



THE COURT OF APPEAL

[19/18]

**The President
McGovern J.
McCarthy J.**

BETWEEN/

DIRECTOR OF PUBLIC PROSECUTIONS

APPELLANT

- AND -

RAFAEL DUDEK

RESPONDENT

Judgment of the Court (ex tempore) delivered on the 20th day of January 2020 by Mr. Justice McCarthy

1. The appellant pleaded guilty to one count of dangerous driving causing serious bodily harm contrary to section 53 of the Road Traffic Act, 1961 as inserted by s.4 of the Road Traffic Act no. 2, 2011. He was sentenced to a period of three years' imprisonment, the final two years of which was suspended for a period of five years. He was disqualified from driving for a period of ten years, and he appeals the disqualification aspect only of the sentence.
2. The evidence was heard on the 14th November, 2017. The evidence was given on a so-called "agreed facts" basis because what might be described as cognate offences had occurred, and in particular, the appellant had not remained at the scene of the accident as he was required to do, and he had failed also thereafter to report the accident.
3. On the 8th of December, 2016 at about 6.30p.m. Gardaí were notified of the accident, in the course of which the pedestrian, the injured party, Mr. Miska was knocked down and suffered very serious injuries. It was dark at the time, the weather was dry, but the road surface was wet. The appellant's vehicle mounted a kerb, struck a heavy steel barrier that was in place in front of the entrance of a playground, and this in turn struck the injured party who was walking on the footpath.
4. As previously stated, the appellant did not remain at the scene, and in particular he did not assist the injured party. He made contact with the Gardaí the next day. He was arrested and interviewed. He outlined his version of events which was to the effect that he had been working between seven in the morning and five in the afternoon and that when he finished work he went to a garage to obtain petrol and bought some items there. He stated during the interview that he was: -

"Driving when a cat entered the road and myself trying to avoid hitting him, I skidded on the road; it was very slippery, this pedestrian was on the footpath, it was very dark, I couldn't see him until the last moment."

He [the appellant] then subsequently said: -

"I can't turn back time, I am extremely sorry. I panicked. I can't find explanation. The other person got injured but I didn't mean to. My friend got seriously harmed which is physical and I have to live with my mental thoughts."

His explanation for leaving the scene was that he was in shock. Mr. Miska was working in the place of employment as the appellant.

5. The appellant is a Polish national. He has been a full-time employee at Kepak meat plant since 2011, the year which he came to Ireland, although that business has now closed. He expressed his concerns regarding his partner and a daughter in terms of the consequences of the punishment or disqualification which might be imposed upon him. He referred to the fact that he lives some three to four kilometres from his work, or did at that stage, but could avail of lifts from colleagues.
6. The Victim Impact Statement of Mr. Miska described his mental and physical difficulties as a consequence of the accident. In particular, he received extensive surgery on more than one occasion. His leg had to be placed in a brace and severe injury was suffered to his legs apart altogether from very significant psychological adverse sequelae.
7. The appellant submits that a consequential order only arises where the court decides, subject to the mandatory provision, (disqualification for four years) in the light of the evidence, that the person is unfit to exercise the privilege of driving.
8. The court is required to determine what period of disqualification will be appropriate, having assessed the suitability of the person to drive and in that regard, reference is made to a number of authorities, including *Conroy v The Attorney General* [1965] I.R. 411 which of course is now well-established.
9. It was submitted on behalf of the appellant that the judge erred in law and in fact in his conclusion in relation to what was or were not aggravating factors in terms of the driving as well as the speed and the evidence of alcohol. It was also submitted that there was no evidence of alcohol consumption. It was further submitted that the appellant had no previous convictions, and that the ten-year disqualification imposed extreme hardship on him and his family, and that of ten years was effectively imposed as an additional punishment rather than on the basis of an assessment of the unsuitability of the appellant to drive.
10. In response, the respondent submits the sentencing judge adopted the correct approach and that in light of the aggravating factors in the case, and in particular the appellant's failure to remain at the scene, and the fact that he did not report the accident until the next day, apart altogether from the nature of the driving and his failure to assist the injured party, there was a correct identification of all relevant factors and that the disqualification for the period in question was appropriate.
11. It was further submitted on behalf of the State that the sentencing judge imposed a disqualification order which was legally permissible and within the permitted range, and further that the sentence as a whole taken in its totality was not disproportionate.

Discussion and decision

12. The judge was entitled to conclude that the protection of the public rendered a significant period of disqualification appropriate beyond the statutory minimum. Certainly, he was entitled to take into account the appellant's conduct in leaving the scene, his failure to assist the victim, and his failure to report the accident the incidental personal adverse circumstances including consequences for family life as here, obviously in the ordinary course of events arise when consequential disqualification orders are applied, so they are of little relevance as the protection of the public is at stake.
13. A court must balance these against that necessity to protect the public, having regard to the nature of the driving, both manifested at the scene and otherwise. It seems to us that one of the principal factors which must guide a court in deciding on the relevant period of disqualification is the history of driving of a party, with particular reference to offences under the provisions of the Road Traffic Act.
14. Here, there was no suggestion of prior offending which might have afforded a guide as to how the appellant drove generally, and in particular how he might do so in the future. We think that the judge did not have a sufficient evidential basis for concluding that a disqualification for a period of ten years was necessary and we think that he thereby fell into error.
15. We therefore quash that portion of the order of the Circuit Court insofar as it deals with disqualification and substitute a disqualification order for the lesser period of six years.