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No: 2013/2500/A5
IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
Strand
London, WC2A 2LL

Tuesday, 17 September 2013

B e f o r e:

LORD JUSTICE FULFORD

MRS JUSTICE COX DBE

MRS JUSTICE SLADE DBE

R E G I N A

v

TERRY WARD

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(Official Shorthand Writers to the Court)

Miss P Ellis appeared on behalf of the **Appellant**

J U D G M E N T
(Approved)

1.

2. MRS JUSTICE SLADE: On 29th April 2013 at the Crown Court at Northampton, the appellant pleaded guilty to an offence of dangerous driving. On the same day the judge sat as a District Judge under section 66 of the Courts Act 2003 and dealt with two summary offences, threatening behaviour and criminal damage. The appellant also admitted a failure to surrender to custody. He was sentenced as follows. For dangerous driving, 21 months' imprisonment; for threatening behaviour, four months consecutive; for criminal damage, two months consecutive and for failure to surrender to custody, no separate penalty. With leave of the single judge the appellant appeals from the sentence of 21 months' imprisonment for the offence of dangerous driving.

3. The facts giving rise to the offence of dangerous driving are as follows. On the night of Saturday 10th September 2011 the appellant had been drinking. In the morning of Sunday 11th September 2011 he drove to a shop to get some cigarettes and crisps. A 15-year-old girl and another young woman (his partner and the schoolgirl's cousin) were passengers in the Volkswagen Polo motorcar which he was driving.

4. At about 9.20 am the appellant was in the shop staggering and obviously drunk. On the way back the appellant drove very fast. His two women passengers told him to slow down or the car would crash. The car did crash soon afterwards. A bus driver driving in the opposite direction saw the appellant's car shortly before the crash. She said that the appellant was driving very fast, at least 60 mph. He was driving fast over speed humps. The appellant passed the bus without incident but lost control of the vehicle at a right-hand bend, mounting the kerb and went onto the pavement. He then went out of the bus driver's view. The police found the Volkswagen just after that point. They found it at 9.23 am. From the damage to the car it was clear that it had rolled over onto a grass verge. The young girl suffered a broken collarbone. The appellant's partner was unconscious at the time she went to hospital, but made a full recovery. The appellant was also unconscious when the ambulance arrived. He suffered a punctured lung and damage to his arm. At hospital, a blood sample was taken from the appellant at 6.05 pm. That showed that he had not less than 38 milligrammes of alcohol in 100 milligrammes of blood. A forensic scientist did a back calculation. She was of the opinion that at the time of the accident 9 hours earlier, his expected blood alcohol level would have been about 206 milligrammes. The legal limit is 80 milligrammes.

5. When interviewed after discharge from hospital, the appellant said he could not remember anything about the incident. He did not believe that he would be responsible for driving in the manner alleged against him. He was bailed to attend a police station but failed to attend.

6. In January 2013 the appellant was arrested for other offences: criminal damage and for aggravated threatening behaviour. Checks made by the police revealed that the appellant had failed to surrender to custody for the dangerous driving charge in 2011. The appellant was released on bail. He failed to attend a plea and case management hearing at the Northampton Crown Court on 26th April 2013, but spoke to the court and his solicitors in the morning to say he had insufficient funds to get to court. He was

arrested over the weekend and brought to court on Monday 29th April 2013. At that court appearance the appellant pleaded guilty to dangerous driving. The appellant wished all matters to be dealt with on that day. Accordingly the judge exercised the powers referred to under the Courts Act 2003 to deal with the summary offences at the same time as sentencing the appellant for dangerous driving.

7. In sentencing for the offence of dangerous driving, the judge gave the appellant some credit for his guilty plea. However, the judge observed that the appellant had failed to surrender to custody twice. First he absconded whilst on bail from the police station in 2011. He was only picked up in January 2013 when he was arrested for other offences for which he now also fell to be sentenced. The appellant then failed to turn up to the court for those matters.

8. The judge observed that the dangerous driving was a serious offence. The appellant chose to drive when drunk. He was well over the limit. He had two young passengers including a girl aged 15. He drove at serious speed over speed bumps when his passengers were crying out for him to stop. He lost control and the vehicle rolled over. All three occupants were seriously injured. The reading of alcohol in the appellant's blood taken at the hospital showed that he was well over the limit at the time of the accident. For the offence of dangerous driving the appellant was sentenced to 21 months' imprisonment. Consecutive sentences of four months and two months were imposed for the threatening behaviour and criminal damage. No separate penalty was imposed for the failure to surrender to custody.

9. We have seen the antecedents of the appellant and the pre-appeal report ordered by the single judge. That report was prepared on 6th September 2013. A pre-sentence report was not prepared before the sentence was passed in the Crown Court as the appellant wished to be sentenced on 29th April 2013. The appellant has two previous convictions for five offences, none of which were driving offences.

10. There is one ground of appeal: the sentence was manifestly excessive. The original grounds of appeal relied upon two matters: first, reliance was placed on King [2000] 1 Cr.App.R (S) 105, and secondly on the sentencing guidelines on discounts for guilty pleas. Quite rightly and appropriately, Miss Ellis, who has appeared before us and who was the draughtsman of the notice of appeal, does not pursue reliance on King. That was a very different case from that of the appellant. In King the sentencing judge made no discount at all for a guilty plea and had sentenced on a misapprehension of the facts. Accordingly before us Miss Ellis relies on the Sentencing Guidelines Council on Reduction for Guilty Plea.

11. Miss Ellis rightly recognises that in this case, unlike what is contemplated in the Sentencing Guidelines Council guidance on discounts for guilty pleas, the appellant did not comply with the normal timetable for the progress of the criminal justice process. Miss Ellis also rightly recognises that the Sentencing Guidelines Council recommendations for guilty plea discount are predicated on a defendant complying with the normal court processes and the normal timetable. This timetable was not complied with in this case because of the appellant's own actions.

Discussion and conclusion

12. This was a very serious case of dangerous driving. The appellant drove his car having consumed a considerable amount of alcohol during the night before the offence. The reverse calculations of the content of alcohol in his blood showed that he is likely to have been driving whilst well in excess of the legal limit. He had two passengers in his car, one of whom was a young girl. He drove far too fast and ignored the pleas of his passengers to slow down. His vehicle left the road and turned over. He and his passengers were injured, he and his partner quite seriously. It is fortunate that they did not suffer more serious injury.

13. In our judgment, the sentencing judge was fully entitled to regard this offence as one meriting a starting point of the maximum sentence of two years. Rightly Miss Ellis does not submit that the starting point taken by the learned judge was wrong. The Sentencing Guidelines Council recommends a reduction of 25 per cent in sentence for a guilty plea after a trial date is set. In our judgment, the sentencing judge was entitled to take into account the failures of the appellant to comply with the criminal justice processes in giving a lesser reduction. Miss Ellis submits that this appellant effectively pleaded guilty at what would have been a hearing to fix a trial date. By his own plea he curtailed the need for that to take place because he pleaded guilty on that occasion.

14. However, there is no doubt in our mind that the guidelines are based on the usual procedural timetable and that this appellant effectively torpedoed that timetable by his own actions in failing to answer to bail and to surrender to custody when required to do so. Why should he benefit from the recommended reduction when by his actions he had delayed the criminal justice process for over a year?

15. In our judgment, there is nothing at all wrong with the discount that the sentencing judge made for the guilty plea. He effectively gave a discount of one-half of the ordinarily recommended discount of 25 per cent. In our judgment the discount of twelve-and-a-half per cent applied by the sentencing judge did not result in a manifestly excessive sentence. The appeal is dismissed.