

Neutral Citation Number: [2019] EWCA Crim 689

No: 201803487/A3

**IN THE COURT OF APPEAL**  
**CRIMINAL DIVISION**

Royal Courts of Justice  
Strand  
London, WC2A 2LL

Friday 5 April 2019

**B e f o r e:**

**LORD JUSTICE FLAUX**  
**MRS JUSTICE SIMLER DBE**

**THE RECORDER OF GREENWICH**  
**HIS HONOUR JUDGE KINCH QC**

(Sitting as a Judge of the CACD)

**R E G I N A**

v

**DANIEL ODAME-DANQUAH**

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**Mr C Meredith** appeared on behalf of the **Applicant**

**J U D G M E N T**  
(Approved)

1. **THE RECORDER:** On 3 July 2018, the day his case was listed for trial, this applicant pleaded guilty to a count of causing death by careless driving while unfit through drugs. He also admitted summary matters of failing to stop and failing to report an accident. He was sentenced to a term of five years' imprisonment with concurrent terms of imprisonment on the summary matters. He was disqualified from driving until taking an extended retest and for a term of five-and-a-half years, comprising a three-year disqualification with a two-and-a-half year extension period under section 35A. He renews his application for leave to appeal against sentence after refusal by the single judge.

### **The facts**

2. In the early hours of 3 July 2016, the applicant was driving a Mercedes car in the direction of Harlow. As he approached a left-hand bend on the unlit road with unbroken double white lines in the centre of the carriageway, he crossed over the double white lines for no apparent reason into the opposite side of the carriageway and collided head-on with a Volkswagen Golf driven in the other direction by Mr Usama Kabhari.
3. The occupants of a car that had been travelling ahead of the applicant stopped to give assistance. The applicant was noted to be out of his car, unsteady on his feet but walking away from the collision in the direction of Nazeing. He was seen to be using a mobile phone. Mr Kabhari was taken to hospital but died from multiple injuries received in the accident. He was 33 years old and a law graduate, studying for a Masters Degree in surveying. His family spoke eloquently of their grief and anguish in victim personal statements read to the court.
4. By the time the police arrived the applicant was no longer at the scene. He could not be contacted by mobile phone and a helicopter and dog search was unsuccessful. He was however located in Waltham Abbey later in the day and was arrested. In interview, he said he had been dazzled by the headlights of an oncoming vehicle and thought he had hit something hard like a tree. Afterwards he said he had been wandering around in shock, dazed, confused and in a lot of pain. He said he had had nothing to drink and was not under the influence of drugs or alcohol. However, a blood sample taken from him at hospital contained 11 micrograms of Alprazolam, marketed under the brand name Xanax. It is a prescription only drug. It is known to cause side effects that can include sedation, impaired concentration and loss of co-ordination. It is plainly not compatible with safe driving. The applicant had not been prescribed the drug. Given the length of time between the blood sample and the time of the incident, it is likely that the concentration of the drug at the time in the applicant's blood would have been higher, possibly within the therapeutic range. The applicant has never explained how much, when or where he got the drug from, claiming amnesia.
5. A forensic collision investigation failed to establish any exact reason the Mercedes crossed into the path of the Golf, but the investigation concluded that the most likely speeds on impact were between 40 mph and 55 mph for the Mercedes and between 10 mph and 25 mph for the Golf which was likely to have been slowing down in

anticipation of the Mercedes' approach. The road was covered by the national speed limit of 60 mph.

6. The applicant is now 31 years old. He was 29 at the time of the incident. He had in the past been convicted of and cautioned for possession of cannabis and he had a significant previous conviction in relation to dealing in firearms and supplying controlled drugs in 2010 when he received a total of seven years' imprisonment. In 2014 it appears that he was convicted of driving without due care and attention after an incident in which he swerved and hit parked vehicles. For that he was fined and had six points added to his licence. On the information before the court, he was suffering from ulcerated colitis and had written to the court expressing remorse.
7. In sentencing him, the judge characterised the offending as careless driving not far short of dangerous driving. He was not impressed by the suggestion that the incident could have been explained by a momentary dazzling caused by headlights. He observed that it was driving at night, on a difficult road with solid double white lines, where the applicant (although within the speed limit) drove too fast for the conditions, having taken a pill or pills. He ended up on the wrong side of the carriageway, colliding head-on with an oncoming vehicle. He concluded that the toxicology evidence did not satisfy him that the quantity taken could be characterised as moderate for the purposes of the sentencing guideline and that the applicant ought to be sentenced on the basis of having taken a minimal quantity.
8. On that basis, the Sentencing Council Guidelines Definitive Guideline suggested a starting point of four years' imprisonment, with a range of three to six years. The judge accepted that the applicant may well have been shaken by the accident, but he had a previous driving conviction and had behaved badly after the accident, not just failing to stop but failing to cooperate with the police investigation. Further, he had not been candid about the presence of the drugs in his system. The judge noted he had also served a lengthy sentence for other criminal matters, the licence period for which had not expired at the time of this offence.
9. Taking all those factors into consideration the judge took a starting point, as he put it, just over five-and-a-half years. He applied a 10 per cent discount for the late plea of guilty, reaching the eventual sentence of five years' imprisonment with concurrent sentences for failing to stop and report the accident and the disqualification we have referred to.
10. The judge's approach on appeal is criticised for taking too high a starting point. It was submitted that the driving was not properly to be assessed as not far short of dangerous and Mr Meredith has, in argument before us, relied on the assessment in the investigation report that the applicant was not travelling in excess of the speed limit. It is further suggested that the judge gave insufficient weight to the mitigation available to the defendant.

## **Assessment**

11. The single judge concluded that it was simply not arguable that the judge had fallen into error in raising the starting point to one of five-and-a-half years before discount for plea was taken into account. There were a number of aggravating features present and very little in terms of mitigation. The sentence was neither manifestly excessive nor wrong in principle. Despite Mr Meredith's submissions this morning, we agree with the assessment of the single judge and the application must be refused.

**Epiq Europe Ltd** hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

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