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IN THE COURT OF APPEAL

CRIMINAL DIVISION

ON APPEAL FROM THE CROWN COURT AT [LOCATION]
HHJ HUSEYIN 47EH0266423

CASE NO 202401823/A3

[2024] EWCA Crim 1350

Royal Courts of Justice
Strand
London
WC2A 2LL

Tuesday 22 October 2024

Before:

LORD JUSTICE HOLGATE

MRS JUSTICE STACEY

SIR NIGEL DAVIS

REX
V
JEAN DIAS

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MR A MACKAY appeared on behalf of the Applicant.

J U D G M E N T

SIR NIGEL DAVIS:

1. The applicant, a man now aged 44, renews his application for leave to appeal against sentence, leave having been refused on the papers by the single judge. The sentence was one of 28 months' imprisonment for an offence of causing serious injury by dangerous driving. The sentence was imposed at the Lewes Crown Court by HHJ Huseyin on 19 April 2024. In addition to the custodial sentence, the appellant was also disqualified from driving for a total term of 6 years, comprising a discretionary term and an extended term under section 34A of the Road Traffic Offences Act 1988. An extended driving test was also directed to be taken before he could drive again.

2. For present purposes the facts can be shortly stated. The appellant's car (a Land Rover Discovery) collided with a Ford van at around 5.10 am in the hours of darkness on the 24 January 2023. The collision was on the A21 road in Sussex. The undisputed evidence had been that the appellant had been driving to the airport but then had reason to return home. The evidence was that before he set off, he had had coffee, had taken exercise and indeed was used to driving at such an hour. There was also material to show that other cars had been driving on the road at that particular time.

3. The road at the place of the collision was a single carriageway, near to a school, with a 50 mile per hour speed limit. It was marked by a solid double white line in the middle of the road. The road itself had had various contours and bends in it before that particular spot was reached. It appeared that the appellant had gone round a roundabout, or perhaps out of some sort of turning, and then, for some period thereafter, at some stage after leaving the roundabout or turning, had been driving on the wrong side of the road. This was

demonstrated by CCTV cameras and rebutted an assertion made at the time by the applicant that he had suddenly, for some reason, veered across to the wrong side of the carriageway. In truth, there has never been offered an explanation as to why the applicant should drive on the wrong side of the carriageway for the period that he did, as he did. Certainly, there was no evidence that he had been drinking or taking drugs. There was no evidence that he had been using his phone or anything like that. As for the the van which had been coming in the other direction, that had been driven entirely correctly in the left hand lane and there were no defects of any kind in the van.

4. The effects of the collision have been drastic, so far as the driver of the van, Mr Britt, was concerned and also (although to a much lesser extent) for his passenger. Mr Britt suffered injuries as a result of the collision, which can only be described as “appalling” and “life changing”. Amongst other things, he had a punctured lung, ruptured spleen and kidney, broken legs, shattered kneecaps, broken ribs and a broken pelvis. A lengthy and dignified victim personal statement had been put in by him as well as by members of his family detailing the consequences to him and his life-style. He was required to spend 5½ weeks in hospital. He had to undergo a series of operations. Even 18 months after the collision, it was estimated that he would not be able to walk properly. He has not been able to return to work, almost certainly never will be able to return to work and his wife has had to give up her own occupation in order to care for him in effect on a 24-hour basis. As for his passenger, he also suffered injuries, although fortunately far less significant and had to take 6 weeks off work as well as being seriously affected in his mind by what had happened. So far as the applicant himself was concerned, he effectively walked away from the crash physically unscathed, although it is right to

record that there clearly have been profound psychological impacts upon him.

5. Turning to the position of the applicant, he had no previous convictions of any kind. He had been brought up in Brazil and came to the United Kingdom in 2016 with his family. He undertook a UK driving test relatively shortly after his arrival in this country. He has done well in his career and has progressed to a senior position in a large corporation and has a settled family life.

6. In dealing with the matter, the judge, amongst other things said this:

> "... at some point between the roundabout and the area of the prep school, on the wrong side of the road. That is, obviously a seriously highly dangerous manoeuvre. From the video it wasn't a momentary straying into another lane, it was driving following the contours of the road as the accident report shows on the wrong side of the road. It means also that by the time of the accident you had ignored both very clear markings on the road warning drivers to get back in the correct southbound lane before the solid line lane divider area starts as one approaches the entrances to the school, and you were either not paying attention to those signs or deliberately ignoring them; I am going to assume it was the first, rather than the second. Your counsel has addressed me about culpability, blameworthiness, and it is right to say that none of the other factors that appear in the sentencing guidelines on the category A culpability apply, but that one obviously a highly dangerous manoeuvre, does..."

The judge went on to repeat that the applicant had driven for:

> "... a significant distance, although not a very long way, on the wrong side of the road in a highly dangerous manoeuvre."

He then went on to say that, in terms of the sentencing guideline, that he considered there was an overlap, in terms of the top of the culpability B and the bottom of culpability A.

Necessarily for the purpose of the guideline this was conceded to be category 1 harm.

7. It is submitted by Mr Mackay, on behalf of the applicant before us today, that the judge erred in finding, for the purposes of assessing culpability, that this was "obviously a highly dangerous manoeuvre" for the purposes of the guideline. It was stressed that the applicant had not in any way been driving deliberately or recklessly - indeed, as was said, there is no real explanation for his driving in the way that he did. It was submitted that a subjective approach was required for the purposes of assessing whether there was obviously a highly dangerous manoeuvre: and here that cannot be said in the case of this applicant who had no intention or indeed recklessness with regard to his driving the way that he did.

8. In our view, it is wrong to say that that particular factor, indicating that level of culpability, is to be approached entirely subjectively as counsel has submitted. On the contrary, it is clear, both from the wording of that particular factor identified in the guideline, and from the context of the other factors in the guideline, that objective appraisal is needed as well as assessment of questions of degree.

9. We conclude that the judge, on the evidence before him, was entitled to make the finding that he did for guideline purposes, in terms of culpability. In any event, we would point out that the judge in fact went on to say that this was on the cusp of culpability A and culpability B. That clearly was a proper appraisal of the situation.

10. In terms of the guideline, a category 1A categorisation gives a starting point of 4 years

and a range of 3 years to 5 years - 5 years being the maximum available. A categorisation of category 1B gives a range of 2 to 4 years with a starting point of 3 years. Given that the judge gave full credit for the early plea, one can deduce, although the judge had not precisely spelt it out, that he had alighted upon a figure, after weighing the gravity of the offending and the aggravating and mitigating factors, on the figure of 3 years and 6 months' imprisonment before applying the discount for credit for plea. That, we observe, was well within the range applicable to category 1B.

11. Although in the written grounds some complaint is made that that judge relied on matters that were not formally in evidence, it was clear that the judge knew the road well, he made the observations he made to counsel in argument, and no-one has ever suggested that his observations as to the road were in any way wrong. In any event, all the material aspects of what happened were not disputed, albeit: as we have said, no explanation has ever been forthcoming for the applicant driving in the way that he did and for the period that he did.

12. It is then submitted that the judge did not give appropriate weight to the personal mitigation available to the applicant. Undoubtedly the applicant had very strong personal mitigation. He was of entire good character. He has strong references. There is clear and evidenced remorse. Also, there has been a profound effect both on him and his family as a result of what had happened. However, the judge had to balance the undoubted mitigation with the gravity of the offending and the significant aggravating factor of the injury to the passenger in the vehicle, as well, of course, as the grave injury to the driver, Mr Britt, which is reflected in the guideline itself. Overall, we can see no

error in the judge's conclusion that an appropriate sentence here was one of 28 months' imprisonment. The judge evidently had given the matter full and careful consideration and, in agreement with the single judge, this Court considers that there is no basis for interfering with that conclusion.

13. We add two further points. One can deduce that the argument below on behalf of the applicant was primary geared towards trying to secure a suspended sentence for this particular applicant, given the circumstances. Although the judge made no positive finding in that regard, it is clear enough that the judge's view, from the comments he made in the course of his sentencing remarks, that, even had he felt able to impose a sentence of 2 years or less, he would not have suspended it. This Court would not have disagreed with that evaluation given the gravity of what had happened and how it happened. We make that point because it would be wrong for the applicant to think, if he does think, that he missed out on a suspended sentence only by a matter of 4 months and solely for that reason. That emphatically should not be taken to be the case. Secondly, we do emphasise that this was a tragic case. We fully accept that the consequences for this applicant have been profound, both for him and for his family. But one then also has to consider the tragic consequences for Mr Britt and his family. In all the circumstances, however, we need not say more than that. This application is refused.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

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