence she was sentenced to three months' imprisonment concurrent. The appellant was disqualified from driving for a period of three years and ten months.

2. The offences all arose from a very serious, prolonged course of dangerous driving on 3rd February 2018 in Milton Keynes, where she lived. The appellant had been drinking heavily. The level of alcohol in her breath was subsequently found to be nearly two-and-a-half times the prescribed limit. She was driving a Honda car. Another woman (her ex-partner) was a passenger in the vehicle. The appellant drove dangerously on roads, pavements and grass verges in Furzton, Milton Keynes. A member of the public alerted the police to the driving because he was so concerned. It seems that the appellant was weaving in and off the road, onto the grass verges and off again, swerving around trees. The general course of this driving was reflected in count 1, dangerous driving. This driving continued for a period of ten minutes or so.

3. It so happened that a young cyclist was travelling home that night after work, Cristin Dohotaru, then aged 18. He was still at school but had a part time evening job and was cycling home from work. He was not cycling along the road itself but on the cycle path next to the carriageway. He had stopped to send a text message to a friend. The Honda mounted the pavement and collided with

him, striking him from behind. He lost consciousness very briefly but saw the vehicle on the pavement afterwards. He noticed that the appellant had wound down the window and had started laughing at him. He was able to see that it was a blonde-haired woman driving. He sustained serious facial injuries, including broken nasal bones. His two upper front teeth were knocked out completely, but fortunately they were spotted at the scene by a diligent police officer who retrieved them and, with skilful dental treatment, they were re-implanted. We shall return to the injuries and their consequences for the victim.

4. By the time the police arrived at the scene the appellant was no longer in the car. She was close by, carrying a bottle of vodka. She lied to the police, denying that she had been driving the car. She maintained those lies in interview. Only very much later did she admit that she had been the driver by pleading guilty to the offences of dangerous driving and excess alcohol. She still maintained at that stage that she had not been responsible for the collision with the cyclist. In her police interview she said she knew nothing about any cyclist being hit, and that was the position in her defence statement as well. Only much closer to the trial date did she acknowledge that she had indeed collided with the cyclist.

5. It was at the police station that the intoximeter reading of 85 micrograms was recorded, the legal limit being 35.

6. We have seen photographs of the injuries to the cyclist and we have read his victim impact statement. A CT scan at hospital showed broken nasal bones. There were multiple abrasions to the face and a marked haematoma to the forehead. The photographs make a very sorry sight indeed. His two upper middle front teeth were missing and the lower four middle teeth were loosened and mobile. He underwent surgery the next day. The upper teeth and a broken bony segment were repositioned and splinted into the correct position with wire and dental filling. There were abrasions and lacerations to his face. Some of the lacerations required stitches. The prognosis for the front teeth was that root canal treatment would be needed.

7. In his impact statement made some six weeks after the incident, the cyclist described the injuries as "horrible". He said they had affected him in many ways. The broken nose caused him great discomfort. He was unable to breathe properly through his nose for a week. The combination of injuries to his face made it difficult for him to eat. It was too painful to chew. His food had been chopped up into a soup, which he drank through a straw. His confidence in crossing or walking alongside a road had been damaged. He had missed a great deal of time from school, with crucial exams imminent. He had been unable to return to his part-time job, on which he relied to help him out financially. He was fearful that if his teeth did not grow back properly he would need dental implants at considerable cost.

8. The appellant had no previous convictions, although we note that she had

been cautioned in the past for shoplifting and for resisting a constable.

9. There was a pre-sentence report. The appellant was a single parent living with her two children, a son aged 11 and a daughter aged 13. The father of the children had no involvement with them. She worked as a hairdresser. She had recently ended a same sex relationship with the woman who was the passenger in the car that night. The explanation she gave to the probation officer was that she had finished cutting this woman's hair and was then giving her a lift to visit a friend in Milton Keynes. They had stopped off in a public house, where the appellant had been drinking vodka. She carried on driving, drinking vodka from the bottle as she drove. There was an argument between the two of them as she was driving and she decided to go "off-roading", driving onto the footpath in grassed areas away from the main road. She said that the consequences of this dangerous driving never entered her mind. She had no recollection of hitting the cyclist and she denied laughing at him. She had been drinking on top of taking sleeping tablets, Zopiclone.

10. There were other problems in her personal life. She had a gambling addiction; her mother had been diagnosed with cancer some months earlier, only to be given the all clear, happily, but this had caused the appellant considerable anxiety. For a while she had been looking after her brother's child as well as her own children because he too had family problems. The relationship with her ex-partner had been stormy and traumatic, with reported incidents of harassment. Her son had been born with a congenital facial abnormality which had improved after surgery but left him vulnerable.

11. Before the sentencing hearing arrangements had been put in place for the children to be looked after by the appellant's mother in the North of England should the appellant receive an immediate custodial sentence. She was also at risk of losing her housing association accommodation in Milton Keynes if she went to prison. For all these reasons there was a recommendation in the pre-sentence report for a community order with an unpaid work requirement and other requirements to address her thinking skills and domestic problems if the court were able to avoid an immediate custodial sentence.

12. In his sentencing remarks the judge rightly described the appellant's driving that night as disgraceful and shameful, the act of an irresponsible and immature individual, with no regard to the consequences for others including her own children. He concluded that the sentence had to be immediate custody, despite the disruption that would cause to her two children - disruption for which, he said, she was wholly liable. The judge noted that the appellant had sensibly had the foresight to make arrangements to have the children looked after by their grandmother.

13. The judge had regard to the Sentencing Council guideline for causing death by dangerous driving in determining that this was, without doubt, a level 1 offence, involving prolonged, very bad driving and gross impairment through

alcohol. He identified the appropriate range after trial as two to two-and-a-half years' custody. He gave 15% credit for her guilty pleas in arriving at the sentence of 20 months' imprisonment. It follows that his starting point after trial was in fact two years, which was at the very bottom of the range he had identified.

14. In the course of his sentencing remarks the judge expressly considered the case of *Petherick [2012] EWCA Crim 2214*; *[2013] 1 Cr App R (S) 116*, but he concluded that he could not suspend the sentence.

15. On behalf of the appellant Mr Holme submits in the grounds of appeal that the judge should have suspended the sentence of imprisonment having regard to the appellant's personal mitigation and specifically the effect an immediate custodial sentence would have on her dependent children. He does not challenge the length of the custodial sentence. We are very grateful to Mr Holme for his realistic submissions this morning made in a very attractive and measured way, if we may say so. He also gave the Court some good news in that, perhaps contrary to expectation, the children have, in the end, settled rather better than had been anticipated. The long-term plan is that, when she is released from her sentence, the appellant will move with the children to live in the North of England close to their grandmother, if not in the same household. That will require some further work, with a view to transferring her tenancy of accommodation in the Milton Keynes' area, but in the long term that is the proposed arrangement.

16. Notwithstanding this development, Mr Holme submits that the judge should have suspended the sentence having regard to the position as it was at the time of the hearing. He relies on the mitigation he advanced then: that relocation of the children to their grandmother in the North of England would take them away from their school, their friends and their day-to-day activities; there was the ongoing health issue with the son; there was the strong likelihood that the family home would be lost; the appellant had gone through a difficult time in the six months before the offence, including a miscarriage; she had a gambling addiction; there were issues with her mother's health; and there was the domestic violence with which she (the appellant) had had to contend. Mr Holme makes the point that in the period between the commission of the offence and the sentencing hearing she had come to terms with many of these problems in an impressive way.

17. We have been provided with a brief pre-appeal report. It has not been possible for the author of the report to interview the appellant in prison, but records indicate that she has settled well into her custodial sentence and there are adequate arrangements in place for the children to be cared for by their grandmother, as Mr Holme has confirmed.

18. A report from the appellant's offender supervisor in prison confirms that she has engaged well with the regime, working full time in the prison hairdressing saloon. She has found it difficult, understandably, being away from her two

children, and she has shown remorse for her offences.

19. We also have a letter from the appellant's mother (the grandmother) and a letter from the appellant's daughter, aged 13. It is clear that both children have been adversely affected by separation from their mother and by the move away from their familiar surroundings, although that is mitigated by the information that Mr Holme was able to provide to the Court this morning. The children have been seeing their mother for four hours a month. It is regrettable that it cannot be more, but she is in prison in the South of England, they are living in the North of England and to visit her involves a ten-hour round trip.

20. In granting leave the Single Judge noted that the judge made no reference in his sentencing remarks to the Sentencing Council guideline on the imposition of community and custodial sentences and the factors to be weighed in considering whether to suspend a sentence of imprisonment. Mr Holme has confirmed to us that the judge was referred by him to the guideline in the course of his mitigation as well as to the decision of this Court in Petherick.

21. We have considered carefully all the matters advanced by Mr Holme in his written and oral submissions. However, we are unable to accept that this sentence of 20 months' immediate imprisonment was either wrong in principle or manifestly excessive. The judge was quite correct to have regard to the guideline for causing death by dangerous driving in order to identify the appropriate level of offending. This was undoubtedly a level 1 offence, for the reasons the judge explained. There was a prolonged, deliberate course of very bad driving, aggravated by the consumption of a substantial amount of alcohol, leading to gross impairment. The maximum sentence for the offence of causing serious injury by dangerous driving is five years' imprisonment, whereas the maximum for causing death by dangerous driving is fourteen years. That distinction, underlined in a number of decisions of this Court, means that the bands of sentencing for the offence of causing serious injury by dangerous driving will necessarily be compressed.

22. Allowing for all the appellant's personal mitigation, the judge's starting point of two years' custody after a trial, reduced to 20 months after credit for plea, was entirely justified. Dangerous driving of this seriousness, causing injury and aggravated by the consumption of alcohol, would normally attract a sentence significantly higher than two years after trial.

23. As to the question of suspension, although the judge did not refer in terms to the guideline, it is perfectly plain that he had the relevant factors from the guideline well in mind. He had to balance and weigh the factors for and against suspension. In favour of suspension, there was a realistic prospect of rehabilitation, there was strong personal mitigation and there was significant harmful impact on others (namely the children) from immediate custody. Against suspension, however, he correctly identified as the key factor that appropriate punishment could only be achieved by immediate custody. In his sentencing remarks he

contrasted that crucial finding with the undoubtedly harmful impact on the children and referred specifically to Petherick.

24. This Court recognised and emphasised in Petherickthat the likelihood of the interference with family life inherent in a sentence of imprisonment being disproportionate is inevitably progressively reduced as the offence is the graver. This was a very serious offence. As the judge rightly said, the appellant could easy have killed herself, her passenger and any member of the public on or near the highway that night. In the event, she ran down and seriously injured an innocent member of the public for whom the consequences have been devastating. The judge rightly observed that it was the appellant and no one else who was responsible for the adverse impact of her imprisonment on the children. She grossly neglected her responsibilities as a mother in embarking on this extended drunken escapade that night. All the mitigation that could properly be advanced on the appellant's behalf was fully reflected in the comparatively modest period of custody the judge imposed, and it had to be immediate imprisonment. For all these reasons, the appeal must be dismissed in so far as the custodial sentence is concerned.

25. There is, however, one technical matter which the Registrar has identified and which we need to address. It relates to disqualification from driving. The judge correctly applied the provisions of section 35A of the Road Traffic Offenders Act 1988 in imposing a total of three years ten months' imprisonment, comprising the mandatory period of two years for the offence of causing serious injury by dangerous driving, which he increased to three years because of the seriousness of the offence, plus ten months representing one-half of the custodial term, being the period she will actually serve. That period of disqualification was imposed concurrently on count 1, dangerous driving, and count 2. However, the judge did not impose any separate disqualification for the offence of driving with excess alcohol. That offence also carried a mandatory disqualification of twelve months. There were no special reasons for not disqualifying.

26. Accordingly, we think the appropriate course is now to redress matters by imposing a concurrent disqualification of 22 months for the excess alcohol offence, comprising the mandatory period of twelve months plus ten months representing one-half of the custodial term that is being served. As this does not lengthen the overall period of disqualification, there is no question of any infringement of section 11(3) of the Criminal Appeal Act 1968, and Mr Holme takes no issue with the course we propose.

27. However, to achieve that, it is necessary for us formally to allow the appeal to the very limited extent of quashing the sentence for the excess alcohol offence and substituting for it a sentence of three months (that is the same sentence of imprisonment) but also a period of 22 months disqualification, as we have indicated. To that very limited extent only, the appeal is allowed.