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[2023] EWCA Crim 408

IN THE COURT OF APPEAL

CRIMINAL DIVISION



CASE NO 202203312/A1

Royal Courts of Justice

Strand

London

WC2A 2LL

Wednesday 15 March 2023

Before:

LADY JUSTICE CARR DBE

MR JUSTICE JEREMY BAKER

HIS HONOUR JUDGE TIMOTHY SPENCER KC

(Sitting as a Judge of the CACD)

REX

V

FAHRAN NADEEM

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MS DOWER appeared on behalf of the Applicant

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**J U D G M E N T**

LADY JUSTICE CARR:

Introduction

1. This is a renewed application for leave to appeal sentence.
2. On 24 August 2022 the appellant, now 31 years old, pleaded guilty to a single count of dangerous driving, contrary to section 2 of the Road Traffic Act 1988. He was sentenced on 19 October 2022 by Her Honour Judge English ("the judge") sitting at Snaresbrook Crown Court to 21 weeks' imprisonment suspended for two years with an unpaid work requirement of 180 hours and a rehabilitation activity requirement for 15 days. He was disqualified from driving for 15 months and until an extended retest was passed.
3. We grant leave.

The facts

4. The offending took place at around 8.45 pm on 24 May 2022 on the High Road in Chadwell Heath, a busy, built-up residential and shopping area with a 30 mph speed limit. There were buses and other vehicles on the road, including queuing traffic, and the footpaths were populated with pedestrians.
5. Traffic police officers on patrol in an unmarked vehicle noticed a white BMW motor vehicle, driven by the appellant, and a black Mercedes motor vehicle, driven by the appellant's co-defendant, Sahil Patel. The two cars appeared to be racing each other at speeds estimated at between 70 mph and 80 mph. The police pursued the vehicles up to a first set of traffic lights. When those lights changed to green, both vehicles left at speed, the police officers noting the speeds to be up to 80 mph at times. The vehicles passed through a narrow gap between a parked car and a bollard, again at high speed. The police caught up with the vehicles at a second set of traffic lights. When those lights turned green, the Mercedes drove away at high speed; the BMW drove away at a lower speed, the appellant having noticed the police presence. The period of dangerous driving overall lasted around 20 to 30 seconds.
6. Both drivers in due course pulled over to a car park as instructed by the police and both apologised immediately for what they had done.
7. The appellant had no previous convictions. The judge afforded him 25% credit for his guilty plea. A pre-sentence report recorded the appellant denying that he had been driving dangerously or racing. Although he displayed remorse and shame, there was little insight into the dangerous driving and limited consequential awareness. In terms of personal circumstances the appellant was married with two young children and a self-employed director of a vehicle repair centre.

## Grounds of appeal

8. In focused submissions, Ms Dower for the appellant submits that there are six reasons why the two-year operational period of the suspended sentence order was disproportionate to the 21-week custodial sentence. Amongst other things, it is said that the judge failed to have proper regard to the Sentencing Council Guideline on the Imposition of Community and Custodial Sentences.
9. Those six reasons can be summarised as follows. First, whilst the author of the pre-sentence report identified deficits in the appellant's thinking, those deficits were said to be capable of being addressed, with a consequent decrease in the risk posed by the appellant. Secondly, there was an assessment that the appellant carried only a low risk of re-conviction and a medium risk of serious harm to others. Thirdly, Ms Dower prays in aid the appellant's previous good character. Fourthly, and allied to this, she refers to his guilty plea and his expressions of remorse and shame, not only at the time of the offending but also to the author of the pre-sentence report and in a separate letter to the judge. Fifthly, she relies on the recommendation in the pre-sentence report of a 12-month as opposed to a 24-month community order. Sixthly and finally, she reminds the court that judges are to follow Sentencing Council Guidelines unless it is deemed contrary to the interests of justice to do so. The relevant Guideline indicates that the time for which a sentence should be suspended should reflect the length of the sentence. Up to 12 months, states the Guideline, might normally be appropriate for a suspended sentence of up to six months.
10. In the round, it is submitted that the imposition of the maximum operational period of two years was manifestly excessive.

## Discussion

11. As indicated, the sole ground of challenge relates to the length of the operational period of the suspended sentence. That period must be a period beginning with the day on which the order is made of at least six months and not more than two years: see section 288(2) of the Sentencing Act 2020.
12. As Ms Dower submits, the Sentencing Council Guideline on the Imposition of Community and Custodial Sentences states that:

"The time for which a sentence is suspended should reflect the length of the sentence; up to 12 months might normally be appropriate for a suspended sentence of up to 6 months."
13. Whilst that is not an inviolable rule, it is general guidance to be followed, and the judge did not give any reasons for departing from it. Taking the overall circumstances into account, together with the guidance in the Sentencing Council Guideline, we are persuaded that a two-year operational period – the maximum possible - was disproportionate to the length of the custodial sentence of 21 weeks imposed, and manifestly excessive. However, given in particular the ongoing risk posed by the appellant, an operational period of more than 12 months was warranted on the facts of this case. We consider an operational period of 18 months to be appropriate.

14. For these reasons and to this extent we allow the appeal. We quash the operational period of two years and substitute in its place an operational period of 18 months.

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

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