

Neutral Citation Number: [2018] EWCA Crim 1531

NO: 201800424/A3

IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice Strand London, WC2A 2LL

Friday 2 March 2018

B e f o r e:

MR JUSTICE SWEENEY

MR JUSTICE WILLIAM DAVIS

R E G I N A

V

MATTHEW PHILLIPS

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Mr R Moss appeared on behalf of the **Applicant**

J U D G M E N T (Approved)

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1. MR JUSTICE SWEENEY: This is an appeal against sentence with our leave, following a referral by the Registrar. On 9th January 2018 in the Crown Court at Reading, the appellant pleaded guilty to an offence of dangerous driving and was sentenced by Deputy Circuit McCreath to 11 months' imprisonment and to disqualification for three years and five-and-a-half months and until an extended driving test is passed.

2. The facts in short are these. The appellant was born in 1993. He was thus aged 24 at the time of the offence in November 2017 and is now aged 25. He had 11 previous convictions in the period between 2008 and 2014, receiving non-custodial sentences for offences such as possession of drugs, threatening behaviour, assault occasioning actual bodily harm and criminal damage and, in 2014, 26 weeks' imprisonment suspended for two years for possession of a class B drug with intent to supply. There are no driving convictions.
3. On Tuesday 31st October 2017, or thereabouts, the appellant was stopped by police driving his black Honda Civic car and advised that he had two bald tyres that needed to be changed. However, the appellant did not change the tyres and some five days later, in the afternoon of Sunday 5th November, was driving the car in Reading when he was seen stationary at traffic lights by a police officer who was driving a marked police vehicle in the opposite direction. The two were known to each other and made eye contact. The officer began to turn his car around in order to stop and speak with the appellant, who clearly appreciating what was going on accelerated away from the traffic light which was still at red against him. The officer activated his siren and flashing light and followed.
4. The appellant turned into roads that were governed by a 30 mph speed limit. He passed through another set of traffic lights, this time on the wrong side of a traffic island, and disappeared from view. However, a bus driver and then another member of the public indicated to the pursuing officer where the appellant had gone and the officer saw the appellant in the distance ahead of him. By this stage the officer was driving at 60 to 70 mph but was unable to make up any ground.

The appellant then came to a junction where he was required to give way, but instead simply drove through it without braking and at very high speed. When the officer got to the same junction he had to give way to other vehicles, which enabled the appellant to get away. The chase, such as it was, had lasted for about one and a half minutes. The appellant was however arrested at his home shortly afterwards and accepted that he had been driving.

5. There was a pre-sentence report and a character reference before the judge. The author of the pre-sentence report recorded that the appellant had regretted his actions and was grateful that no one had got hurt. He said that he was not thinking and just wanted to avoid being in trouble with the police. There was no planning involved. He had acted impulsively and did not consider the consequences of his actions. He could now see that his actions could have had a devastating effect on either him or on an innocent bystander. The author of the report recorded that the appellant was working full time as a builder's labourer, earning £300 a week and had no debts, nor did he have any drug or alcohol issues. His previous convictions were considered but the author concluded that there was no pattern of offending, in consequence of which he was assessed as posing a medium risk of re-conviction and a low risk of serious harm. If the court was minded to consider an alternative to a custodial sentence, a community order or a suspended sentence order was recommended. The character reference spoke well of the appellant.
6. In mitigation, it was suggested that the appellant had pulled up somewhere and that the officer had driven past him. In passing sentence, the judge acknowledged that there were a number of mitigating factors. The appellant had never been

convicted before for bad driving, albeit he had lots of convictions for other things. He had not previously been sentenced to immediate imprisonment, although he had been subject to a suspended sentence. He was in a good and stable relationship. He was in work and had settled accommodation. In the result, said the judge, had bore that all in mind, as well as all the other things that he had heard or read to the appellant's credit. The appellant was given a quarter credit for his guilty plea, which the judge recognised acknowledged some measure of remorse. The judge indicated that he would pass sentence on the basis that the appellant was driving his car on a Sunday afternoon in a residential area when he was seen by a police officer. He had been conscious that the officer was interested in him and was concerned that he would be in trouble because his car had bald tyres and he had been formally warned about that already. He had therefore driven off at speed. The exact speed was not clear because there was no proper basis to make a proper comparison between his speed and that of the police car. The judge indicated that he had seen the video footage from the police car, as we interject have we, which drove through the residential area at very high speed but was unable to catch up. The judge said that he was unable to accept that the appellant had pulled up somewhere and the officer had driven past him. That, said the judge, made no sense. Had he pulled up, said the judge, he would have been observed and the officer would have stopped. At all events, the appellant had driven so fast that he got away from the officer, notwithstanding that the officer was driving at speeds up to and beyond 70 mph. The appellant had been driving through a residential area in daylight at undoubtedly very high speeds and on unsafe

tyres. That, said the judge, was hugely dangerous. There were parked cars along some of the streets, it was a sunny afternoon and there was a risk that a child or other individual could have been in the road and serious injury or worse could have followed. It was, said the judge, only by good fortune that no one had been hurt as anyone could have been mown down by the appellant during the course of the episode. It was against that background that the judge imposed the sentence to which we have already referred.

7. There are three grounds of appeal, namely that (1) the starting point of 15 months was too high, (2) the sentence should have been suspended, (3) the disqualification period was too long.
8. On the appellant's behalf it is stressed in the combination of written and oral submissions that he was aged 24 at the time, living in stable accommodation, that he had been employed as an apprentice bricklayer for three months, that he had no convictions for driving offences, that the offence was committed during the day, there was no evidence of intoxication, there was no evidence of injury or damage, there was no collision, no road rage, no use of a vehicle as a weapon and no adverse road or weather conditions at the time. The court's attention was drawn to a number of authorities, only one of which, as Mr Moss now appearing on the appellant's behalf accepts, is of any particular assistance, namely Cain [2014] EWCA Crim 1788, which involved a police chase and in which the court decided that given the enactment of the offence of causing serious injury by dangerous driving the maximum sentence of two years in relation to the instant offence of dangerous driving was available for very bad cases, even if no serious injury was caused.

9. Of more assistance, albeit that ultimately cases of this type turn on their own particular facts, are the cases cited at paragraph 232.13 of the 12th Edition of Banks on Sentence under the heading "police chases". The authorities there cited make clear that driving dangerously in the context of trying to evade the police is a significant aggravating feature. That aggravating feature plainly applied in this case, as did the further aggravating feature that the appellant knew that he had two bald tyres that he had not replaced, despite an official warning of the need to do so. That said, the driving in this case was of short duration and, albeit fortunately, did not result in any accident or injury, nor did it have any of the other aggravating features that the appellant has underlined.
10. In the result, and whilst it is conceded that the custodial threshold is crossed, we are persuaded that a notional sentence after trial of 15 months was too long in the particular circumstances of this case. In our view, the notional sentence after trial should have been one in the order of eight to nine months which, less 25 per cent for plea and rounded down, results in a sentence of six months' imprisonment.
11. Weighing the factors set out in the Sentencing Council Guideline on Imposition, we reject the appellant's argument that this is an appropriate case in which to suspend the sentence. In our view appropriate punishment can only be reflected by an immediate term of imprisonment. We are however persuaded that the period of disqualification that was imposed was too long. In the result, we propose to quash the sentence of 11 months' imprisonment and to substitute for it a sentence of six months' imprisonment. We also quash the order for disqualification and substitute for it a period of disqualification of 18 months with a three month extension period, making a total period of disqualification of

21 months. The requirement to pass an extended driving test will of course remain. To the extent that we have indicated, therefore, this appeal is allowed.

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