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Neutral Citation Number: [2023] EWCA Crim 1754

IN THE COURT OF APPEAL
CRIMINAL DIVISION



No. 202302863 A5

Royal Courts of Justice

Wednesday, 20 December 2023

Before:

LORD JUSTICE WILLIAM DAVIS
MRS JUSTICE FARBEY
HER HONOUR JUDGE MORELAND

REX
V
SCOTT ASHLEY FREETH

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MR M. FRIEND appeared on behalf of the Appellant.
MR B. BERLYNE appeared on behalf of the Respondent.

J U D G M E N T

LORD JUSTICE WILLIAM DAVIS:

- 1 Scott Ashley Freeth is now aged 34. He has 30 convictions for 20 offences. He has been sent to custody on six different occasions. His convictions include: in 2008 careless driving and failing to stop; in 2010 failing to supply a specimen for analysis; a similar offence in 2011. In 2020 twice his licence was endorsed for offences of speeding. In June 2022 he committed a further offence of speeding which was whilst he was under investigation for the offences with which we are concerned.
- 2 On 22 June 2023 in the Crown Court at Minshull Street, Manchester he pleaded guilty to causing death by dangerous driving and doing an act tending and intended to pervert the course of public justice.
- 3 On 27 July 2023 he was sentenced in respect of causing death by dangerous driving to a period of nine years and four months' imprisonment. For the offence of doing an act tending and intended to pervert the course of justice a concurrent sentence of 12 months' imprisonment was imposed. He was disqualified from driving for a total period of 14 years and two months. That comprised a discretionary period of eight years and an extension period of six years and two months pursuant to s.35A of the Road Traffic Offenders Act 1988. He was also ordered to take an extended retest.
- 4 His application for leave to appeal against sentence has been referred to the full court by the Registrar.
- 5 The grounds of appeal as originally lodged were directed simply to the proposition that because various higher culpability and/or aggravating factors were not present the overall sentence should be lower. However, the Registrar was concerned that there were two matters that apparently had been ignored or overlooked by counsel in the court below. First, the offences were committed in June 2021. The maximum sentence for the offence of causing death by dangerous driving at that point was 14 years ' imprisonment. By the time

of sentence, the Sentencing Council Guideline was in force which allowed for sentences within the highest category range in excess of 14 years. That was because the maximum sentence had been increased to life imprisonment in relation to offences committed after 28 June 2022. The Registrar considered that this court should review whether the judge who sentenced Mr Freeth had done so under a misapprehension as to the maximum sentence.

6 The second matter was that the extension period for disqualification assumed that the applicant would have to serve two-thirds of his sentence before release. That assumption was incorrect because the maximum sentence at the relevant time was 14 years. Thus, the applicant in fact will be eligible for release at the halfway point of his sentence. A matter subsidiary to that in relation to disqualification is that at the time of the offence the minimum obligatory disqualification was two years, whereas now it is five years. There was some thought that it may be the judge's period of disqualification of eight years might have been affected by a misapprehension as to what the minimum obligatory disqualification was.

7 Both parties have provided skeleton arguments dealing with the matters raised by the Registrar. There is no issue as to the error made in respect of the period of disqualification calculated by reference to the release date. Thus, we will give leave to appeal in order to allow that error to be corrected. The principal matter raised by the Registrar cannot so easily be resolved.

8 We shall deal with the facts in a little detail. At around 10 o'clock in the evening on 19 June 2021, the appellant picked up two friends, a man called Coy and a man called Cooper, in his work's Mercedes Sprinter van. He was allowed to use that van outside working hours. He drove from Dukinfield, an area to the east of Manchester, to Oldham. That is about half an hour's drive. The purpose of the journey was to pick up some cocaine. The appellant drove back to Dukinfield. By now, sometime after 11 o'clock in the evening,

the appellant began to drive "like an idiot". Those were the words later used by the witness Coy. More particularly, the appellant drove very fast and he drove through red lights. Coy told the appellant to slow down and drive more sensibly. For a time the appellant did so. He then resumed driving at dangerous speeds.

9 Two witnesses observed his driving in the nearby town of Ashton-under-Lyne. One of these witnesses, a Mr Baxter, was driving along a road in a residential area at around the speed limit of 30 miles an hour. He was overtaken by the appellant's van, which he estimated was travelling at around 50 miles an hour. He saw that the appellant's van nearly collided with another van coming in the opposite direction. The appellant then drove through a set of red traffic lights. A Mr Pivot, who was the driver immediately behind Mr Baxter, saw the same course of driving.

10 Not very far from the point at which those witnesses saw the appellant driving in that manner, the appellant approached a public house called the Royal Oak. A Mr David Clegg had come out of the public house on foot. He began to cross the road. He was obvious and visible in the roadway. The appellant approach him at around 53 miles an hour. He failed to see Mr Clegg until it was far too late. When he did see Mr Clegg, the appellant braked hard. Even braking hard, he was still travelling at around 40 miles an hour when he struck Mr Clegg, who was carried by the van some 50 yards down the road before being thrown off. Mr Clegg died instantly from multiple injuries.

11 From there, the appellant drove on through yet another red traffic light and stopped by a canal some distance way. His passengers ran off. The appellant attempted to set fire to the van before he also ran away. His attempt was seen by a passer-by who called the fire brigade.

12 It was not until the next day that the appellant told his mother what had happened. She told him to go to the police. He only did that at around 5 o'clock in the evening on 20 June when

he went to Ashton Police Station. He gave a prepared statement to the police. He admitted overtaking vehicles and exceeding the speed limit. He said he did not see Mr Clegg until too late. He said his brakes had not worked properly. He said that he did not stop because he panicked. He concluded his prepared statement with these words:

"No words can describe how devastated and sorry I feel about my actions and my remorse to the victim and his family."

- 13 Close examination of the vehicle showed absolutely no fault at all with the brakes.
- 14 There was no victim personal statement. Mr Clegg was a man of 56. He was survived by his three children, two daughters and a son, his mother and his brother and sister. All attended the sentencing hearing. They told the prosecutor that they did not wish to make any form of statement, but they told the prosecutor that the whole family missed Mr Clegg greatly and that they still grieved his loss.
- 15 In sentencing the judge set out the facts much as we have rehearsed them. She indicated that given the history at the Magistrates' Court, where some indication at least had been given of an intention to plead guilty, that it would be appropriate to give a maximum reduction of one-third for the pleas of guilty. The judge, as was entirely appropriate, observed that whatever sentence she passed would not assuage the grief of Mr Clegg's family present in court.
- 16 She then turned to the guidelines. She applied the guidelines then in force, namely the Sentencing Council Guideline introduced approximately four weeks before. She said that the offence fell within culpability A for two reasons. First, there was a deliberate decision to ignore the rules of the road and the danger posed to other road users. Second, there was driving over a prolonged period of time at an excessive speed. This translates in the language of the Guideline as "a prolonged and persistent deliberate course of dangerous driving". That gave a starting point of 12 years with a range of eight to 18 years.

- 17 The judge went on to identify the significant aggravating features which existed in the case. She noted the previous convictions of the appellant, in particular his very poor record for driving. Even whilst under investigation for the offence of causing death by dangerous driving, he had driven at excessive speed, thereby acquiring yet another speeding conviction. He had passengers in the vehicle who apparently had been taking drugs. He was driving a large goods vehicle. His victim was a vulnerable road user. The area in which the victim was struck was at a location where it was obvious that there might be hazards and that any vehicle should slow down. The appellant failed to stop and obstructed attempts to detect the offence by trying to set the vehicle alight. The judge went on to say that she proposed to reflect the totality of the offending by elevating the starting point in respect of causing death by dangerous driving to take account of the attempt to pervert the course of justice. Taking all those matters into account, she said that the appropriate starting point after a trial would be one of 14 years' imprisonment. From that a reduction of one-third brought the sentence down to nine years and four months.
- 18 In respect of disqualification, she identified a discretionary disqualification of eight years, saying that the appellant had "a terrible driving record" and also referred to the seriousness of the offence as justifying such a substantial period of disqualification.
- 19 In the initial grounds of appeal, on behalf of the appellant it was submitted that although the judge was correct to find that the case fell into culpability A, a lower point within the category range should have been chosen because a number of features were not present. For instance, the appellant was not driving a stolen vehicle, he was not uninsured and he was not affected by drink or drugs.
- 20 Subsequent to the Registrar's intervention, it has been submitted that no one reminded the judge the maximum sentence was 14 years. The sentence before reduction for plea was as a matter of fact the maximum sentence. Of itself, that demonstrates that the sentence was manifestly excessive.

- 21 On behalf of the respondent it is accepted that nothing was said about the maximum sentence available either in submissions to the judge or by the judge herself. However, it is pointed out that the sentence imposed was not based on a sentence in excess of the statutory maximum which was applicable. The sentence reflected several significant aggravating factors and the quite separate offence of attempting to pervert the course of public justice. The respondent notes that the judge said nothing explicitly which indicated that she believed that the maximum sentence was life imprisonment rather than 14 years.
- 22 The Sentencing Council Guideline in relation to causing death by dangerous driving came into force on 1 July 2023. It applies to offences committed prior to the increase in the maximum sentence. That is clear from the opening paragraphs of the guideline itself. There is nothing anywhere in the guideline which indicates that the starting point and the relevant factors relating to culpability apply differently to cases where the maximum sentence was 14 years as opposed to case where the maximum sentence is life imprisonment. The structure of the Guideline is very different to its predecessor, the Guideline issued by the Sentencing Guidelines Council. The sentencing range for the most serious cases goes up to 18 years. That is in order to accommodate the increase in the maximum sentence. However, as we have said, the Guideline does not differentiate between cases to which the new maximum sentence applies and those to which it does not. The structure of the new Guideline means that the starting point for serious cases of causing death by dangerous driving will be greater than under the Sentencing Guidelines Council Guideline. That is in part to accommodate the new maximum sentence. However, a sentencing judge must apply the Guideline irrespective of whatever the statutory maximum sentence might have been, subject to not exceeding the relevant statutory maximum. It is to be noted that in the previous Guideline for level one offences, the starting point was eight years with a sentencing range of seven to 14 years. This would have been a level one offence. The Sentencing Guidelines Council guideline for the most serious kinds of causing death by

dangerous driving was very unusual in that the upper end of the category range was the same as the statutory maximum sentence.

23 It was argued on behalf of the appellant that there are worse cases. This argument has little weight. As Sir Brian Leveson said in *Brown* [2018] EWCA Crim 1774:

"We have no hesitation in rejecting the argument that the maximum sentence must be reserved for some notional case, the gravity of which cannot be matched by any other set of circumstances".

24 This was a very bad example of dangerous driving. The appellant persistently drove a large van at dangerously high speeds, in residential areas, passing through red traffic lights. He was warned by his passenger about his driving. He had a bad driving record. He left the scene knowing full well that he had struck a vulnerable pedestrian at speed. He tried, albeit with no success, to set fire to the van, with a view to throwing the police off the track. Allowing for the fact that sentence on the principal count had to reflect the secondary count of attempting to pervert the course of public justice, we are quite satisfied that the judge was entirely correct in taking what, as a matter of fact, was the maximum sentence as the starting point. This was a case with no mitigation of any substance.

25 It follows that we reject the argument that there was anything wrong at all in the sentence of imprisonment imposed by the judge. We also reject the argument that the period of discretionary disqualification was incorrect because it failed to recognise that there had been an increase in the minimum obligatory term. The period of eight years was imposed because of the nature of this man's driving and his bad driving record. The appellant is a mature man of 34. Given how he has driven in the past and how he drove on this occasion, a very substantial period off the road was what was required. The only adjustment we make is to the extension period. That will be adjusted so as to allow for the fact that the period to be spent in custody will be one half of the custodial sentence rather than two-thirds.

26 We allow the appeal in relation to the extension period. That will be reduced to four years eight months. To that very limited extent, the appeal is allowed.

CERTIFICATE

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