



**The President  
Whelan J.  
Kennedy J.**

**BETWEEN**

**THE PEOPLE AT THE SUIT OF THE DIRECTOR OF PUBLIC PROSECUTIONS**

**RESPONDENT**

**AND**

**DAVID BYRNE**

**APPELLANT**

**JUDGMENT of the Court delivered on the 20th day of December 2019 by Birmingham P.**

1. On 11th May 2018, following a contested trial, Mr. Byrne was convicted of the offence of dangerous driving causing death and sentenced to a period of five years imprisonment along with lesser concurrent terms in relation to offences of deception and making a false statement. Mr. Byrne appealed against both the conviction and the sentence imposed. This Court, in a judgment delivered on 11th October 2019, dismissed the appeal against conviction and this judgment now deals with the remaining sentence aspect.
2. The background facts are set out in detail in the course of the Court's judgment dealing with the conviction appeal and it is not proposed to repeat that exercise at this stage. Suffice at this stage to recall that the background to the case is to be found in a fatal road traffic accident which occurred on 16th October 2015 at Collins Avenue East which resulted in the death of the late Patricia Dunne. An issue at trial and on the appeal related to the fact that the appellant suffered from a condition known as Usher Syndrome Type 2, a condition that affects one's peripheral vision. The Trial Court had heard that he had been advised not to drive in 1997, and that he had told an optometrist in 2012 that he was not driving.
3. In terms of the appellant's background and personal circumstances, he is now forty-three years of age. He has an impressive work record and at the time of the accident, he was working as a postman, though he has since lost that position as a result of his involvement in this offence. At an earlier stage, he had worked with his father, painting and decorating, and working on what might be described as high-end projects. He married in 2007, his wife is a nurse, and he has two children aged eleven and eight years respectively. An extremely impressive volume of references and testimonials have been put before the Court and it is clear that apart from his involvement in this offence, that Mr. Byrne has been a model citizen. Not only has he no previous convictions, but the evidence went well beyond an absence of previous convictions and there were many

references to his role in the community, generosity with his time in helping others and involvement in many charitable activities.

4. The judge's approach, when sentencing, was to identify aggravating and mitigating factors. So far as the driving offence was concerned, she identified the aggravating factors as driving a vehicle while suffering from Usher Syndrome Type 2 and driving when he knew he ought not to have driven. She saw the mitigating factors as his cooperation at interview with members of An Garda Síochána and the fact that he agreed to members of An Garda Síochána procuring his medical records, the admissions at interview, the enormous remorse shown by Mr. Byrne, the fact that he had no previous convictions, his good character, and his good standing in the community. The judge referred to the volume of testimonials and references that she had received on his behalf, his excellent employment record and work ethic, the effect of the charge and conviction on his occupation, the effect a custodial sentence would have on him because of his medical condition, his apology to the family of the deceased and the effect that the offence and the death of the late Mrs. Dunne had had on him, medically and psychologically. The judge referred to the hardship that a custodial sentence would have on the appellant's family. She referred to Mr. Byrne as a psychologically vulnerable man who had been unable to accept his disability for most of his life. The judge then indicated that insofar as the dangerous driving offence was concerned, she was nominating a headline sentence of eight years imprisonment, but reduced that sentence to one of five years, having regard to the mitigating factors present, and also disqualified the appellant from driving for life.
5. In the course of the sentence appeal, counsel for the appellant has rehearsed arguments that he made at the sentence hearing in the Circuit Court. He has suggested that it is difficult, or indeed, impossible, to be sure of the basis on which the jury decided to return a verdict of guilty. He says that, likewise, the judge's sentencing remarks do not clarify on what basis she approached sentencing. In that context, he refers to the recent judgment of Charleton J. in the case of DPP v. Mahon [2019] IESC 24 in the Supreme Court and the obligation on the judge to set out his or her reasoning in clear terms.
6. Counsel for the prosecution disputes that there can be any uncertainty about the basis on which the jury approached its task. She says that the role of Usher Syndrome *vis-a-vis* Mr. Byrne was at all stages front and centre to the prosecution's case. She says that the lack of reaction was a manifestation of the Usher Syndrome. Counsel on behalf of the appellant responds to this by saying that while Usher Syndrome may have always been front and centre to the prosecution's case that it is by no means certain that the jury reached its verdict on that basis.
7. In the Court's view, the complaints about uncertainty are overstated. This Court has no doubt but that the jury approached the case on the basis that for Mr. Byrne to get behind the wheel of a car, suffering with the medical condition that he did, was dangerous. Equally, there can be no doubt whatsoever but that it was on that basis that the judge approached sentencing. She referred specifically to his knowledge that he was aware that he suffered from Usher's Syndrome and aware that he should not be driving as

aggravating factors. The headline sentence identified was only consistent with a dangerous driving causing death where there were significant aggravating factors present and was not a sentence that would ever be considered if the case involved inattentiveness or slowness of reaction and no additional factors present.

8. This Court feels that it must approach the appeal on the basis that the fact that Mr. Byrne was driving, when he ought not to have been, was central to the jury's conclusion that he was guilty of dangerous driving causing death. In the Court's view, the fact that Mr. Byrne drove persistently, indeed, habitually, when he knew he ought not to have been driving, is a serious aggravating factor. Absent that factor, if the case involved merely inattentiveness or slowness of reaction speed, if it was dealt with as a dangerous driving causing death case, as distinct from a careless driving causing death case, which is far from certain, it would certainly be at the lower-end of dangerous driving. However, that is not the situation and the Court is forced to conclude that the fact of persistently driving, when the appellant knew that he should not have been, moves the case well into the midrange.
9. However, while firmly of the view that this was a serious case with significant aggravating factors present, nonetheless, we feel that the identification of a headline sentence of eight years was an error. Courts sometimes find themselves dealing with cases involving high degrees of recklessness, racing cars, driving for prolonged periods on the wrong side of the road, taking a number of bends on the wrong side of the road and so on. Serious as this case is, we do not see it as falling into that category. In saying that, we acknowledge that this was a case where the appellant's decision to drive might fairly be described as reckless. He was aware of the risk and he pressed on, regardless. He knew he should not have been driving, and yet he drove. In fairness to the appellant, we do acknowledge the fact that he drove without incident for a prolonged period may have lulled him into believing that he could get away with driving. In those circumstances, we believe that a headline sentence of six years rather than eight years would be more appropriate.
10. Having identified a headline sentence, we must now have regard to the mitigating factors present. In doing so, we resentence as of today's date. We have regard to the additional material put before us, including, in particular, an updated psychological report which makes clear that with his physical disabilities and psychological issues, the appellant has struggled in the prison environment.
11. This was always a case where, as was recognised by the trial judge, there were significant mitigating factors present, particularly in terms of the appellant's exemplary character. The one matter not present was a plea of guilty. The victim impact report makes clear just how difficult the family of the deceased found the trial process. However, while the appellant did not enter a plea of guilty to the charge of dangerous driving causing death, he was prepared to offer a plea of guilty to careless driving causing death, to plead to the other counts, those of deception and making a false statement, and also to consent to a special disqualification order which would disqualify him from driving for life. Regard has to be had to this aspect.

12. Having regard to the mitigating factors present, we will reduce the headline sentence from six years to four years. In addition, we will suspend the final year of the sentence. Counsel on behalf of the DPP has made the point that because Mr. Byrne is a person of impeccable character who is highly unlikely to ever find himself before the courts, that there is no need for a suspended element and that the factors in his favour are better marked by a reduction simpliciter of the sentence to the appropriate level. While we see the force of that, we believe that the suspension of the final year of the sentence allows the Court to mark the gravity of the offence, while tailoring a sentence appropriate to the individual circumstances of the offender.
  
13. In summary, we will quash the sentence imposed in the Circuit Court and substitute a sentence of four years imprisonment with the final year suspended. The disqualification order remains as before.