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No: 201804454/A2

**IN THE COURT OF APPEAL**  
**CRIMINAL DIVISION**

Royal Courts of Justice  
Strand  
London, WC2A 2LL

Thursday, 7 February 2019

**B e f o r e:**

**LORD JUSTICE HOLROYDE**

**MRS JUSTICE O'FARRELL DBE**

**HIS HONOUR JUDGE WALL OC**  
**(Sitting as a Judge of the CACD)**

**R E G I N A**

v

**JACK MCGEECHAN**

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**Mr M Rowcliffe** appeared on behalf of the **Applicant**

**Mr S Heptonstall & Ms Bakshi** appeared on behalf of the **Crown**

**J U D G M E N T**

Approved

MRS JUSTICE O'FARRELL:

1. On 16 June 2017 Jack McGeechan, the applicant, was made subject to a 24 month detention and training order ("DTO") imposed for offences of being concerned in the supply of Class A drugs, affray, having a bladed article and breach of a criminal behaviour order.
2. In June 2018, at the end of the period of detention and training, the applicant was released and became subject to a period of supervision until expiry of the DTO which was to run until June 2019.
3. On 1 September 2018, at Leicester Magistrates' Court, the applicant pleaded guilty to the following offences: dangerous driving, failing to stop when required by a constable, driving otherwise than in accordance with a licence, driving without insurance and possessing a controlled drug of Class B, namely cannabis. Those offences occurred on 30 August 2018. Therefore, they were committed during the supervision period of the DTO. The applicant was 18 years old when he committed those offences and 19 at the date of sentence.
4. On 3 October 2018 the applicant was sentenced, at Leicester Crown Court by His Honour Judge Hurst, to 21 months and 18 days' detention in a young offender institute ("YOI") as follows:

- i) firstly, for the offence of dangerous driving, 12 months' detention in a YOI;
- ii) secondly, for the other offences, no separate penalty, subject to licence endorsement;
- iii) thirdly, for the commission of an imprisonable offence during the supervision period of the DTO, a period of detention of 9 months and 18 days being the total period between the date of the new offences and the date when the DTO would have expired;
- iv) further, the applicant was disqualified from driving for a total period of 39 months and 18 days comprising a discretionary disqualification period of 24 months and an extension period of 15 months and 18 days.
- v) a requirement for an extended re-test was imposed and a victim surcharge order made.

The applicant seeks leave to appeal against his sentence, his application having been referred to the court by the Registrar who granted a representation order for junior counsel who appears before us today, Mr Rowcliffe.

5. The relevant facts can be summarised as follows. On 30 August 2018, at about 5.00 pm, police officers on patrol near the village of Quorn followed and attempted to stop a black Volkswagen Golf car driven by the applicant with three passengers. The police activated their blue lights on the patrol car and a second marked police vehicle pulled in front of the applicant's vehicle. The applicant failed to stop and a chase then ensued.
6. The applicant's speed as he attempted to avoid the police was approximately 40 miles per

hour - in excess of the applicable 30 mile per hour speed limit. The applicant collided with the police vehicle in front of him a few times and collided with two other police vehicles who assisted in the attempt to stop him. The applicant mounted the pavement, drove across a grassed area, rejoined the road, collided again with the police vehicles, collided with a wall and finally came to a halt. As police approached the car the applicant continued to attempt to accelerate and drive off.

7. The police officers suffered whiplash-type injuries caused by the collisions and four police cars were damaged. The pursuit lasted for about 30 seconds, over a few hundred yards. The applicant had no insurance and has never held a driving licence.
8. At the date of sentencing the applicant was 19 years old, having been born on 16 September 1999. He had 11 previous convictions for 20 offences including dishonesty, criminal damage, threatening behaviour, assaults on police and possession of cannabis.
9. In passing sentence, having viewed the CCTV footage of the incident, the judge noted that it must have been terrifying for the officers involved and for any members of the public who observed it. The judge indicated that the appropriate sentence, after a trial for the dangerous driving offence would have been 18 months. The applicant was entitled to full credit for his guilty plea, namely a reduction of one-third, resulting in a sentence of 12 months' detention.
10. The court exercised power, under section 105 of the Powers of Criminal Courts

(Sentencing) Act 2000 ("the Act"), to detain the applicant for a period equal to the length of time between the date of the current offences and the expiration of the supervision period of the DTO, a period of 9 months and 18 days. The sentencing judge ordered that period of detention (which we will refer to as "the breach detention") to be served immediately and ordered the sentence for the dangerous driving offence to run consecutively to the breach detention.

11. The grounds of appeal against sentence advanced by Mr Rowcliffe for the applicant are that:

- i) firstly, the court had no power to order that the sentence of detention imposed for the offence of dangerous driving should run consecutively to the breach detention;
- ii) secondly, it was not necessary, in all of the circumstances, to impose the whole of the period between the new offences and expiry of the DTO by way of the breach detention;
- iii) thirdly, that the sentence imposed in respect of the dangerous driving offence was manifestly excessive.

12. Section 100 of the Powers of Criminal Court (Sentencing) Act 2000, empowers the court to pass a detention and training order ("a DTO") on a young person under 18 who is convicted of an offence which is punishable by imprisonment in the case of a person aged 21 or over in appropriate cases. Section 101 of the Act provides that the term of a DTO must be 4, 6, 8, 10, 12, 18 or 24 months. The court can make a DTO concurrent with or consecutive to another DTO provided that, firstly, the cumulative term does not exceed 24 months and

secondly, if a period of supervision has already begun under an existing DTO, any new DTO must commence immediately.

13. Section 102 of the Act provides that the period of detention and training under a DTO shall be one-half of the term of the order. The offender is released at, or shortly before or after, the halfway point, subject to the power of the Secretary of State to release an offender earlier. Section 103 of the Act provides that on release of an offender, the period of supervision begins and continues until expiry of the term of the DTO.

14. Section 104 of the Act provides that where an offender has failed to comply with the supervision requirements under a DTO, the court is empowered to impose a period of detention. The maximum period for which such detention may be imposed is 3 months or the period between breach and expiry term of the DTO whichever is shorter. The period of such detention begins on the date the order is made and may overlap with a DTO supervision period.

15. Section 104B provides that where an offender is subject to detention for failure to comply with supervision requirements, a separate DTO may be imposed in respect of other offending concurrent with or consecutive to that detention.

16. Section 105 of the Act provides as follows:

“(1) This section applies to a person subject to a detention and training order if—

(a) after his release and before the date on which the term of the order ends, he commits an offence punishable with imprisonment in the case of a

person aged 21 or over ('the new offence'); and  
(b) whether before or after that date, he is convicted of the new offence.

(2) ... the court by or before which a person to whom this section applies is convicted of the new offence may, whether or not it passes any other sentence on him, order him to be detained in such [F1 youth detention] accommodation as the Secretary of State may determine for the whole or any part of the period which—

(a) begins with the date of the court's order; and

(b) is equal in length to the period between the date on which the new offence was committed and the date mentioned in subsection (1) above.

(3) The period for which a person to whom this section applies is ordered under subsection (2) above to be detained in youth detention accommodation—

(a) shall, as the court may direct, either be served before and be followed by, or be served concurrently with, any sentence imposed for the new offence; and

(b) in either case, shall be disregarded in determining the appropriate length of that sentence.

...

(5) A person detained in pursuance of an order under subsection (2) above shall be deemed to be in legal custody.”

17. Section 105 read in isolation, empowers the court to impose a breach detention for offending during the supervision period of a DTO and a separate sentence for the new offence. Section 105 explicitly states that the breach detention may be ordered to be served before the sentence for the new offence, ie the sentences shall be served consecutively or concurrent with the new offence. However, section 105 must be read together with section 106 of the Act which provides:

“(1) Where a court passes a sentence of detention in a young offender institution in the case of an offender who is subject to a detention and training order, the sentence shall take effect as follows—

(a) if the offender has been released by virtue of subsection (2), (3), (4) or (5) of section 102 above, at the beginning of the day on which it is passed;

(b) if not, either as mentioned in paragraph (a) above or, if the court so orders, at the time when the offender would otherwise be released by virtue

of subsection (2), (3), (4) or (5) of section 102...

...

(4) Subject to subsection (5) below, where at any time an offender is subject concurrently—

(a) to a detention and training order, and

(b) to a sentence of detention in a young offender institution, he shall be treated for the purposes of sections 102 to 105 above... as if he were subject only to the one of them that was imposed on the later occasion.”

18. Thus, section 106 expressly provides that where an offender has been released, following the period of detention and training under a DTO, any sentence of detention in a young offender institution shall have immediate effect. Therefore, such sentence must be served concurrent with and not consecutive to any detention period imposed for breach of the DTO.

19. Section 106, as originally enacted, included subsection (3) which stated that:

“Subsection (1)(a) above has effect subject to section 105(3)(a) above.”

This had the effect of permitting the court to impose a sentence of detention in a young offender institution to be served consecutive to a breach detention. However, this provision was repealed by paragraph 112 of schedule 32(1) of the Criminal Justice Act 2003. The necessary implication is that Parliament intended that section 106 of the Act would no longer be subject of provisions of section 105. Section 106, in its current form, requires a sentence of detention in a young offender institution to be imposed with immediate effect where an offender has been released following the completion of the detention and training period of a DTO.



20. This interpretation of section 106 is consistent with the approach to adult offenders who have been released as set out in section 265 of the Criminal Justice Act 2003 which provides that:

“A court sentencing a person to a term of imprisonment may not order or direct that the term is to commence on the expiry of any other sentence of imprisonment from which he has been released.”

21. Section 106 is engaged where, firstly, a sentence of detention in a young offender institution is imposed and secondly, the offender is subject to a DTO.

22. In this case, the applicant was 18 years old at the date of the new offences and the court passed a sentence of detention in a young offender institution in respect of the dangerous driving offence.

23. The period of detention imposed for breach of the DTO is not part of the DTO but a discrete form of detention for the following reasons. Firstly, a DTO is defined in section 100(3) of the Act as “an order that the offender in respect of whom it is made shall be subject, for the term specified in the order, to a period of detention and training followed by a period of supervision.” An offender subject to a DTO is not released on licence; the supervision period is a separate part of the term. The commission of an offence during the supervision period does not permit the court to reactivate any part of the detention and training period. Secondly, the detention period which the court has power to impose is not limited to the specified terms for which a DTO may be ordered set out in section 101 of the

Act. Thirdly, the period of detention imposed for a breach of DTO must be served in full. There is no provision for early release. It follows that a period of detention under section 105 is not in itself a DTO.

24. However, section 106 is engaged where an offender is subject to a DTO. In this case, at the time of sentencing the applicant was still subject to the supervision part of the 2017 DTO. Therefore, section 106 of the Act was engaged in this case. The sentence of 12 months' detention in a young offender institution was required to take effect on the day that it was passed. The court did not have power to order that this should be served as a consecutive sentence.

25. We are very grateful to counsel for their clear and concise skeletons. We note that paragraphs 7.22 and 7.23 of the Sentencing Children and Young People Guidelines set out the position regarding children and young people under 18 as follows:

“7.22 If a child or young person is found guilty of further imprisonable offence committed during the currency of the order then the court can impose a further officer of detention. This period of detention cannot exceed the period between the date of the new offence and the date on which the original order would have expired.

7.23 This period can be served consecutively or currently with any sentence imposed for the new offence and this period should not be taken into account when determining the appropriate length of the sentence for the new offences.”

26. The guidelines accurately set out the position for children and young persons under the age of 18 because they will not be affected by section 106. But they do not cover the situation where a sentence of detention in a young offender institution is imposed on someone who has reached the age of 18. In those circumstances the court does not have power to order

such detention to be served consecutively to any detention imposed for breach of a DTO.

27. Ground 2 of the application is that the court could and should have exercised its power to shorten the period of the breach detention. The grounds relied upon by Mr Rowcliffe are, first of all, that Mr McGeechan had completed about two-and-a-half months of the supervision period of the DTO and although one does not carry out a straightforward arithmetical exercise in order to deduct that period from any proposed detention period, he submits that it would be appropriate for the court to recognise the applicant's compliance with the terms of his DTO for that period. Secondly, it is urged upon the court that the offending in this case was an impulse offence; effectively the applicant was showing off to his friends and panicked when pursued by police. Mr Heptonstall for the Crown draws our attention to the very serious nature of the offences in question and submits that the court may take that into account when considering the appropriate period for the breach detention.

28. In our view, there is some force in the submission made by Mr Rowcliffe on ground 2. It is accepted that the applicant should have some recognition for his compliance and co-operation with the supervisory period of his detention and training order. In addition, we accept that the nature of the offending in this case is different to the offences for which the applicant was made subject to the DTO. It is not a straightforward case of repeat offending behaviour. For those reasons we consider that it would be appropriate to make a relatively short adjustment to the breach detention period, reducing that to 6 months.

29. Ground 3 is that the sentence passed in respect of the dangerous driving offence was

manifestly excessive. The judge took the starting point of 18 months, before giving full credit for a guilty plea and reducing that to 12 months.

30. The submissions made by Mr Rowcliffe today are:

- i) the dangerous driving occurred for a short duration and over a relatively short distance;
- ii) although damage was caused to the police vehicles, the applicant did not set out to cause such damage but rather the damage occurred during the course of the legitimate pursuit by police;
- iii) this was an impulse offence and the applicant took off in the spur of the moment.

31. In our judgment, there are no grounds for reducing the sentence imposed for the dangerous driving offence. The applicant has never held a licence. He was uninsured. Although it is accepted that the dangerous driving took place over a short duration and distance, during that period the applicant drove too fast and in a manner that endangered the police officers and other innocent drivers. We have had the benefit of watching the CCTV footage. The car swerved onto the pavement, thereby endangering pedestrians. The officers suffered injuries. Police cars were damaged. Although we accept that the applicant did not initially set out to cause damage, he deliberately rammed the police vehicles in his attempt to avoid them. The applicant had recently been released from detention.

32. In those circumstances, a substantial custodial sentence was justified. The sentence of 12

months was appropriate and certainly cannot be said to be manifestly excessive.

33. For those reasons, we grant leave to appeal. We reduce the term of detention for commission of these offences during the supervision period of the DTO to 6 months and make it concurrent with the sentence of 12 months for the dangerous driving offence. A total period of detention in a young offender institution of 12 months. We reduce the period of disqualification from driving to 30 months comprising 24 months' discretionary disqualification and an extension period of 6 months. To that extent this appeal is allowed.

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

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