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Neutral Citation No. [2023] EWCA Crim 661

IN THE COURT OF APPEAL
CRIMINAL DIVISION
CASE NO 202301004/A2



Royal Courts of Justice
Strand
London
WC2A 2LL

Tuesday 23 May 2023

Before:

LORD JUSTICE DINGEMANS

MR JUSTICE JAY

HIS HONOUR JUDGE BATE
(Sitting as a Judge of the CACD)

REFERENCE BY THE ATTORNEY GENERAL UNDER S.36 CRIMINAL JUSTICE ACT 1988

REX
V
LIAM HASLAM

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THE SOLICITOR GENERAL and MS F ROBERTSON appeared on behalf of the Solicitor
General.

MR D OUTTERSIDE appeared on behalf of the Offender.

J U D G M E N T

LORD JUSTICE DINGEMANS:

Introduction

1. This is a hearing of an application by His Majesty's Solicitor General for leave to refer a sentence which the Solicitor General considers to be unduly lenient. The Reference raises issues about: first, whether the increase to the maximum sentence for the offence of causing death by dangerous driving from 14 years to life imprisonment, on 28 June 2022, as a result of the coming into force of the Police, Crime, Sentencing and Courts Act 2022 ("the 2022 Act"), should affect and increase the sentences for levels 2 and 3 offending, the levels being set out in the relevant Sentencing Council Guideline for causing death by dangerous driving; and secondly, whether the judge was right to categorise this as a high level 3 offence and not a level 2 offence. We grant leave for the Reference.
2. The relevant offence took place on Sunday 24 July 2022. The respondent, Liam Haslam, was born on 22 December 2002. He was, before these offences, of previous good character and Mr Haslam had passed his driving test on 13 October 2021, when he was aged 18 years and 9 months. He was aged 19 years and 7 months at the date of the offence.
3. On 24 February 2023, when Mr Haslam was aged 20 years and 2 months, he was sentenced in the Crown Court at Nottingham to 32 months' detention in a young offender institution for causing the death of Luke Worley by dangerous driving. At the time of the offence Mr Worley was Mr Haslam's best friend. A sentence of 14 months' imprisonment concurrent for causing serious injury to Lydia Wilson by dangerous driving was also imposed and at the time of the offence Ms Wilson was Mr Haslam's girlfriend. Mr Haslam was disqualified from driving for 5 years with an extension period of 16 months and a requirement to take an extended driving test. The victim surcharge of

£228 was also imposed.

4. The Solicitor General and Ms Robertson, on behalf of the Solicitor General, submit that the judge should have increased the sentence to take account of the increase in the 2022 Act. The issue of an increase for level 1 offences was addressed by the Court of Appeal decision in R v Soto [2023] EWCA Crim 55, decided on 26 January 2023. This case gives the Court an opportunity to address the situation for levels 2 and 3 offending. Further, they submit that the offending in this case was level 2, squarely within level 2, and that the judge was wrong to find that this was level 3 offending albeit towards the top end. The sentence was therefore unduly lenient.
5. Mr Outterside, on behalf of Mr Haslam, submits that this Court should leave the issue of any adjustment to the sentences for levels 2 and 3 to the Sentencing Council, which is reviewing the Guideline for causing death by dangerous driving, and we were told in the course of submissions that it is anticipated that the amended Guideline for causing death by dangerous driving will be published next month. It was further submitted that the fact that other judges might have imposed a higher sentence was irrelevant and the question was whether this was unduly lenient, and it was submitted that the sentence showed no gross error. The judge had provided thoughtful and well-structured remarks. We are very grateful to the Solicitor General, Ms Robertson and Mr Outterside and their respective legal teams for all of their assistance.

The relevant circumstances

6. On 6 April 2022, which was some 5 months after Mr Haslam had passed his driving test, he was warned by his insurers that he had exceeded the speed limit, according to a black box fitted on his previous car. We were told in the course of submissions by both sides

today, and accept, that that is triggered on any occasion where there is a breach of the speed limit, but no further details of the speeding are known.

7. On 30 April 2022, so some 6 months after he had passed his driving test, a black box was fitted to Mr Haslam's silver Fiat Punto motorcar which he had purchased earlier that month. On 1 July 2022, Mr Haslam was detected travelling at 62 miles per hour in a 50 mile per hour zone. A "Notice of Intended Prosecution" was sent on 11 July 2022 and returned by him on 15 August 2022. He later pleaded guilty on 11 January 2023, which was after the offending in this case took place. On 17 July 2022, some seven days before this accident, he received a further email warning that he had exceeded the speed limit according to the black box and that speeding can be dangerous. There were also messages and social media messages which show that Mr Haslam had abused cannabis in the weeks leading up to the offence.
8. On the day of the offence, data from the black box confirmed that Mr Haslam had collected Ms Wilson from her home address at 2.45 pm and then he had gone to collect Mr Worley from his home address shortly after 3.00 pm. They had gone to the Toby Carvery in Chaddesden shortly before 4.00 pm and stayed there until just after 5.00 pm. Over the course of the evening the group travelled to Mr Haslam's address, Mr Worley's address and a number of other unknown addresses. Mr Haslam was the driver of the vehicle at all times. It is apparent from CCTV footage, which we have seen, that there were wet conditions that night.
9. The black box recorded a crash trigger in Kilburn, a slight impact to the offside of the vehicle, and at that stage the vehicle was being driven at 85 kilometres per hour in a 48 kilometre an hour speed limit, ie 30-mile zone. Thereafter the vehicle stopped at an address in Kilburn before setting off again to Ilkeston. At 10.30 pm the black box

registered hard acceleration and a high speed of 101 kilometres an hour in a 48 kilometre per hour zone on Stanton Road in Ilkeston. This was 3 seconds before the fatal collision. The black box registered a speed of 77 kilometres an hour at the time of the collision, indicating a strong impact to the offside of the vehicle. The collision occurred when it was dark and the road surface was wet. A witness saw the Fiat Punto driving in the opposite direction on the wrong side of the road before moving back onto the correct side. The witness believed that the driver was speeding and did not have control of the car. The witness' impression was that the driver had overcorrected himself as he moved to the correct side of the road, resulting in the front nearside wheel clipping the kerb and that explains the offside movement detected by the black box. The witness observed that the vehicle was airborne for a few moments, turned in the air before he thought it hit a tree, flipped over and landed on its roof on a strip of grass.

10. Another person heard the collision and went to assist. He observed the car on its roof with people trapped inside. Together with others he tried to open the driver's door without success. That witness borrowed a hammer from a neighbour to try and force open the passenger door. Emergency Services were called and arrived. The three occupants of the vehicle were rescued from the car. On being removed from the vehicle Mr Haslam appeared to be in shock commenting: "What have I done?" He appeared to be unable to recall what had happened. He co-operated with roadside tests. He passed a breath alcohol test, but a saliva drug test provided a positive result for the presence of cannabis. A blood sample was subsequently taken and that showed a reading of 2.2 micrograms of cannabis per litre of blood. The legal limit for those who have been prescribed cannabis as a medicine is 2 micrograms per litre.

11. All the occupants were taken to hospital for treatment. Mr Haslam was arrested at

hospital following the death of Luke Worley who, despite medical intervention, was pronounced dead at 2.08 in the morning of 25 July. The cause of death was head and abdominal injuries.

12. Ms Wilson sustained multiple spinal fractures, two vertebrae in her neck and two vertebrae in her lower back. She underwent spinal surgery for the broken bones in her lower back. She was discharged from hospital on 1 August 2022, and she was required to wear a collar for 8 weeks and underwent subsequent medical consultations. In October 2022 it was noted that Ms Wilson reported that she had no pain and no issue with walking. Medical information suggested that Ms Wilson was likely to suffer long-term back pain and possibly neck pain in the future.
13. There were no material faults with the car. A forensic collision investigator concluded that Mr Haslam had accelerated to 49 mph in the area of Union Road and continued to do so as he descended Lower Stanton Road, reaching over 63 miles per hour (over twice the speed limit) on a wet road surface. As he began to negotiate a nearside bend he encroached onto the opposite of the carriageway, then steered to the left to correct this but lost control of the vehicle, before striking the kerb and concrete post at a speed of 61 miles per hour. The car had rotated clockwise and begun to roll before striking a substantial tree with its rearward roof area. In summary, Mr Haslam had driven whilst impaired through consumption of cannabis, had been unable to follow the path of the road, and had lost control of the vehicle whilst attempting to negotiate a nearside bend and subsequently collided with a tree. That was the forensic collision report.

The sentencing

14. Mr Haslam pleaded guilty at a pre-trial preliminary hearing. A pre-sentence report was

obtained which noted that custody was inevitable and that the report writer had not been able to meet Mr Haslam. Mr Haslam was assessed as presenting a low risk to the public and reference was made to his guilt level eating away at him, and that Mr Haslam felt that he deserved a custodial sentence and wanted to try to feel that he could make up for his actions.

15. There were victim personal statements from Mr Worley's mother who said she had not blamed Mr Haslam and did not feel bitter towards him. Ms Wilson provided a victim personal statement which catalogued her injuries and recovery, and which recorded that Mr Haslam was a loving, caring person who had helped her recovery. Both Mr Worley's mother and Ms Wilson said they did not want to see Mr Haslam imprisoned.
16. At the sentencing hearing the prosecution and defence submitted that this was a level 2 offence because there was a substantial risk of danger caused by greatly excessive speed and driving whilst impaired by drugs. That was a starting point of 5 years with a range of 4 to 7 years. The prosecution submitted that there were aggravating factors of serious injury to another victim and disregarding previous warnings about speed. There were mitigating factors of the victim being a close friend, Mr Haslam's youth and previous good character.
17. It was submitted on Mr Haslam's behalf that he should have full credit for his guilty pleas because the delay in entering them was caused only because his legal team had been concerned about his mental health. Privilege was waived in the file notes from the solicitors at the police station. There were character references showing that Mr Haslam had been loving and kind, caring and willing to help anyone.
18. The judge stated that Mr Haslam had held his licence for about 9 months and his car for about 3 months at the time of the fatal collision. He had received warning messages from

his insurer on 6 April and 17 July, and he was aware on 24 July that he was being prosecuted for an offence of speeding. The collision had taken place when it was dark, the road conditions were wet and Mr Haslam had accelerated to 63 miles per hour in a 30-mile per hour limit. The vehicle had some defects, but it was unclear that these contributed to the crash. It was only by good fortune that no other vehicles and pedestrians were involved.

19. The judge noted that the maximum sentence for causing death by dangerous driving had recently gone up to life imprisonment but for less serious offences of dangerous driving, ie offences which were not level 1 the current Sentencing Guideline remained valid.
20. Although the prosecution and defence considered that the offence fell within level 2 on the Guidelines, the judge was of the view that that was too high and the offence was in fact a level 3 offence on the Guidelines, as it was short-lived driving at excessive speed that had caused a significant risk of danger. The significant risk of danger was the combination of speed and the road conditions.
21. The judge did not sentence on the basis that the cannabis was impairing Mr Haslam's driving but on the basis that he was prepared to take the dangerous risk of driving having consumed cannabis. In that sense, cannabis was still relevant. It was also relevant that Mr Haslam was prepared to drive passengers who did not wear seatbelts despite the obvious risk from failure to use them. They were Mr Haslam's passengers and therefore his responsibility. The judge took a starting point of 3 years' custody for level 3 but increased this to 4 years to take account of aggravating factors in the driving. The fact that there was a second victim who sustained serious injury was a serious aggravating factor. That offence would have attracted a sentence of 2½ years alone after trial before discounts for plea and mitigation. Having regard to totality and not simply aggregating

the sentences for counts 1 and 2, the overall sentence would have been one of 5 years' custody before considering mitigation and guilt pleas. The judge noted psychiatric reports and the pre-sentence reports and the mitigation was considerable. The good character, the hard working, the fact that the deceased was a close friend and that Ms Wilson was his partner. He had emerging post-traumatic stress disorder. He was an inexperienced driver, and he was aged 19 at the time. The judge accepted that Mr Haslam was very remorseful and would carry the guilt of this tragic event with him forever more. The judge said that custody sadly was inevitable to reflect the gravity of a crime in which a life was lost to punish and deter Mr Haslam and others. The sentence of 5 years was reduced to 48 months to reflect the mitigation. A final reduction was made to give full credit for the guilty plea giving 32 months or 2 years 8 months. The sentence on count 1 was therefore the 2 years 8 months and the sentence on count 2, as we have already indicated, was concurrent.

Post hearing matters

22. A prison sentence report, produced for the purpose of this Reference, shows that Mr Haslam has engaged well with staff, his cellmate and other prisoners. He is completing a construction course and in-cell learning. He still gets upset when discussing the offence, saying that he feels guilty. He does not sleep well at night and is struggling with his mental health.

Relevant provisions of law

23. Section 86(2) of the 2022 Act provided for an increase in the maximum sentence for causing death by dangerous driving from 14 years' imprisonment to life imprisonment.

The explanatory notes for section 86 of the 2022 Act provide:

"14 years' imprisonment is the current maximum custodial penalty available for the offences of causing death by dangerous driving and causing death by careless driving when under the influence of drink or drugs. Increasing the maximum penalty to life imprisonment for these offences will provide the courts with enhanced powers to sentence appropriately for the most serious cases."

24. We note the wording "for the most serious cases". It is clear that every case of causing death by dangerous driving is serious because of the harm caused but the reference to "the most serious cases" suggests a reference to level 1 offences.
25. As was confirmed in Soto, at paragraph 4, sentencing courts have to take into account increases of sentences provided for by the legislature, see generally R v Richardson & Ors [2006] EWCA Crim 3186; [2007] 2 Cr App R(S) 36. The maximum sentence for the offence of causing death by dangerous driving was increased in the past from 5 to 10 years and then from 10 to 14 years before the latest increase from 14 years to life. It was the increase from 10 to 14 years which was addressed in Richardson. At that time the Court recorded that judges were required to take legislative changes into account when deciding the appropriate sentence in each individual case, or where guidance was being offered to sentencing courts. An issue in Richardson was whether the increase in sentence should affect the judicial guidance in only the most serious of offences. At the time Richardson was decided there were no Sentencing Council Guidelines for causing death by dangerous driving. The Court concluded at paragraph 13 that the primary object of that increase was to address the cases of the utmost gravity but that even, in other cases, there might be an increase in sentences immediately below the most serious of offences.

26. After Richardson and before the passing of the 2022 Act, the Sentencing Council produced a Guideline for causing death by dangerous driving, which was effective from 4 August 2008. The relevant Guideline for causing death by dangerous driving has three levels of offending. Level 1 is reserved for the most serious offences encompassing driving that involved a deliberate decision to ignore or a flagrant disregard for the rules of the road and an apparent disregard for the great danger being caused to others. Such offences were likely to be characterised by, among other things, a prolonged, persistent or deliberate course of very bad driving, providing a starting point of 8 years' custody and a range of 7 to 14 years' custody.
27. Level 2 concerns driving that created a substantial risk of danger. The Guideline states that such offences are likely to be characterised by greatly excessive speed, racing or competitive driving against another driver, gross avoidable distraction such as reading or composing text messages over a period of time, or driving whilst the ability to drive is impaired as a result of consumption of alcohol or drugs, failing to take prescribed medication or as a result of a known medical condition, or a group of determinate seriousness which, in isolation or small number, would place the offence in level 3. It provides a starting point of 5 years' custody and a range of 4 to 7 years.
28. Level 3 involves driving that created a significant risk of danger. The Guideline states that such offences are likely to be characterised by driving above the speed limit, at a speed that is inappropriate for prevailing conditions, or driving when knowingly deprived of sleep or rest, or knowing that the vehicle had a dangerous defect or was poorly maintained or dangerously loaded, or a brief but obvious danger from a seriously dangerous manoeuvre or driving whilst avoidably distracted or failing to have proper regard to vulnerable road users. That has a starting point of 3 years' custody and a range

of 2 to 5 years' custody.

29. After the 2022 Act was brought into force, the effect on the level 1 offences was addressed in Soto and sentences were increased for level 1 offending. The Court also concluded that prior to consideration by the Sentencing Council of the effect of section 86(2) of the 2022 Act, sentences for lower levels of offending should not be increased, and it was not for the court to take account of the Sentencing Council's work on the new Guideline.

No increase for levels 2 and 3 pending the new Guideline

30. We do not consider that this Court should increase the sentences for levels 2 and 3 offences from those set out in the Sentencing Council Guideline applicable at the time of sentence because of the enactment of the 2022 Act for a number of reasons. First, the increase in the maximum sentence for the 2022 Act was addressing the most serious of offences. Secondly, the increase to the maximum may have some effect on sentences below the most grave, as Richardson made clear was a possibility, but this is being addressed by the Sentencing Council, which is amending and consulting on amendment of its Guideline for causing death by dangerous driving. The Sentencing Act 2020 makes it clear that courts must follow any relevant guideline produced by the Sentencing Council, thereby giving it an important role in setting Sentencing Guidelines. Thirdly, this was the conclusion reached in Soto at paragraph 37, where it was said:

“Prior to proper consideration by the Sentencing Council of the effect of Section 86(2) of the 2022 Act, sentences for the lower levels of offending should not be increased.”

31. The Solicitor General is right to point out this statement was obiter because there was no level 2 or 3 case before the court. This means that we are not bound by the dicta in Soto,

but we can see no reason to take a different approach from the court in Soto, particularly where we understand that the Sentencing Council will produce its amended Guideline sometime next month.

The correct level of offending

32. It is common ground that at the sentencing hearing the judge was not bound first, by the wishes of the victims of the offending, that Mr Haslam should not be imprisoned. This is because the purposes of sentencing are the punishment of offenders, the reduction of crime, including by deterrence, the reform and rehabilitation of offenders, the protection of the public and the making of reparation by offenders to persons affected by their offences. The wishes of the victims that Mr Haslam should not be imprisoned could not dictate the judge's sentence, any more than could Mr Haslam's professed desire to be sent to prison for his wrongdoing. Further, it is common ground that the judge was not bound by the agreement of the parties that this was level 2 offending. Clearly, any judge will give careful consideration to what the parties consider to be the correct level but the decision about level offending must be for the judge, subject to review by this Court. In this case the court found that this was level 3 offending albeit at a high level. In our judgment, the judge was wrong to categorise this as level 3 offending because it was, properly analysed, level 2 offending. This is because there was more than a significant risk of danger, there was a substantial risk of danger. The main problem was that Mr Haslam was driving above the speed limit, at twice the speed limit (being 61 miles per hour in a 30 mile per hour zone) on a wet road. This is greatly excessive speed.
33. In our judgment, there were no other features which, on its own, would have made this level 2 offending. Level 2 gives a starting point of 5 years' custody with a range of 4 to 7

years. There were the aggravating factors identified by the judge. These were ignoring previous warnings about the speed and the consumption of cannabis albeit without an effect on the accident. There were the serious injuries caused to Ms Wilson, which the judge said would have merited a sentence of 2½ years alone, but which he said to have regard for the purposes of totality would add 1 year. Although the Solicitor General submitted that that increase was insufficient, we do not agree. The judge had proper regard to totality and reflected the separate harm caused to Ms Wilson in the same criminal culpability and offending.

34. We can well see that the judge's sentence of 5 years, before discounting for mitigating and guilty pleas, was generous to Mr Haslam and could properly be described as lenient. We are, however, in the final event, not persuaded that the sentence was unduly lenient. This was because the judge had gone up in level 3 to 4 years before adding the further year to reflect the serious injury suffered by Ms Wilson. Any adjustment we might make to the sentence of 5 years, such as increasing it to 6 years before discounting for mitigation and plea, would be very close to making only minor amendments to the sentence, which is sometimes called "tinkering" by the appellate court. This Court will interfere with a sentence which is manifestly excessive but not with one which is only excessive, and similarly will interfere only with a sentence which is unduly lenient, and not just lenient. We consider, however, that this was a sentence which was lenient, but not unduly lenient.

Conclusion

35. For all those reasons, having granted leave, we will dismiss the Reference.

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

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