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*Judgment: approved by the court for handing down (subject to editorial corrections)**	*Delivered:* **05/11/2024**

IN HIS MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

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THE KING

v

VLADIMAR KOVAC

_____

Mr Martin O'Rourke KC with Mr Ciaran Roddy (instructed by GRB Solicitors Ltd) for the Appellant
Mr Jonathan Connolly (instructed by the Public Prosecution Service) for the Crown

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Before: Keegan LCJ, Treacy LJ and Horner LJ

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KEEGAN LCJ (*delivering the ex-tempore judgment of the court*)

Introduction

[1] This is an appeal of a sentence imposed by His Honour Judge Greene KC ("the judge") on 6 November 2023 after a plea of guilty on 18 April 2023 to one charge of causing death by dangerous driving, contrary to Article 9 of the Road Traffic (Northern Ireland) Order 1995.

[2] The appellant appeals to this court with leave of the single judge on two grounds. He was ultimately sentenced to a term of imprisonment of nine and a half years split equally between custody and licence and he was disqualified from driving for 10 years. The facts of this case are set out comprehensively by the single judge, Mr Justice McFarland, and so we will simply summarise them as follows.

Background

[3] A road traffic collision occurred on the main A4 Enniskillen to Belfast Road close to Brookeborough, Co Fermanagh, just after 1am on Saturday 11 June 2022. The appellant was driving a Volkswagen Golf in an easterly direction on this road. The deceased, Mr Barry McManus, having just come off his work shift at 1am was driving in the other direction in his Renault Megane. Crash data was recovered

from the appellant's vehicle which showed that just before the collision which occurred on a straight section of the A4, the Volkswagen was travelling at 88mph which increased to 95mph at impact. This data also confirmed that the accelerator pedal had been fully depressed for the five seconds before the collision, that there had been only small steering inputs, and no braking was recorded. The speed limit applied to this road at the time was 60mph.

[4] At the time of this incident the appellant was in conversation, later reported by him to have been a "heated argument" with his wife on his mobile phone using handsfree in the car. He remained on the phone post-accident when he was being treated by ambulance staff.

[5] When questioned he accepted that he had consumed alcohol as part of a domestic incident occurring between him and his wife. He said that he had initially left the matrimonial home to sit in the car and then that he decided to drive the car during which the row with this wife continued over the mobile phone.

[6] Of significance is the estimated collision point. This was located on the opposite side of the road from which the appellant was driving on the hard shoulder and Mr McManus's side of the road.

[7] As a result of the collision Mr McManus, a married man with two children, one aged seven at the time and another only three weeks old, died instantly at the scene.

[8] The appellant sustained some injuries at the collision and was treated at the scene and thereafter in hospital. He was thought to have been intoxicated at the scene and that was subsequently confirmed by testing of his alcohol levels. The judge's sentencing remarks reflects in detail all that we have said above. The judge also refers to a *Newton* hearing which took place in relation to the alcohol level, but ultimately, as the judge said that issue did not impact upon the sentencing.

Consideration

[9] At the core of the sentencing exercise is that the judge identified a starting point of 12½ years, which he reduced by 24% or three years to take into account the guilty plea in order to reach his ultimate sentence. He identified the case of *R v McCartney* [2007] NICA 41 as the guideline case in this area. He identified four aggravating factors, namely greatly excessive speed, aggressive driving, consumption of alcohol and high victim impact. He referred to mitigation as the appellant's clear record, the injuries he sustained, his settled lifestyle and his consistent work ethic.

[10] Turning to the grounds of appeal which have been set out in writing by Mr O'Rourke and Mr Roddy and put before us orally by Mr O'Rourke today. First, we record that no issue is now taken with the judge's finding on the alcohol

consumption issue which occupied the *Newton* hearing. In all of the circumstances, as the single judge said, it could not be argued that the judge was wrong to find to the criminal standard that the appellant had consumed alcohol to a level that impaired his driving. So it is that the judge correctly identified the aggravating features in this case which put this sentence into the most serious culpability bracket attracting a range of between seven and 14 years. The maximum sentence for this offence is currently 14 years.

[11] Ground 1 of appeal is simply whether the 12½ years starting point chosen by the judge was too high leading to a manifestly excessive sentence. Ground 2 is as to the 10-year disqualification which it is argued was too long.

[12] Our conclusion on Ground 1 of the appeal is as follows. First, as we have indicated, the judge correctly considered the lead case of *R v McCartney* [2007] NICA 41. Also, the judge correctly found that this was the most serious culpability bracket of seven to 14 years. No issue is taken with either of those propositions. Where a sentence sits within a range (in this case, the seven to 14 year range) depends on the circumstances of a case in terms of aggravation and mitigation and an overall view of the features of the case.

[13] The judge has not left anything out of account when considering the aggravation and mitigation. The question really is whether his evaluation strays outside a reasonable range open to him leading to a manifestly excessive sentence.

[14] Of course as Mr O'Rourke pointed out, a sentencing judge has to be careful not to double-count when looking at aggravating factors given the initial culpability assessment which is required to establish the range. In addition, we are cognisant of the principles in play cited in *McCartney* within para [14] as follows:

> "…. We would, however, remind sentencers of the importance of looking at the individual features of each case and the need to observe a degree of flexibility rather than adopting a mechanistic type of approach. If they bear this in mind, they will, in our view, be enabled to maintain a desirable level of consistency between cases while doing justice in the infinite variety of circumstances with which they have to deal."

[15] Mr O'Rourke referred to various other cases in this area and decisions of this court such as *DPP's Reference (No 1 of 2016) R v Stewart* [2017] NICA 1, *Attorney General's Reference No 2 of 2008* (*R v McGinn*) [2008] NICA 40, *R v Nelson* [2020] NICA 7, *R v Finn* [2019] NICA 17, and *R v Moore* [2013] NICA 80. It is immediately apparent that all of these decisions are based on their own facts and particularly that *McGinn* and *Finn* concerned juvenile offenders. While these cases are of use in terms of the broad parameters of sentencing in this area, they cannot displace the judicial

exercise in any individual case which is to arrive at a sentence which meets the justice of the case in the overall circumstances.

[16] In this case, the appellant made a very bad choice which killed a man and wrecked a family. To drive a car at an already excessive speed of 88mph up to 95mph was extreme. He did so deliberately and continuously and with the accelerator fully depressed increasing the speed significantly in the five seconds before impact. He ended up on the hard shoulder on the opposite side of the road. This is an exceptionally bad example of dangerous driving. Allied to the nature of the driving is the intoxication of the appellant.

[17] There was also clearly high harm in this case given the devasting impact on the deceased's family evidenced by the personal statement that we have read. The consequences of this case, common to all cases of this nature are, of course, lifelong for the family of the deceased. There is a particular lesson to be learned in relation to the circumstances of this incident which is that people engaged in domestic rows who also have drink taken should clearly not continue the argument in their cars when they are in such an emotionally heightened state.

[18] In terms of mitigation the appellant's own injuries, in our view, were not so serious as to warrant any significant reduction as explained at para [28] of *McCartney*. The judge, we consider, was fair, if not generous, in his consideration of this issue as a mitigating factor and of the other mitigation, particularly as personal mitigation in this type of case will have limited weight. In our view the reduction for the plea, was also within the range open to the judge in the circumstances and cannot be criticised.

[19] Overall, we consider that the starting point chosen by the judge for this offending was within range and appropriate to reflect the overall nature of the offending. It was not manifestly excessive, and so we dismiss Ground 1 of the appeal.

[20] Ground 2 is in relation to the disqualification period of 10 years. The disqualification, in this case will prevail for roughly the duration of the licence period post release. That, in our view, is a reasonable disposition and is not disproportionate.

[21] Previously, this court in *R v Phair* [2023] NICA 18, has referred to the purpose of a disqualification which is "to reflect culpability and the need for public safety by virtue of risk. There should also be some correlation between the term of imprisonment and the extent of any disqualification." On an overall view, we consider the judge was correct in applying the 10-year disqualification in this case. Accordingly, we also dismiss Ground 2 of the appeal.

[22] Accordingly, for the reasons we have given, the appeal is dismissed.

Postscript

[23] By way of postscript we make some comment on the question of interim disqualification reflecting the additional written submissions which counsel have submitted at the request of the court. Both parties were agreed that disqualification takes effect from the moment it is pronounced. Disqualification may be incepted either on an interim basis, on the date of conviction but before sentencing, or substantively on the date of sentence.

[24] The power to impose an interim disqualification is grounded in Article 28 of the Road Traffic Offenders' Order (Northern Ireland) 1996, which provides as follows:

> "**Interim disqualification**
>
> 28.—(1) Where a court—
>
> (a) defers passing sentence on an offender under Article 3 of the Criminal Justice (Northern Ireland) Order 1996 in respect of an offence involving obligatory or discretionary disqualification, or
>
> (b) adjourns after convicting an offender of such an offence but before dealing with him for the offence,
>
> it may order the offender to be disqualified until he has been dealt with in respect of the offence.
>
> (2) An order under paragraph (1) shall cease to have effect at the end of the period of 6 months beginning with the day on which it is made, if it has not ceased to have effect before that time.
>
> (3) Where a court orders a person to be disqualified under paragraph (1) ("the first order"), no court shall make a further order under that paragraph in respect of the same offence or any offence in respect of which an order could have been made under that paragraph at the time the first order was made.
>
> (4) Where a court makes an order under paragraph (1) in respect of any person it must—
>
> (a) require him to produce to the court any licence held by him and its counterpart, and

(b) retain the licence and counterpart until it deals with him.

(5) If the holder of the licence has not caused it and its counterpart to be delivered, or has not posted them, in accordance with Article 11 and does not produce the licence and counterpart as required under paragraph (4), then he is guilty of an offence.

(6) Paragraph (5) does not apply to a person who—

(a) satisfies the court that he has applied for a new licence and has not received it, or

(b) surrenders to the court a current receipt for his licence and its counterpart issued under Article 62 and produces the licence and counterpart to the court immediately on their return.

(7) Where a court makes an order under paragraph (1) in respect of any person, Articles 49(1), 52(2) ,92ZA(7) and 92(5) of this Order shall not apply in relation to the order, but—

(a) the court must send notice of the order to the Department, and

(b) if the court which deals with the offender determines not to order him to be disqualified under Article 35 or 40, it must send notice of the determination to the Department.

(8) A notice sent by a court to the Department in pursuance of paragraph (7) must be sent in such manner and to such address and contain such particulars as the Department may determine.

(9) Where on any occasion a court deals with an offender—

(a) for an offence in respect of which an order was made under paragraph (1), or

(b) for 2 or more offences in respect of any of which such an order was made,

> any period of disqualification which is on that occasion imposed under Article 35 or 40 shall be treated as reduced by any period during which he was disqualified by reason only of an order made under paragraph (1) in respect of any of those offences.
>
> (10) Any reference in this Order or in any other statutory provision (including any provision made after this Order) to the length of a period of disqualification shall, unless the context otherwise requires, be construed as a reference to its length before any reduction under this Article."

[25] As counsel have submitted, the statutory regime permits the court to impose an interim disqualification only after conviction, but irrespective of whether the charge involves a mandatory or discretionary disqualification. In this case the charge involved a minimum mandatory disqualification of two years. Under Article 28(2) interim disqualifications are time-capped at six months and Article 28(9) provides that any period served from an interim disqualification is deducted from the total length of any disqualification ultimately imposed.

[26] We have clarified that the court imposed an interim disqualification on the appellant upon his plea of guilty. It is recommended in cases of this nature to take such a course as a mandatory disqualification applies and a convicted person should not be driving post guilty plea. In addition, we point out that prior to a plea of guilty a court considering bail may also impose restrictions upon driving depending on the circumstances of a particular case.