

Neutral Citation Number: [2019] EWCA Crim 258

No: 201805244/A3

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

Royal Courts of Justice

Strand

London, WC2A 2LL

Tuesday, 5 February 2019

**B e f o r e:**

**LORD JUSTICE HOLROYDE**

**MR JUSTICE MARTIN SPENCER**

**HIS HONOUR JUDGE WALL QC**

**(Sitting as a Judge of the CACD)**

**R E G I N A**

v

**JASON WILKINSON**

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**Mr S Smith** appeared on behalf of the **Appellant**

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

(Approved)

1. LORD JUSTICE HOLROYDE: On 4 October 2018 this appellant pleaded guilty, before a magistrates' court, to offences of dangerous driving, contrary to section 2 of the Road Traffic Act 1988, using a motor vehicle on the road without third party insurance, contrary to section 143 of that Act and driving otherwise than in accordance with a licence, contrary to section 87 of the Act.
2. He was committed for sentence to the Crown Court at Basildon, where on 22 November 2018 he was sentenced by a Recorder as follows. For the offence of dangerous driving, 10 months' imprisonment and disqualified from driving for 4 years and 5 months and until an extended driving test is passed. For each of the other two offences he was fined £100 and his driving licence was appropriately endorsed. He was also ordered to pay the victim surcharge.
3. He now appeals against his sentence by leave of the single judge.
4. The offences were committed on 31 August 2018. Just after midnight the appellant, driving a Volkswagen car and with one passenger, attracted the attention of the police by going the wrong way round a roundabout. The police officer began to follow the appellant with his blue flashing lights illuminated. The appellant failed to stop. He was pursued for a period of between 15 and 30 minutes, during which time the appellant drove at very high speed and dangerously. He was estimated as driving at about 115 miles per hour at a point where the speed limit was 70 miles per hour, and estimated as driving at over 70 miles per hour in a 30 mile per hour zone. He overtook two other vehicles at speed, he travelled the wrong way around further roundabouts and ultimately he steered suddenly to his offside and mounted the pavement, bursting a tyre on the car. Even then the appellant sought to escape. He ran off and was caught after a foot chase.
5. The appellant is now 28. At the time of the offences he held a provisional driving licence but had never held a full driving licence and he was, of course, uninsured. He had been convicted of a total of 10 previous offences as a teenager and young man and had served custodial sentences for offences of burglary and theft and of supplying Class A controlled drugs. He did not however have any previous conviction for any motoring offence.
6. There is no Definitive Sentencing Guideline for offences of dangerous driving sentenced in the Crown Court. At the sentencing hearing the Recorder was referred by the prosecution advocate to the Magistrates' Courts Sentencing Guidelines in relation to each of the three offences. The prosecuting advocate also invited the court's attention to two previous decisions of this court in which, it was suggested, there were factual similarities with the present case. They were the decisions in R v Kilara [2012] EWCA Crim 110 and R v Murray [2014] EWCA Crim 886.
7. An oral report was helpfully given to the Recorder by a probation officer. This indicated that, after being released from a prison in Merseyside in 2012, the appellant had moved to Essex with the specific purpose of removing himself from previous negative influences and improving his life-style. He had obtained employment which he had maintained for some 3 years. He had become involved in a relationship with a

woman but that had ended in separation a few months before the present offences. The appellant himself had reported to the probation officer that he had previously been diagnosed as suffering from a personality disorder, paranoia and borderline ADHD, though no formal confirmation was available of that diagnosis. The appellant had recently returned to his native Wales. As to the offence, the appellant had told the probation officer that he had stupidly agreed to a request from a friend to collect him and give him a lift. He had borrowed the car from another friend for that purpose. The appellant had expressed his bitter regret and his genuine remorse for what he did and was assessed by the probation officer as being genuinely grateful that no one had been injured. He told the probation officer that when he saw the police officers he panicked and felt he had to get away. He was at the time of the sentencing hearing in part-time work with the prospect of full-time work if he remained at liberty.

8. On the appellant's behalf Mr Smith - then, as now, appearing for him - advanced a number of points in mitigation. He put forward, on the appellant's behalf, an account of events similar to that which the appellant had given to the probation officer. Mr Smith pointed out that in contrast to each of the two cases which had been mentioned by the prosecution, this dangerous driving occurred after midnight, when traffic appears to have been very light, and that no other road users were in fact caused to take evasive action. Recognising that that was largely a matter of good fortune, Mr Smith submitted that it was nonetheless a relevant consideration. He pointed out also that bad though it was, this offence of dangerous driving lacked some of the aggravating features found in other cases. It was not, for example, a case of a driver who was intoxicated with alcohol or drugs. No damage was caused to any vehicle other than that which the appellant himself was driving and the appellant, as we have said, had no previous convictions for any motoring offence. Mr Smith's submission was that any custodial sentence could properly and should be suspended.
9. In his sentencing remarks the Recorder referred to the appellant having embarked on a prolonged course of dangerous driving "which can only be described as being of the very worst kind". The Recorder noted that the appellant had gone the wrong way round more than one roundabout and had undertaken a number of dangerous overtaking manoeuvres. It was very lucky indeed that no one had been seriously injured or worse. Summarising the evidence as to speed the Recorder observed that this was "grossly excessive speed and self-evidently dangerous driving of the worst kind". He added that the offending was significantly aggravated by the fact that the appellant had neither a full driving licence nor insurance. He concluded that such dangerous driving, "which I consider to be at the very highest end of the spectrum, coupled with the aggravating features" meant that only an immediate custodial sentence could be justified. He referred to the two cases to which the advocates had referred but noted that all sentencing decisions are fact specific. He took a notional sentence after trial of 15 months' imprisonment and, giving full credit for pleas, reduced that to 10 months' imprisonment. The Recorder then imposed the period of disqualification of 4 years. After a reminder from the court clerk, and some rather inconclusive discussion with the advocates, he was reminded to extend that discretionary period of disqualification by a further 5 months to take account of the period of time when the appellant would be in custody.

10. Mr Smith today advances three grounds of appeal. They are, though not taken in this order, as follows. First, that the sentence for dangerous driving was manifestly excessive: it should have been significantly shorter and should have been suspended. Secondly, the period of discretionary disqualification was too long. Thirdly, the Recorder erred in principle in both treating the two lesser offences as aggravating features of the dangerous driving and also imposing significant fines for them. We are grateful to Mr Smith for the clarity with which he has made his submissions. They were admirably focused and notably realistic.
11. We accept that there are certain features of the factual circumstances of both Kilara and Murray which could be said to be similar to some of the features of the present case. But inevitably the overall circumstances of the cases differ, as the Recorder rightly recognised and as Mr Smith rightly accepts. We therefore do not think that it assists this court to seek to engage in a detailed analysis of the fact specific decisions in other cases. It is necessary instead to focus upon the important features of the present case which, in our judgment, are as follows.
12. First, we view this as a bad case of dangerous driving, involving prolonged driving at very high speeds, including travelling the wrong way round a number of roundabouts and overtaking at high speed and ending in the appellant mounting the pavement. Secondly, the fact that the offence occurred after midnight and at a time when traffic was light, meant that there were fewer other road users than there would have been at other times of the day. It certainly did not however exclude the obvious risk of injury to others. Thirdly, the explanation advanced by the appellant of panicking when he realised the police car was behind him has to be set in its context of the police only starting to follow the appellant's vehicle because he was driving dangerously in the first place. Fourthly, the Recorder was correct to regard the fact that the appellant had no full driving licence and no insurance as serious aggravating features. Fifthly, and as against those matters, it was necessary also for the Recorder to take into account that no one was in fact injured, that the appellant has no previous convictions for similar types of offending and that he has clearly made genuine efforts both recently and some years ago to rise above previous offending and to lead a law abiding life. He was correctly given full credit for his guilty pleas.
13. Given that the maximum sentence for the offence of dangerous driving is one of 2 years' imprisonment, there is a comparatively broad band of conduct which represents the most serious offending within the ambit of that offence and which therefore justifies a sentence, after trial, at or near the statutory maximum. Bad though it is, this case does not fall into that broad band. With respect to the Recorder, we do not think he was justified in describing it as dangerous driving "of the very worst kind". However, although the Recorder expressed himself in those terms, he did not in fact take a sentence after trial which was at or near the maximum. The sentence of 15 months' imprisonment, before giving appropriate credit for the guilty plea was a stiff one but, in our judgment, it was not one that was manifestly excessive in length. Moreover, we are not persuaded by Mr Smith's submissions that the mitigation available to the applicant was such that the Recorder was wrong in principle when he concluded that the custodial sentence must take effect immediately. In particular, by reference to the Sentencing Council's Definitive Guideline on Imposition, it seems to us that the

Recorder was fully entitled to regard this as a case in which "appropriate punishment can only be achieved by immediate custody."

14. We are therefore not persuaded that the sentence of 10 months immediate imprisonment was either wrong in principle or manifestly excessive. We do however see greater force in the other grounds of appeal advanced by Mr Smith. We bear in mind that the appellant is still a young man. He has no previous convictions for driving offences and no record of bad driving. He has shown himself willing and able to work hard in order to obtain and keep employment. He will in any event be required to take and pass a demanding driving test before he can drive lawfully in the future. In those circumstances, we accept that the discretionary period of disqualification was significantly longer than was necessary and appropriate. We also accept that the imposition of fines which were more than nominal was inappropriate in relation to the two offences to which weight had already been given when treating them as aggravating features of the dangerous driving.
15. In the result, we allow the appeal to the following limited extent. We quash the period of disqualification imposed below and substitute for it a disqualification of 2 years 5 months, comprising a discretionary period of 2 years and an extension period, pursuant to section 35 of the Road Traffic Offenders Act 1988, of 5 months. That reduced period of disqualification will run as before from 4 October 2018, and as before the appellant will be required to take and pass an extended driving test. We also quash the fines of £100 imposed below for the offences of driving with no insurance and driving without a valid licence. We impose no separate penalty for those offences save that the appellant's driving licence must be endorsed in each case.
16. To that extent the appeal succeeds but the prison sentence remains unaltered.

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