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No: 201903210 A1
IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
Strand
London, WC2A 2LL

Thursday, 7 November 2019

B e f o r e:

LORD JUSTICE SIMON

MR JUSTICE WARBY

HIS HONOUR JUDGE THOMAS QC

(Sitting as a Judge of the CACD)

R E G I N A
v
NATHAN JOHN JOSEPH WALDRON

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Mr H Khattak appeared on behalf of the **Appellant**

J U D G M E N T

LORD JUSTICE SIMON:

1. On 6 June 2019 the appellant (now aged 28) pleaded guilty before the Birmingham Magistrates and was committed to the Crown Court for sentence. On 8 August he was sentenced by His Honour Judge Henderson as follows: offence 1, dangerous driving, contrary to section 2 of the Road Traffic Act 1988, a term of 10 months' imprisonment; offence 2, driving a motor vehicle without a licence, no separate penalty, licence endorsed and offence 3, using a vehicle without insurance, no separate penalty, licence endorsed. For a Bail Act offence the sentence was a term of 14 days' concurrent. The total sentence was therefore a term of 10 months' imprisonment.

2. He was disqualified from driving for 2 years and required to take an extended driving test with an extension to the disqualification period of 5 months to reflect the fact that the disqualification should not begin until his release from custody.

3. He appeals with leave of the single judge.

4. On 21 May 2019, at around midday, the appellant had been driving a Renault Megan along Ravenshill Road in Birmingham. Police officers noticed that the vehicle was in a state of despair and, when the appellant became aware that they were interested in his vehicle and had activated their lights and sirens, he sped away. He drove at speeds at around 50 miles an hour on roads which had a speed limit of 30 miles per hour, undertook a number of motor vehicles, turned corners without indicating and drove down the wrong side of the street.

5. The prosecutor in opening the case referred to him driving down the wrong side of the "carriageway" and this later led to a misapprehension on the part of the judge.

6. After a short period of time the vehicle collided with some street furniture and the appellant was detained. He immediately confirmed that the vehicle was not his but that it was not stolen. He accepted that he should not have been driving the vehicle and said that he had had a panic attack when he had seen the police officers. He was arrested and in a subsequent interview admitted all the charges made against him.

7. The appellant had three convictions for nine offences spanning April 2008 to June 2014. There were historic cases of robbery and attempted robbery and a breach of a non-molestation order for which in each case a custodial sentence had been imposed.

8. A short form pre-sentence report was prepared on 11 July, which recorded the appellant saying that the car he had been driving had belonged to a friend who had given him the keys when they got into the vehicle. He described driving for only a short period before seeing the police vehicle and panicking. The appellant made admissions to the offences and appeared remorseful. He described his behaviour as "stupid" as well as "dangerous and wrong". He had demonstrated a good understanding of the potential consequences of his behaviour.

9. There had been a referral to Liaison and Diversion Services ("LDS") for assessment as to his suitability for a low level mental health treatment requirement.

10. The pre-sentence report set out some of the difficulties in the appellant's personal life resulting in a fire that left him homeless.

11. The author of the report concluded that the court might wish to consider the imposition of an 18-month community order. An accredited programme requirement was also considered appropriate alongside a Rehabilitation Activity Requirement. The appellant had been assessed as suitable for an unpaid work requirement as a punitive element.

12. A LDS report dated 30 July 2019 made recommendations to support the appellant in relation to what were described as "a gamut of social needs": suitable accommodation; access to benefits; photo ID; bank account and access to the Examination Board where he had taken his GCSEs.

13. The judge remarked in his sentencing remarks that he had to sentence the appellant for an offence of dangerous driving as well as a Bail Act offence that led to the appellant failing to appear when he had been due to surrender to bail. The judge said he had read the pre-sentence report and the LDS court report, and accepted what was said in those. He also remarked that it had been an awful life that the appellant had had to cope with. Nevertheless, the offence could only be met with a custodial sentence. The judge then said this:

> This was a desperately serious incident of bad driving. It was in the middle of the day when there would have been people about. It involved you going down the wrong side of a dual carriage with the risk of a very high speed crash. Most weeks in this court we get cases that start like yours but end up with people dead, so I am afraid, that despite all that I have read and despite the sympathy that I have for you, I think this has to be a prison sentence that

> you will serve. I have reduced it because of the factors that I have discussed and I have given you full credit for your plea because you did plead guilty to everything at the first opportunity.

14. The sentences passed were the sentences we have referred to.

15. In the grounds of appeal Mr Khattak submitted that in the circumstances of the case, which included the appellant's prompt pleas and remorse, the judge should not have passed a sentence of immediate imprisonment and the sentence should have been suspended, or alternatively, a shorter sentence should have been imposed. The appellant had strong mitigation which reinforced the submission that the sentence should have been suspended. It was clear that he would lose complete contact with his three children, who have been removed from his care and would be separated if he were sentenced to immediate imprisonment. He has had no contact with them but retains contact with the Children Services allocated worker. An immediate sentence of imprisonment had the consequence that he would not be able to keep contact with the allocated worker and his children would be placed with foster parents.

16. It is clear that the use of the archaism "carriageway" in the prosecution opening led to a misunderstanding by the judge. The appellant had not driven on the wrong side of a dual carriageway (on any view a highly dangerous piece of driving) he had driven on the wrong side of the road, dangerous in itself but qualitatively different. In our view the features of the dangerous driving were sufficiently serious to warrant a custodial sentence. But the sentence should have been one of 6 months and not 10 months. The Sentencing Council Guidelines on the Imposition of Community and Custodial Sentences

provides a double test to be applied weighing factors against and for suspending a custodial sentence. The factors indicating that it would not be appropriate to suspend a custodial sentence are first, the offender presenting a risk and danger to the public; second, appropriate punishment that can only be achieved by immediate custody and third, a history of poor compliance with court orders. We bear in mind that the maximum sentence for the driving offence is 2 years.

17. In our view none of these factors pointed ineluctably to an immediate custodial sentence, particularly bearing in mind the nature of the driving as it now appears.

18. The sentencing judge accepted what was said in the two reports: the risk of harm to the public was assessed as medium and it might be reduced. In these circumstances we have concluded that the appropriate punishment could not only be achieved by immediate custody.

19. The factors indicating that it may be appropriate to suspend a custodial sentence are first, a realistic prospect of rehabilitation; second, strong personal mitigation and third, immediate custody resulting in significant harm and harmful impact on others. All these factors weighed to a greater or a lesser extent in favour of suspending the custodial term.

20. The pre-sentence report referred to concerted efforts to turn his life around and combined with the LDS report suggested a prospect of rehabilitation, and that immediate custody had a potential and potentially harmful impact on the appellant's children.

21. In those circumstances, we have concluded not only that the sentence should be one of 6 months but it should be suspended for 12 months with up to 20 days of a Rehabilitation Activity Requirement. The disqualification period will be reduced from 2 years 5 months to 2 years.

22. LORD JUSTICE SIMON: Mr Waldron, I hope you have understood that we have allowed your appeal to this extent. The custodial term is reduced from 10 months to 6 months and we are going to suspend that sentence for 12 months, with a Rehabilitation Activity Requirement of up to 20 days, so that when the documents come through from the Court of Appeal office you will be released from custody. But the consequence of the suspended sentence will be that if you commit an offence during the period of suspension, you may be brought back to the Crown Court and you will be dealt with for this offence as well as any other. Do you understand?

23. THE APPELLANT: Yeah, I understand.

24. LORD JUSTICE SIMON: Very good.