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IN THE COURT OF APPEAL
CRIMINAL DIVISION



No. 202301401 A3

Royal Courts of Justice

Neutral Citation Number:
[2023] EWCA Crim 1098

Thursday, 31 August 2023

Before:

LORD JUSTICE POPPLEWELL
MRS JUSTICE CHEEMA-GRUBB
MRS JUSTICE TIPPLES

REX

V

IMRAN MALIK

Transcript prepared from digital audio by
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MR T SINGH KC appeared on behalf of the Appellant.

MR T KENNING appeared on behalf of the Respondent.

J U D G M E N T

MRS JUSTICE CHEEMA-GRUBB:

- 1 On 22 February 2023 in the Crown Court at Birmingham, Imran Malik, who is now aged 29 years, pleaded guilty for causing the death of Leon George Youngsam by careless driving on 17 May 2021. Sentence was adjourned. A pre-sentence report was prepared, and, on 19 April of this year, the sentence of 27 months' imprisonment was imposed. The statutory surcharge was applied, and the applicant was disqualified from driving for three years plus 13 and a half months' extension pursuant to section 35 of the Road Traffic Sentence Act 1988.
- 2 He renews his application for leave to appeal against this sentence. Submissions in support have been made by Mr Talbir Singh KC. The Crown are represented by Mr Kenning who has responded to the application.
- 3 The collusion between the applicant's car and his victim was captured on CCTV which the members of this court have viewed.
- 4 The facts were that just before 7 p.m. during bright daylight, Imran Malik was driving his Range Rover east on the A457 Spring Hill in Birmingham. The road has two lanes in each direction. There is no central reservation. Traffic travelling westbound was stationary. As he drove beyond a crest in the carriageway, Mr Youngsam, who was 41 years old, a family man, and who was holding a shopping bag, was crossing the carriageway from between stationary vehicles to the offside of the Range Rover, and he was struck by the applicant's vehicle. The impact occurred in the eastbound lane and projected Mr Youngsam diagonally forward towards the offside, where upon he collided with a car that was stationary in the line of vehicles westbound.
- 5 At the point of the collision, the speed limit was 30 miles per hour. There were footpaths and commercial premises on both sides of the road. The conditions were dry, there was good visibility and eyewitness testimony, together with subsequent collision investigation, established that the applicant had been travelling well beyond the speed limit. The agreed expert estimation

is that, just before the point of contact with Mr Youngsam, the Range Rover's speed was 56 miles per hour, almost double the limit.

6 A nurse was in the queue of stationary traffic. She went to Mr Youngsam's aid and performed CPR until paramedics arrived, but there was no pulse and he died through multiple grave injuries caused to him.

7 A little more detailed analysis of CCTV footage showed that the Range Rover driven by the applicant was held up in vehicles travelling east by temporary traffic lights at roadworks some distance prior to the point of collision. Once able to proceed, the applicant allowed two vehicles to make turns just prior to the traffic lights and then, as he approached and passed through the lights, he accelerated considerably more quickly than the vehicles behind him did. The footage shows Mr Youngsam passed between two vehicles in the stationary queue in the opposite carriageway, he looked twice to his left, the direction of the oncoming traffic and this applicant, and he began to run after this second look. Within a split second, he appeared to hesitate and turned backwards towards the westbound lane but, as he did so, he was struck by the applicant's car. The applicant stopped and a number of members of the public also responded to the collision.

8 On arrest and interview, the applicant, who had tested negative for drink and drugs at the roadside, claimed he had not seen Mr Youngsam at all and had had no opportunity to react to his presence in the carriageway. He entered a not guilty plea on 7 July 2022 and his trial was fixed for 6 March 2023. Shortly before that listing, as we have indicated, he admitted his guilt.

9 The death of Mr Youngsam was a serious blow to his close family. The judge heard powerful expressions of the devastation the applicant's actions had brought. As ever, no judicial assessment of culpability can equate to the loss of a much loved man.

10 Expert analysis concluded that the Range Rover would not have been visible to Mr Youngsam when he first looked because of the curve and incline of the road and stationary vehicles. At the time of his second look, it would have been visible to him and he would have been visible to the

applicant and they would have been 38 metres apart. The expert noted that it was possible that the Range Rover could have been brought to a complete stop from an initial speed of 56 miles per hour in a distance of 39 metres under emergency braking. It was his assessment that emergency braking commenced only three metres before the collision, indicating *prima facie* that the applicant had seen Mr Youngsam at least by then.

- 11 The expert also concluded that, had the Range Rover been travelling at an average speed of 30 miles per hour, even without braking, Mr Youngsam would have had an extra 1.3 seconds in which to either retrace his steps or finish crossing the road before the applicant's vehicle covered the intervening distance.
- 12 Mr Singh's submissions can be encapsulated in this way. The term of imprisonment is manifestly excessive because the judge erred in his application of the Sentencing Council's guideline for an offence contrary to section 2B of the Road Traffic Act 1988, which carries a maximum penalty of five years' imprisonment.
- 13 The notional starting point reached by the judge before credit for the guilty plea, which was 32 months, was simply too high, given that the relevant guideline's starting point is 15 months. He argues that the victim's actions in choosing to cross the road where there was no crossing provided should act to reduce the gravity of the applicant's offence and he draws our attention to the suggestion in the report commissioned for the defence, which he interprets as supporting the contention that the collision may have occurred even if the applicant had driven at the speed limit of 30 miles per hour.
- 14 Furthermore, Mr Singh suggests that other aspects of mitigation were not sufficiently or at all reflected in the final sentence imposed. In this respect, he relies on the applicant's remorse which the judge accepted was genuine, he was of previous good character, including no driving offences in the two years between the incident and the sentencing hearing, and personal circumstances.

- 15 Dealing with these in turn, the expert evidence on the alternative scenario that Mr Singh asks us to consider, namely the collision would still have occurred had the applicant's speed been 30 miles per hour, was not uncontroversial. The judge accepted the prosecution's submission that the excessive speed at which the applicant had undoubtedly driven within the prevailing road conditions, roadworks, queuing traffic and temporary lights, was such as to qualify for the highest level of categorisation within the guideline then applying.
- 16 The Sentencing Council indicated a starting point of 15 months' imprisonment for offences which fall not far short of dangerous driving, within a range of nine months to three years. The judge said that the appropriate sentence, allowing all relevant features, would have been one of 32 months, just four months short of the top of that range. He applied a 15 per cent discount for the late guilty plea, which was and remains an uncontroversial feature. The resulting term of 27 months was too great to be suspended and the judge noted that, even if he had considered it just to reduce it further, he would have imposed a sentence to be served immediately.
- 17 Section 59 of the Sentencing Code states that the courts must follow any relevant sentencing guideline unless it is contrary to the interests of justice to do so. Judges are required to follow relevant guidelines in a rational, reasoned way and explain significantly clearly in their sentencing remarks how the guideline has been applied. While judges are permitted to disapply a guideline if justice requires that course, axiomatically, any such departure must be explained. The transparent application of the sentencing guidelines promotes public confidence in the consistency of sentencing practice.
- 18 The omission we have found in the judge's brief analysis is any reasoning to explain moving from the starting point of 15 months to more than double that term at the stage before reduction for the guilty plea.
- 19 The Sentencing Council guideline applicable until July 2023 provides a detailed narrative of aggravating and mitigating features applicable to all driving fatality cases, whether caused by dangerous or careless driving or contributed to by the consumption of alcohol or drugs. The

judge did not express, nor can we find, any aggravating features beyond the excessive speed at which the applicant drove in the prevailing road conditions. While we agree that the speed, almost double the limit while approaching a rise which limited the driver's view for a period after which the applicant still failed to see Mr Youngsam until a few metres away from him at least, as indicated by the analysis, that there was then a late application of the vehicle's brakes, this did properly fall to be considered not far short of dangerous driving and, further, would have justified some uplift from the starting point, we are persuaded that, in reaching a provisional sentence of 32 months, the judge failed to avoid double counting the impact of the speed of the applicant at the time of the collision and the judge gave no reason for departing from the guideline.

20 There was some mitigation available. Good character is often, indeed usually, the position in cases of this kind and the guideline assumes that the offender is of good character. Accordingly, no discount is required for that aspect. The applicant's remorse was expressed through counsel and in a letter to the court which we have read, together with a number of character references. The judge accepted this was a case of genuine remorse and not mere self-pity. Genuine remorse is a mitigating feature.

21 The guideline specifically requires the court to consider whether the actions of the victim contributed to the commission of the offence, but we do not take the view that this was the situation here. Mr Youngsam crossed the road at a point when the cars in the lanes closest to him were stationary and there was very light traffic in the other direction. When he saw the applicant's car speeding towards him, he reacts and, although Mr Singh suggests that the judge was wrong to state that the victim froze at one point before reacting, in our judgment, it is not only unattractive, (and counsel must sometimes make unattractive submissions to this court,) it is wholly unfair to criticise either the judge or Mr Youngsam. Mr Youngsam particularly, for his efforts under such desperate circumstances as he found himself in.

- 22 Finally, the personal family circumstances of the applicant are not out of the ordinary and hardship caused to others by his imprisonment is his responsibility alone.
- 23 Having assessed the submissions and reflected upon the available evidence, particularly the CCTV footage, and having rejected the grounds argued, we do nonetheless find some merit in this application. This arises because of the unwarranted uplift from the starting point. We grant leave and conclude that a sentence after trial of 20 months was required to meet the gravity of this case, taking into account all of its features. After a reduction of 15 per cent, the sentence imposed should have been in the region of 17 months. We agree with the sentencing judge that adequate punishment could only be enforced by immediate custody. Accordingly, we quash the sentence of 27 months and substitute an immediate custodial sentence of 17 months' imprisonment.
- 24 Disqualification for 12 months is mandatory. We reduce the disqualification to two years. To reflect the period of incarceration, it will be extended by eight months, so that 32 months' disqualification applies from the date of sentence. To that extent, this application succeeds.
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CERTIFICATE

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the Judgment or part thereof.

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