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Neutral Citation: [2023] EWCA Crim 1617
IN THE COURT OF APPEAL
CRIMINAL DIVISION
CASE NO 202303841/A2



Royal Courts of Justice
Strand
London
WC2A 2LL

Tuesday 12 December 2023

Before:

LADY JUSTICE MACUR DBE

MR JUSTICE GOOSE

HIS HONOUR JUDGE DREW KC
(Sitting as a Judge of the CACD)

REFERENCE BY THE ATTORNEY GENERAL UNDER S.36 CRIMINAL JUSTICE ACT 1988

REX
V

THOMAS DAVIES

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MR A RICHARDSON appeared on behalf of the Attorney General.
MS C COURQUIN appeared on behalf of the Offender.

J U D G M E N T

1. LADY JUSTICE MACUR: On 9 October 2023, Thomas Davies (“the offender”) pleaded guilty to an offence of causing bodily harm by wanton or furious driving, contrary to section 35 of the Offences Against the Person Act 1861. He was sentenced to a fine of £500 and his driving licence was endorsed with three penalty points.
2. His Majesty’s Solicitor General applies for leave, pursuant to section 36 of the Criminal Justice Act 1988, to refer the sentence which he regards as unduly lenient. We grant leave.

The Facts

3. On 9 June 2022, the offender reversed his work van into Mrs Singh, a lady in her late seventies, while she was walking in the car park of her care home. Mrs Singh was walking slowly assisted by a walking frame. She had seen the offender’s van and, as shown in the CCTV we have watched, skirted it and walked towards the rear, approaching towards some parked cars. She had made some distance from the rear of the van when the offender, who had been delivering a parcel to the care home, returned to the van. Within moments of re-entering the driver’s seat he reversed the vehicle. Although slow in its manoeuvre, the van struck Mrs Singh, knocking her to the ground. The van stopped for a very short while but then reversed further and the rear wheel drove over Mrs Singh. The offender then pulled forward and the rear wheel drove over Mrs Singh a second time. The offender then got out of his vehicle, saw Mrs Singh on the floor and went to her assistance.
4. Mrs Singh was left with very serious injuries including a fractured pelvis, hip and ball socket, and resulting in a 13-week stay in hospital. She has lost sensation in her right leg and has since suffered significant and constant pain and requires medication. She has had

to move from her care home to a nursing home to receive full-time care and now requires assistance for day-to-day tasks. She is only able to walk for very small distances and cannot go out unaccompanied; she feels isolated. Mrs Singh used to go to the beach and to pray, which was an important part of her life, but cannot do that now. She cries and is angry and feels this has affected her relationship with her grandchildren, to the extent that she feels her life is “finished.”

5. The offender was arrested and interviewed. He said the care home was a regular delivery address for him. On 9 June he had noticed Mrs Singh when he arrived at the care home. When he returned to his vehicle, he did not see her, although he checked his mirrors before beginning to reverse. He believed Mrs Singh must have been in a blind spot, but accepted in interview that he could have done more to check he was safe to reverse before he did so. He realised he had collided with something but thought it was a bird. He pulled forward and only then realised he had hit Mrs Singh.
6. The offender has one previous conviction on 22 November 2011, for driving a motor vehicle with excess alcohol, for which he was disqualified from driving for a period of 17 months.
7. Sentencing the offender, the judge’s attention was drawn to the statement of Dr Collier, a consultant in emergency medicine, who treated Mrs Singh. The judge noted that the van was reversing slowly, and that Mrs Singh was in a blind spot and could not be seen, notwithstanding the cameras on the van and wing mirrors. The basis of the plea, he noted, was that the offender acknowledged that his reversing camera gave a short field of vision and that during the:

“...short reversing movement, he did not check the camera screen again... [and] he did not physically check behind his van, but

chose to rely upon his wing mirrors and camera facility whilst undertaking the reversing manoeuvre.”

8. Thus, the Recorder thought the guilty plea had been put and accepted on a very narrow and restricted basis: “Whilst the harm to Mrs Singh may have been substantial, the degree of culpability on the part of the defendant is low”; later described by the judge as “the very lowest end of culpability”. There was no suggestion that the offender’s conduct was intentional, he deserved “great credit” for accepting his guilt when it was properly open to argue to the contrary. The Recorder considered the case should have been dealt with in the Magistrates’ Court.
9. Subsequently, it was appreciated that the Sentencing Council’s Definitive Guideline had been issued and the prosecution wrongly sought a reconsideration of the sentence, under the provisions of section 385 of the Sentencing Act 2020, the so-called slip rule.

The application

10. The error of law identified by Mr Richardson, on behalf of His Majesty’s Solicitor General, is the failure of the judge (Mr Recorder Jones KC) to apply the relevant Sentencing Council Guideline for the offence, in which case, it is submitted, the relevant starting point would have been one of 6 months’ imprisonment prior to aggravation and mitigating features, and before credit for plea. The Recorder made no reference to the Sentencing Guidelines, nor was his attention drawn to them by either prosecution or defence. Ms Courquin, who appears on behalf of the offender, says that this was due to the mistaken belief that the guidelines were only in draft at the time of the sentence.

Discussion

11. The maximum sentence for this offence is 2 years’ imprisonment. In the circumstances of this case it is unarguable to say that it would be contrary to the interests of justice to

follow the relevant Sentencing Council's Definitive Guideline, which applied to all offenders sentenced on or after 1 July 2023. Consequently, section 36(2)(b) of the Criminal Justice Act 1988 is made out. The failure to have any regard to the current sentencing guideline may tend to undermine public confidence in the sentencing process; we intend to exercise our discretion to intervene in this sentence, which we regard to be unduly lenient.

12. There is no issue but that the harm caused was level 1. Mrs Singh's injuries would have been aggravated by the repeated manoeuvring of the van as the offender drove backwards and forwards, having failed to halt as soon as he became aware of a collision. Mrs Singh was already a significantly vulnerable pedestrian and obviously so. She has received life-changing and potentially life-shortening injuries which has significantly impacted upon her quality of life.
13. We cannot accept the submissions of Ms Courquin, that the assessment of culpability by reference to the Sentencing Council's Definitive Guideline is level C, rather, we agree with Mr Richardson that this was culpability level B. The manoeuvre was undoubtedly unsafe, particularly in the circumstances of it occurring within the car park of a care home, and that the offender had shortly before seen Mrs Singh walking there. It would have been obvious that she was of limited mobility and slow walking. The offender's visibility obviously had been obstructed in that he said he did not see Mrs Singh when he re-entered his cab. There is no issue that the offender was reckless or wanton in an intentional sense. A different charge may well have followed if there had been any evidence of such an intention. However, we accept Mr Richardson's submissions that this was a commercial driver, undertaking a risky manoeuvre, with obstructed visibility. We most certainly disagree with the judge's assessment that this was the very lowest

culpability.

14. The Sentencing Council's Definitive Guideline provides a starting point of 26 weeks' custody with a range of a high-level community order to 1 year's custody for a category B1 offence.
15. We accept that the offender was genuinely remorseful of the injuries he did cause, and we note he did finally stop and did seek assistance for Mrs Singh, albeit we note his late plea. We disagree with the Recorder that because he thought it was "properly open to argue to the contrary" that the offender was guilty of the offence, that any greater reduction in sentence was warranted than that predicated by the Sentencing Guideline Definitive Guideline : 'Reduction in Sentence for a Guilty Plea'
16. We have viewed the CCTV recording more than once and have regard to all the relevant aggravating factors and matters of mitigation. We come to the certain conclusion that no other sentence than a sentence of imprisonment was appropriate to reflect the level of harm and culpability in the extant offence charged. The appropriate custodial sentence would be in the region of 8 months after reduction for plea.
17. However, we have regard to the Sentencing Council's Overarching Guideline on the 'Imposition of Community and Custodial Sentences', and specifically the factors to be weighed when considering whether it is possible to suspend a sentence of imprisonment.
18. We are persuaded that, apart from this offending and more distant motoring offences in 2011, that the offender poses little ongoing risk or danger to the public. We have regard to the authority of R v Ali [2023] EWCA Crim 232, and also consider that, in all the circumstances that led to this Reference, including the error of law made by the court below and contributed to by both advocates, that it is appropriate to have regard to the principle of double jeopardy. These two matters, that is the overcrowding in the prison

estate and double jeopardy, just persuades us that it is appropriate to suspend the sentence of imprisonment. Therefore, we quash the sentence of the court below and in its place, we substitute a sentence of 8 months' imprisonment suspended for 12 months.

19. Additionally, we consider that the Recorder was wrong not to disqualify the offender from driving. We bear in mind that the offender may rely upon a driving licence in order to continue in his employment, but the nature of the offending is such that we consider it just and appropriate to impose a discretionary disqualification for a period of 12 months. We therefore quash the ancillary sentence of three penalty points and impose a sentence of disqualification of 12 months. To that extent, this Reference is allowed.

LADY JUSTICE MACUR: Mr Richardson, we know that Mrs Singh's son is present in court and would like to express how very sorry we were to learn of Mrs Singh's current predicament. She was obviously, despite her limited mobility, someone who took great pleasure in life, and we are very sorry that her quality of life has now been depleted.

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