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IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
The Strand
London
WC2A 2LL

Friday 26th July 2019

B e f o r e:

LORD JUSTICE GREEN

MR JUSTICE GARNHAM

and

HIS HONOUR JUDGE MICHAEL CHAMBERS QC
(Sitting as a Judge of the Court of Appeal Criminal Division)

R E G I N A

- v -

NOORZAMAN ORIAKHEL

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Miss K Roxburgh appeared on behalf of the Appellant

J U D G M E N T
(Approved)

LORD JUSTICE GREEN:

1. On 25th April 2019, following a trial in the Crown Court at Snaresbrook, the appellant was convicted on one count of causing serious injury by dangerous driving, contrary to section 1A of the Road Traffic Act 1988. He was sentenced to a term of sixteen months' imprisonment.

2. He appeals against that sentence by leave of the single judge.

3. The facts may be summarised as follows. On the morning of 17th July 2018, the Romford Road in East London, heading towards Stratford, was very busy. The appellant was driving a van. He became involved in a verbal dispute with a cyclist. The appellant drove his van towards the cyclist who moved onto the pavement in order to escape collision. The cyclist managed to get away and has never been identified. However, as the appellant drove towards the cyclist, he mounted the pavement and hit Miss Karolin Krell, a pedestrian. She was thrown to the ground. She sustained serious injuries as a result of the collision which have had a lasting effect upon her. At the time of sentencing, she had recovered neither physically, nor mentally from the incident. Her professional work as an osteopath had been badly affected.

4. Following the collision with Miss Krell, the appellant drove off. However, another cyclist pursued him and caught up with the van. The appellant shouted at him "It's all your fault, stupid cyclists". The appellant was told to stop and indeed did so. In due course, the police arrived and the appellant was arrested.

5. At trial, the appellant disputed the charge but was convicted of causing serious injury by dangerous driving.

6. In sentencing the appellant, the judge took account of the following facts and matters:

(1) At the time of the offending, the Romford Road was extremely busy.

(2) The appellant was annoyed with a cyclist who was riding more slowly than the appellant considered that he ought to. This led the appellant to lose his temper and behave in "a most extraordinarily dangerous manner". The witnesses who saw the incident were deeply shocked by the appellant's conduct.

(3) The appellant had not attempted to hit the victim, but it was a mark of his rage that he did not care who was in the way.

(4) The appellant was fully aware that he had had a collision but drove off, leaving others to attend to the victim.

(5) The dangerous driving was short-lived; it lasted only a few seconds.

(6) Once the appellant was detained, he still blamed cyclists. He lacked remorse. He did not admit his culpability to the author of the pre-sentence report. He claimed that all of the witnesses had lied. However, it was the appellant who had lied, both to the police and in court when he claimed that it was the cyclist who was at fault and that his vehicle had never left the carriageway.

(7) There was a victim personal statement before the court. The impact for the victim was substantial. It caused her serious injury to her spine and has caused lasting pain. Her prognosis was uncertain.

(8) There were no official guidelines for the offence of causing serious injury by dangerous driving, but guidance was to be had by the guideline on causing death by dangerous driving. This provided assistance when assessing culpability.

7. The judge accepted that there was substantial mitigation. The appellant was a man of good character until this moment of rage. His early life in Afghanistan had been traumatic and had had a lasting impact upon him. He had no record of criminal convictions. He had been a professional driver and now ran his own dry-cleaning business. The consequences of a custodial sentence would be severe for his business and there would be a harmful effect upon his family. The judge then said this:

> "Those mitigating features allow me to reduce the sentence considerably that I would otherwise have passed which would have been in the region of two years' imprisonment. Your offence, however, is so serious that only an immediate custodial sentence can be justified."

The judge then imposed the sentence of sixteen months' imprisonment.

8. It is now argued that the judge gave insufficient consideration to whether the sentence could be suspended. The relevant guidelines – the Definitive Guidelines on Imposition of Community and Custodial Sentences – were apparently not before the court. It is said that had he addressed himself to the guidelines, the judge would have answered the relevant questions that are posed therein in the appellant's favour and suspended the sentence. We are told, however, that the issue of whether to suspend the sentence was argued before the judge.

9. We turn to our conclusion. It is correct that the judge did not expressly address himself to the

relevant guidelines on the imposition of custodial sentences. It is apparent from the quotation in the sentencing remarks to which we have referred that he did, nonetheless, consider that immediate custody was appropriate. It is relevant that the issue of suspension of the sentence was argued before him.

10. Under the guidelines, a judge is required to consider a number of questions. These may be summarised as follows: first, has the custody threshold been passed? Second, is it unavoidable that a sentence of imprisonment be imposed? Third, what is the shortest term commensurate with the seriousness of the offence? Fourth, can the sentence be suspended?

11. On the basis of the findings of the judge, we would address those questions as follows. First, it is clear that the custody threshold was passed. Indeed, there is no dispute about this. Second, it was unavoidable that a custodial sentence should be imposed. Third, the judge addressed himself to the shortest term commensurate with the seriousness of the offence and concluded that it was sixteen months' imprisonment.

12. We turn, therefore, to the fourth question: suspension of the sentence. In considering whether to suspend the sentence, factors relevant to the imposition of an immediate non-suspended sentence include: that the offender presents a risk or danger to the public; that an appropriate punishment can only be achieved by immediate custody; and that there is a poor history of compliance with court orders. Factors specified in the guidelines indicating that it might be appropriate to suspend a custodial sentence include: a realistic prospect of rehabilitation; strong personal mitigation; and that immediate custody would result in a significant harmful impact upon others.

13. In our judgment, it is evident that the judge addressed himself to the question of suspension,

but not formally to the guidelines. Had he done so, he would have addressed the questions which are set out therein, and he would have needed to consider how they applied to the question of suspension.

14. It seems to us that we should stand back and consider for ourselves whether, applying the questions relevant to suspension, the judge ultimately erred. It is apparent from our recitation of the facts that there were factors present in the case which indicated that it could have been appropriate to suspend the sentence. In addition, the appellant is not classified as presenting a material risk or danger to the public. Nor is he a person with a history of poor compliance with court orders. The pre-sentence report indicated that there were factors demonstrating that it might be possible for the court to suspend the sentence. The author of the pre-sentence report concluded that appropriate community orders could be made to reflect the offending in question.

15. Miss Roxburgh, who appears for the appellant today, with commendable succinctness and clarity, has highlighted the deep and serious impact which the custodial sentence has exerted upon the appellant's wife and family. We have no doubt that the effect has been serious.

16. The remaining question which arises from the guidelines is whether appropriate punishment could only be achieved by an immediate custodial sentence. This is, in our view, the real nub of this case.

17. The factors against suspension include the following: first, the need to send a clear, deterrent message to drivers who are prepared to let their rage compel them to react to cyclists and mount a pavement in pursuit that in such circumstances immediate custody will follow. Second, the appellant has shown no remorse or real appreciation of the seriousness of the offending. Third, the offending has had a serious impact upon the victim. Fourth, the appellant's attempt to evade

responsibility reveals a lack of care towards the victim.

18. In our judgment, and notwithstanding the many positive features relating to the appellant, we conclude that the judge was entitled to impose an immediate custodial sentence and not to suspend the sentence. He did not, therefore, err.

19. We would make one final observation. This appeal, in our view, would not have arisen had the sentencing judge made clear that he was aware of the guidelines and had addressed himself to the relevant questions therein. Had this occurred, then no one could have argued that the judge had, even arguably, misdirected himself.

20. For all the reasons that we have given, we dismiss this appeal.

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