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IN THE COURT OF APPEAL
CRIMINAL DIVISION
Case No: 2022/03304/A3
[2023] EWCA Crim 535



Royal Courts of Justice
The Strand
London
WC2A 2LL

Friday 12th May 2023

B e f o r e:

LADY JUSTICE CARR DBE

MR JUSTICE HOLGATE

HIS HONOUR JUDGE BATE

(Sitting as a Judge of the Court of Appeal Criminal Division)

R E X

- v -

OWEN LISCOMBE

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Mr R Rouch appeared on behalf of the Appellant

J U D G M E N T

Friday 12th May 2023

LADY JUSTICE CARR: I shall ask Mr Justice Holgate to give the judgment of the court.

MR JUSTICE HOLGATE:

1. On 5th January 2022, in the Crown Court at Swansea before His Honour Judge Walters, the appellant pleaded guilty to causing serious injury by dangerous driving, contrary to section 1A of the Road Traffic Act 1988. On 21st October 2022, he was sentenced by Mr Recorder Lloyd Jones to two years' imprisonment and disqualified from driving for six years and in any event until an extended driving test is passed. The disqualification from driving comprised a discretionary period of five years and an extension period of one year. The appellant now appeals against sentence with the leave of the single judge.

2. On 24th February 2020, at about 10.30 pm, the appellant had a head-on collision with the victim, Mr Peter Gatehouse. The collision occurred on a dual carriageway in Swansea which was subject to a 50 mph restriction. The north and southbound carriageways were separated by a grassed central reservation. There was no lighting in the area.

3. The appellant had been racing in a Mini Cooper against his co-accused, Benjamin Davies, in a BMW on the northbound carriageway. A witness described the noise of high-revving engines and the popping sounds from the exhausts. The appellant was travelling at about 99 mph. When the cars passed they were no more than an arm's length apart. A slow moving vehicle in the outside lane took the appellant by surprise. He took evasive action, hit the central reservation and lost control. His vehicle left the northbound carriageway and went about a metre into the air before nose-diving into the opposite carriageway. He then collided head-on with a Ford Mondeo vehicle driven by Mr Gatehouse. The approximate speed at the point of impact was 82 mph. It took firemen two hours to extricate the victim from his

vehicle. The damage was so extensive that he was lucky not to have been killed.

4. The appellant's vehicle was inspected. It had been "remapped" two days before the collision. The remapping had increased the vehicle's power by 33 per cent and torque by 57 per cent, and thus its acceleration and top speed.

5. Mr Gatehouse was admitted to an intensive care unit for 15 days and was in hospital for over four weeks. He had to undergo four operations, which included the reconstruction of his pelvis. There were injuries to his lower spine, the joint of his left hip, left leg and ankle, the sternum, head, face and hands. Six ribs were fractured. Because his lower limbs were unable to bear weight, Mr Gatehouse was in a wheelchair for six weeks and then had to use crutches. Professor Pallister, a consultant in orthopaedic surgery, has described the extensive injuries sustained. We have also read the victim personal statement of Mr Gatehouse. He has suffered, and continues to suffer, greatly. The pandemic seriously affected conditions in hospital and his discharge and recovery, including his ability to obtain care. He has had to endure great pain and stress, still needs painkillers, and continues to face the risk of further surgery.

6. The appellant was born on 21st January 1999. We have considered the helpful pre-sentence report.

7. In his sentencing remarks, the Recorder recognised that the appellant himself had suffered serious injuries, but said that he had been the author of his own misfortune. As for mitigating factors, the judge accepted that the appellant had shown remorse. He had his own business, working as a plumber. The appropriate sentence after a trial would have been 36 months' imprisonment. This should be reduced to 31 months because of the delay in the case, and then the appellant was entitled to credit of 25 per cent for his guilty plea. An immediate

custodial sentence was required, and so it was not possible to suspend the sentence. The judge decided that the appropriate discretionary disqualification period was five years and that this should be uplifted by one year to reflect one half of the custodial term. He also ordered an extended driving test.

8. We are grateful to Mr Rouch for his succinct and cogent submissions on behalf of the appellant. He confirmed that he makes no criticism of the judge's decision to impose an immediate custodial term of two years' imprisonment. The appeal relates solely to the length of the period of disqualification. He submits that it was manifestly excessive for four reasons. Firstly, it was significantly more than the mandatory minimum term of two years. The aggravating factors in this case did not justify more than doubling that minimum figure. Secondly, the appellant was aged just 21 at the time of the offence. He has significantly matured since then, as can be seen from the pre-sentence report. The risk posed to other road users has reduced. Thirdly, the appellant had not committed any further driving offences since the offence. Fourthly, the appellant was a self-employed plumber and the length of disqualification would have a significant impact upon his livelihood upon his release from prison.

Discussion

9. In *R v Morrison* [2022] 1 Cr App R(S) 20, giving the judgment of the court, Carr LJ said at [30]:

"Beyond the legislative requirements the relevant principles are now well established on the authorities. In summary, in assessing the appropriate period of disqualification, it is important to bear in mind, first, that the risk represented by the offender is reflected by the level of his culpability which attaches to his driving. There is a basic public protection purpose. Secondly, the main purpose of disqualification is forward looking and preventive, rather than backward looking. Disqualification is still an important element of the overall

punishment for the offence and is intended to deter offenders and others. The court has a wide discretion in considering the appropriate length of disqualification. There is no formula by which a court can measure the right length. It is a judicial decision which should be tailored to the offender and the offence. It should not be so long that it disproportionately adversely affects the prospects of rehabilitation. In short, a balance has to be struck. The court should not disqualify for a period that is longer than necessary."

10. Applying those principles to the circumstances of this case, we conclude that the period of disqualification was manifestly excessive. The appellant was relatively young at the time of the offence. During the period which elapsed before he was sentenced two years and eight months later, the appellant gained real insight into his behaviour. He had seen the impact of his appalling driving on Mr Gatehouse, himself, family and friends. He had matured and shown remorse. The prospects for rehabilitation were good. The length of the disqualification imposed by the judge would seriously impact upon the appellant's business as a plumber.

11. Balancing in this case the objectives of public protection, punishment, deterrence and rehabilitation, we consider that the discretionary period of disqualification should be reduced from five years to three years. The extension period of one year remains undisturbed.

12. We therefore quash the disqualification order made by the Crown Court and substitute for it an order disqualifying the appellant from driving for four years and until he passes an extended driving test. This is made up of a discretionary period of three years and an extension period of one year. To this extent only the appeal is allowed.

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