



APPEAL COURT, HIGH COURT OF JUSTICIARY

[2023] HCJAC 33
HCA/2023/324/XC

Lord Pentland
Lord Boyd of Duncansby

OPINION OF THE COURT

delivered by LORD BOYD OF DUNCANSBY

in

APPEAL AGAINST SENTENCE

by

MICHAEL BARRY REDDINGTON

Appellant

against

HIS MAJESTY'S ADVOCATE

Respondent

Appellant: Brannigan; Basten Sneddon
Respondent: Miller, AD; Crown Agent

29 August 2023

[1] The appellant pleaded guilty by section 76 procedure to the following charge:

“on 8 February 2023 at [an address in] Fife you MICHAEL BARRY REDDINGTON did culpably and recklessly drive a motor vehicle, registered number DY61 HDZ into the property there, causing damage to same, and did thereafter set fire to said vehicle which took effect and spread to said property to the danger of the lives of MB, KB, EB, [aged 11], AB, [aged 9] and IB, [aged 6]....”

[2] The appellant was sentenced to 7 years' imprisonment, discounted from 10 for the early plea. He was also disqualified for life from holding a driving licence. The appellant appeals against the length of the sentence and the disqualification as excessive.

Circumstances of offence

[3] The complainers MB and KB live in the dwelling house with their three children aged 11, 9 and 6. On the day of the offence MB and KB went to bed at 2130. They were awoken at about 2245 on hearing a loud bang from the garage. On looking out they saw a car had collided with their garage and was on fire. MB ran out and attempted to put out the fire with a garden hose. The rest of the family got out of the house. The fire took hold setting the timber frame of the garage alight. In an effort to move the burning vehicle away from the house MB drove his own car at force out through the closed garage door pushing the burning vehicle into the roadway.

[4] CCTV from the premises showed a car being driven at speed into the garage door. A male was seen to get out and pour petrol from a canister inside the vehicle. The male then used either a cigarette or a lighter to ignite the petrol causing an explosion and a large fire. The male was then seen running away with his left hand on fire. The vehicle had previously been reported stolen. The petrol was purchased by a male, not the appellant, from a local petrol station around 15 minutes beforehand.

[5] The appellant was later found with injuries to his hands and singed eyebrows and stubble. Prior to the incident the appellant had asked another person for money to buy petrol as he was going to do something involving fire. He returned to the house where he was later found by police officers and told others that he had crashed the car and set himself on fire. He had clear signs of burning both to his clothes and to himself. The following day

he was shown a news story about the fire and made a comment which was a clear admission of his guilt.

Submissions for appellant

[6] For the appellant Mr Brannigan submitted that the selected headline sentence of 10 years was excessive. While the charge is a serious one it is a crime of culpable and reckless conduct, not attempted murder, which might have merited a sentence closer to the one imposed. The appellant has a relatively limited record with no convictions on indictment and no substantial offence committed for 5 years. His longest period of imprisonment was 135 days. On the basis of the charge and the appellant's limited schedule of previous convictions the headline sentence of 10 years was excessive.

[7] The imposition of a disqualification for holding or obtaining a driving licence for life was excessive. The appellant is a plumber and wishes to gain full-time employment on his release from prison. The inability to hold or obtain a driving licence would significantly impair his ability to get a job and hence hinder the appellant's rehabilitation on his release from prison. There is no evidence to suggest that the appellant would indefinitely pose a danger to the public through his use of a motor vehicle.

Analysis and decision

[8] While we accept the charge is not one of attempted murder the fact is that the appellant's conduct put the lives of a family, including children, in danger. It was not impulsive but required a substantial amount of planning. Had it not been for the quick thinking of the householder in driving his own car through the closed garage door pushing the burning vehicle away from the house the damage to the property might well have been

much more substantial. We agree with the sentencing judge that the level of culpability in this case is high.

[9] While this is the appellant's first conviction on indictment, and there has been a gap in offending in recent times, his record includes a conviction for assault using a stun gun, four periods of imprisonment and two including restriction of liberty orders. The sentencing judge took into account his personal circumstances, including the expressions of remorse and the progress that the appellant considered he had made in addressing his addiction issues while in custody.

[10] For these reasons we do not consider that the headline sentence selected by the sentencing judge was excessive.

[11] So far as the disqualification is concerned it is not disputed that the sentencing judge was entitled to use the power under section 248 of the Criminal Procedure (Scotland) Act 1995 to disqualify the appellant from holding or obtaining a driving licence. There is little in the way of guidance or authority on the use of the power. In *Hayes v HMA* 1997 SCCR 619 the appellant was convicted of assault by driving a car at the complainer and knocking him onto the bonnet and against the windscreen. The complainer was not seriously injured. The sheriff sentenced him to 3 years' imprisonment and disqualified him from holding a driving licence for 10 years. The court considered that a long period of disqualification was appropriate and did not interfere with the period chosen by the sheriff.

[12] The appellant has three rather old convictions for breaches of section 143(1) and (2) of the Road Traffic Act 1988, one of which resulted in a disqualification of 6 months. While relevant, the main consideration is the fact that a motor vehicle was used in the commission of the offence.

[13] We are satisfied that a long period of disqualification is merited but while the offence was very serious we consider that in this case disqualification for life was excessive. We consider that the interests of justice would be served by limiting the disqualification to a period of 15 years. We shall accordingly quash the disqualification for life and impose a disqualification from holding or obtaining a driving licence for a period of 15 years.

[14] The appeal is allowed to that extent only.