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IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
Strand
London, WC2A 2LL

Wednesday, 5 June 2019

B e f o r e:

LORD JUSTICE SIMON

MR JUSTICE LAVENDER

HIS HONOUR JUDGE EDMUNDS QC

R E G I N A

v

EMMA DOWNS

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Mr R Jenkins appeared on behalf of the **Applicant**

Mr A Smith appeared on behalf of the **Crown**

J U D G M E N T

MR JUSTICE LAVENDER:

On 21 February 2019 in the Crown Court at Lewes the appellant was convicted on two counts of causing death by careless driving. These two counts concerned a single incident which occurred at 8.05 pm on Saturday, 9 September 2017.

The appellant's driving on that occasion resulted in the death of two young men, Matthew Lind and James Morden, each of whom died at the scene. Their deaths have been a source of tremendous grief to their family and friends. Matthew Lind's girlfriend, Lauren Maynard, was also present. Indeed, James Morden's body was thrown into hers. Fortunately, she did not sustain any long-standing physical injuries, but this was for her a life-changing incident, as she has described in her statement. She now lives with anxiety, flashbacks, nightmares, a sense of guilt and a loss of confidence. These factors led her to change her job and to give up her independent life in London.

The appellant was sentenced to three and a half years' imprisonment on each count, the sentences to be served concurrently. She was also disqualified from driving for five and a half years and until she passed an extended re-test.

The appellant was 37 years old at the time of her offences and had no previous convictions and a good driving record. She had six children, the youngest of whom was only 12 months old. She worked at stables in a rural area in East Sussex. The incident occurred after she left work at the end of the day. She had been taking medication for a few days as a result of, amongst other things, injuries sustained in a fall on 7 September. She was also very tired throughout this period.

The appellant sent a number of text messages between 6 and 9 September 2017 which indicated that she realised that her ability to drive safely was impaired. In particular, on 6 September she wrote:

"I wanted to get home before it gets dark because of my eyes in the dark, being

so tired and on my meds, I just can't see."

In the morning of 9 September she wrote,

"I can barely drive. It's not safe at night."

Meanwhile, Matthew Lind, James Morden and Lauren Maynard were part of a group of friends who were camping nearby. They had visited a pub and were walking back to the campsite. Their route took them along a stretch of Harvey's Lane. It is a narrow country lane, not wide enough for two cars to pass. The road was in a reasonable state of repair. It was lined with bushes and trees, with very little, if any, verge. There was no street lighting. The speed limit was 60 miles an hour. They were walking on the left-hand side of the road with their backs to oncoming traffic. They were dressed in dark clothing. They had no torches or reflective clothing. Sunset had been at about 7.25 pm. At the time of the collision it was almost dark. The hedgerows were high, and shadows cast from them further reduced visibility. There was patchy mist in places.

The appellant left work, drove along Green Lane and into Harvey's Lane. She came up behind the group of three, about 25 metres beyond the point at which they had joined the road. She was travelling at between 40 and 50 miles an hour. This was not excessive for the road layout or prevailing conditions, but it was excessive for someone whose eyesight was impaired as hers was.

After the collision the appellant stopped at the scene and said that she just did not see them. She appeared to be in a state of shock.

The Judge began her sentencing remarks as follows:

"Mathew Lind and James Morden were two young men in the prime of their lives. They were much loved, each with a wide circle of family and friends and I have heard and read deeply moving evidence of the impact caused by their loss on those left behind. The devastation for all of them, Lauren Maynard, in particular, it is almost impossible to contemplate and lives have

been changed forever. No sentence that this court passes will ease their suffering and it is also important that everybody understands that the sentence I pass in no way reflects, as it were, the value of the loss of those two, clearly, very fine men. It is meant simply to reflect your culpability for their deaths set against what is the statutory maximum sentence of five years' imprisonment."

We agree with those observations, which apply equally to this appeal. In passing sentence the judge had regard to the applicable guidelines. She placed the appellant's offences in the highest category, ie careless driving falling not far short of dangerous driving. We agree with that assessment.

The Sentencing Council has provided that for such cases the starting point is 15 months' imprisonment and that the range is from 36 weeks to three years' imprisonment. It is an aggravating factor that the appellant's driving resulted in two deaths. The judge also treated her speed as an aggravating factor, on the basis that it was unreasonable for her to drive at that speed with her impaired eyesight.

As for mitigating factors, the judge referred to and took account of the claimant's good character and the effect of any sentence of imprisonment on her six children. The judge noted, however, that she had detected no real remorse on the appellant's part.

The Guidelines provide that a potential mitigating factor in a case such as this is that the actions of the victims contributed to the commission of the offence. The judge rightly did not identify this as a factor in this case. In his submissions today Mr Jenkins suggested, somewhat delicately and tentatively, that it might have been a factor. We do not agree.

The judge did not adjourn the case in order to obtain a Pre-Sentence Report before passing sentence. This will often be appropriate in a case where there are children who are likely to be affected by a custodial sentence. We have obtained a Pre-Sentence Report which confirms the adverse effects on the children of their mother's imprisonment and also indicates that she has now shown remorse for, and insight into, what she did. We have also considered a letter from the head of the school attended by some of her children, from which

it appears that her son, who is currently in year three, is experiencing particular difficulties, given his diagnosis with autism.

We observe that the judge was right in principle to impose concurrent, rather than consecutive, sentences (see **R v Brown** [2018] 4 WLR 152) and to treat the fact that the appellant's careless driving resulted in two deaths as an aggravating factor, as provided for in the guidelines.

The principal ground of appeal, ground one, is that the sentences of three and a half years' imprisonment were manifestly excessive. In that respect we note in particular that the sentences were outside the range set by the Sentencing Council in the applicable guidelines. The top of that range is three years' imprisonment. Judges are entitled to impose sentences outside the applicable range in appropriate cases, but we are not persuaded that this was an appropriate case, given that the top of the range is already 19 months higher than the 15 months' starting point identified in the Guidelines.

As we have said, the judge identified two aggravating factors. One was the speed at which the appellant was driving. However, this speed was not excessive in itself. What made it excessive was the appellant's impaired eyesight and it was the fact that she drove with her impaired eyesight which put her case into the highest category in the first place.

The second aggravating factor was the fact that her driving resulted in two deaths rather than one. That is a factor which certainly put her offending at the higher end of the range, but we are not persuaded that it took her offending outside the range. The judge was also obliged to give appropriate credit for the mitigating factors.

In all those circumstances we consider that the sentences of three and a half years' imprisonment were manifestly excessive. We quash those sentences and substitute concurrent sentences of two and a half years. We appreciate this may be very unwelcome for the family and friends of Mr Lind and Mr Morden. However, his court must ensure consistency

of approach in sentencing and for this purpose must give effect to the guidance published by the Sentencing Council.

It follows that ground 2, which concerned the possibility of imposing a suspended sentence, does not arise. Ground 3 is that the period of disqualification was too long. The judge said that the appellant would be disqualified four years, with an uplift of 18 months to reflect her sentence of imprisonment. The Registrar has pointed out that, pursuant to section 35A(4)(h) of the Road Traffic Act 1988, the appropriate extension period which the judge referred to as the uplift was in fact 21 months, ie one half of the custodial sentence of three and a half years, or 42 months. Given that we have reduced her period of imprisonment, that part of her disqualification will be reduced to 15 months, ie one half of two and a half years, or 30 months.

The appellant complains that the judge gave no reasons why she imposed a period of four years' disqualification. However, the reason for imposing a substantial period of disqualification is apparent from the sentencing remarks. The appellant chose to drive when she knew that her eyesight was impaired and that she was not safe and she chose to drive at a speed which was too fast in the light of her impaired eyesight.

Nevertheless, we consider that four years' disqualification was manifestly excessive and that three years would have been appropriate. We quash the disqualification imposed by the judge and impose instead a period of four years and three months' disqualification, made up of a discretionary period of three years and an extension period of 15 months. The requirement to take an extended re-test remains.

LORD JUSTICE SIMON: Thank you for your submissions.

MR JENKINS: Thank you, my Lords.

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