

No: 201902822/A4
IN THE COURT OF APPEAL
CRIMINAL DIVISION

[2019] EWCA 1888 (Crim)

Royal Courts of Justice
Strand
London, WC2A 2LL

Wednesday, 23 October 2019

B e f o r e:

PRESIDENT OF THE QUEEN'S BENCH DIVISION

(DAME VICTORIA SHARP)

MR JUSTICE SWEENEY

MRS JUSTICE JEFFORD DBE

R E G I N A

v

TOMASZ BURDA

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Ms A O'Mara appeared on behalf of the **Appellant**

J U D G M E N T
(Approved)

1. MRS JUSTICE JEFFORD: The appellant is a 40-year-old man.
2. He pleaded guilty to one count of dangerous driving, contrary to section 2 of the Road Traffic Act 1988 and was sentenced on 24 July 2019. His sentence was one of 8 months' imprisonment suspended for 2 years, an unpaid work requirement of 270 hours together with an electronically monitored curfew from 8.00 pm to 7.00 am for 6 months. He was disqualified from driving for 3 years and an extended re-test ordered.
3. He appeals against sentence with the leave of the single judge. He does not challenge the custodial sentence but does appeal against the imposition of the curfew and the length of the period of disqualification.
4. The facts of the offence are these. On 27 March 2019, shortly after 9.00 pm, the appellant was travelling north on the M6 from junction 1. He was in his own car, a BMW 3 Series. An unmarked police car joined the motorway at junction 1. The appellant drove past the police car at considerable speed. The officers followed and found themselves driving at over 100 miles per hour and at a top speed of 127 miles per hour simply to keep the BMW in sight. The appellant was seen changing from lane 3 to lane 1, undertaking a van and two cars. On the approach to junction 2 the speed limit decreased to 50 miles per hour in an area of roadworks but the appellant continued to drive at what was approximated to be 127 miles per hour. The appellant was observed carrying out another undertaking manoeuvre, moving from lane 2 to lane 1 and back again and accelerating away as soon as he could. The police officers could not gain on the BMW. They observed more dangerous driving including braking hard three times. When the appellant approached junction 3 he crossed three lanes from lane 3 to 1 to exit at that point. He was held up by roadworks on the exit road which had been made a single carriageway and he was forced to stop at a red light. The police officers were then able to stop and apprehend him. Throughout this chase the police car had had its blue lights on albeit not its sirens.
5. The sentencing judge had no doubt that the appellant was well aware that he was being pursued by the police. When he was eventually stopped he was polite and co-operative and readily accepted that his driving had been dangerous.
6. When he was interviewed he told the police that he wanted to get home because his daughter was ill: his wife had called him and told him that his young daughter was very ill and needed to go to hospital. It appears that his daughter had been suffering from scarlet fever which had been treated and she appeared to be better but she then contracted chicken pox and that evening her temperature was elevated and she had muscle spasms. The appellant offered that as an explanation but not as an excuse.

7. The appellant is a Polish national who has lived in the United Kingdom since 2008. He is of previously good character, with no convictions or cautions of any nature, and the court received a number of positive character references about him. He has a degree in mechanical engineering and he has worked in the motor industry for a number of years. At the time of this offence he was working for Jaguar Land Rover as a design verification engineer. As a result of his interim disqualification from driving he has lost that job.
8. This was plainly a prolonged and serious incident of dangerous driving which involved driving at vastly excessive speeds (nearly double the speed limit where it was 70 miles per hour and over double the speed limit in the 50 mile per hour zone). It involved the carrying out of dangerous manoeuvres at these speeds, at night, and with the police in pursuit. The danger to others was obvious. The appellant's concern for his daughter, as he recognised, provided no excuse, but neither did it provide an explanation for putting lives in danger or positively seeking to outrun the police in pursuit.
9. His conduct appears to have been completely out of character and the pre-sentence report on him indicated that he displayed genuine remorse and an avowed intention never to do anything of the sort again. He was assessed as posing only a 13% risk of re-offending.
10. The appellant realistically does not appeal against the suspended sentence imposed on him. However, having imposed that sentence the sentencing judge then attached two requirements namely for unpaid work and an electronically monitored curfew. Only an unpaid work requirement had been referred to in the pre-sentence report as part of a community order.
11. The appellant argues that the imposition of a curfew has had and will have a very significant impact on his life. It is submitted that his job involved travelling abroad in Europe to test vehicles which he could not do as a result of the curfew, that other employment roles in his profession require him to liaise with people in other countries (particularly China) and to do so he needs to be at work by 7.00 so that and the curfew has left him unable to gain any other employment. The appellant had however already lost his job because of his disqualification from driving, which was inevitable, and there is no evidence of any job opportunity which the curfew prevents him from taking up.
12. More significant in our view however is the impact on his family life. The curfew represents a significant curtailment of his liberty. In his particular case it, in effect, prevents him travelling to Poland where he has a 13-year-old son from a previous relationship. We are told that in the past he would travel to Poland to see his son once a month and that he would bring him back to the United Kingdom during the school holidays. He has an elderly father undergoing treatment for leukaemia and wider family, all in Poland. There had been a plan to visit in September for a family wedding and he would normally expect to spend Christmas in Poland. Neither could happen because of the curfew.

13. We consider that the imposition of the curfew in the appellant's particular circumstances and in addition to the requirement to undertake nearly the maximum number of hours of unpaid work is manifestly excessive and we therefore allow the appeal on that issue.
14. As to the length of the disqualification from driving, it had been argued by Ms O'Mara, on behalf of the appellant, that the sole purpose of disqualification is to guard against re-offending or, as it has been put, to protect the public. The low risk of re-offending, it is argued, should be reflected in the length of disqualification. But Ms O'Mara accepts that the purpose of protecting the public is not the sole purpose of disqualification and the disqualification is also punitive. The Court of Appeal has considered both purposes in cases such as R v Backhouse [2010] EWCA Crim 111 and R v Mohammed [2016] EWCA Crim 1380.
15. We consider the period of disqualification, therefore, taking both of those matters together. It is submitted that the period of disqualification was excessive taking account of the following- firstly, that this was the appellant's first offence at any nature and secondly, the significant impact that it has on his future job prospects. What is submitted is that he works in an industry where, and undertakes, a job in which it is important for him to have the ability to arrive at work early, as we have already said, to liaise with people in other countries and that the location of car plants and manufacturers of the type for whom he works are not in city centres and more difficult to get to if it is not possible to drive. Further, his particular employment as a design verification engineer requires him to drive on public roads as part of the testing of the design of vehicles. Although there may be other jobs that are open to him within the car manufacturing or design industry which do not require him to drive on public roads, the inability to drive significantly diminishes the number of jobs for which he is able to apply and which he may be able to undertake.
16. It is further argued that the inability to drive has a significant impact on his family. His partner suffers from kidney disease and there are many occasions on which it has been the practice for him to drive the family rather for her to do so, in particular, on the visits to Poland to which we have already referred.
17. Taking all these matters into account, we are persuaded that the period of disqualification was manifestly excessive and we therefore quash that sentence and reduce the period of disqualification to one of 2 years.
18. Finally, we note that there is a remark of the sentencing judge which may indicate that he would have imposed a longer period of disqualification but for the interim disqualification. For the avoidance of doubt, we note that any period of disqualification

will be automatically reduced for the period of interim disqualification, pursuant to section 26(12) of the Road Traffic Offenders Act 1988.

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

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