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IN THE COURT OF APPEAL
CRIMINAL DIVISION



No. 202303035 A4
[2023] EWCA Crim
1537

Royal Courts of Justice

Friday, 27 October 2023

Before:

LORD JUSTICE WILLIAM DAVIS
MR JUSTICE MORRIS
HER HONOUR JUDGE DE BERTODANO

REX
V
SYED MINHAZ AHMED

Reference by the Attorney General under s.36 Criminal Justice Act 1988

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MR P KAZANTZIS appeared on behalf of the Appellant.

MISS K BROOME appeared on behalf of the Crown.

J U D G M E N T

LORD JUSTICE WILLIAM DAVIS:

- 1 On 24 March 2023, in the Crown Court at Snaresbrook, Syed Ahmed was convicted of causing death by dangerous driving. He had previously pleaded guilty to the alternative offence of causing death by careless driving, but that plea had not been accepted by the prosecution. It was not until 4 August 2023 that he was sentenced. The sentence imposed was one of 4 years' imprisonment. He was disqualified from driving for 6 years, namely a discretionary period of 4 years together with an extension period of 2 years pursuant to s.35(a) of the Road Traffic Offenders Act 1988 to take account of the time he would be spending in custody.
- 2 His Majesty's Solicitor General now applies pursuant to s.36 of the Criminal Justice Act 1988 for leave to refer that sentence as unduly lenient.
- 3 The offender is 32. He was 29 at the time of the offence. He was a man of good character with no previous convictions. On 24 July 2020, just before 3.20 in the morning, he was driving an Audi A8 westbound along Romford Road in Forest Gate. Romford Road is the main road running through East London. As it passes through Forest Gate it is bordered by a mix of residential and commercial property. The side roads leading off it are residential streets. As was apparent to us from the CCTV footage, even in the early hours of the morning there were other vehicles on the road, together with cyclists and pedestrians. The road is well lit and relatively straight. It is subject to a 30 miles an hour speed limit.
- 4 Near to the junction with a side road named Crosby Road, the offender collided with a man named Jayden Kristiansen, who was riding his bicycle in the same direction along Romford Road. The speed at which the offender's car was driven prior to the collision was measured by cameras at various points prior to that point. Nine hundred metres from the collision site, the car was travelling at a minimum 64 miles an hour. 500 metres from the collision, the speed of the car was at least 59 miles an hour. The cameras nearest the collision recorded the offender's speed at between 69 and 73 miles per hour. We have seen the footage from CCTV cameras along the route taken by the offender. It is quite apparent he was travelling far faster than any other vehicles on the road.
- 5 Mr Kristiansen was wearing dark clothing. His bicycle was not lit. However, he was plainly visible on the CCTV footage. He was seen by another motorist, a Mr Smith, who was driving eastbound along Romford Road. Mr Smith, in due course, witnessed the collision. Until shortly before the offender caught up with him, Mr Kristiansen was riding along the pavement alongside Romford Road, but then he went into the carriageway. By the time the offender should have had him in view, he was riding in about the middle of the westbound carriageway. There was surface water on the nearside of the road. In all likelihood, Mr Kristiansen was not riding close to the kerb in order to avoid that surface water. In any event, he was perfectly entitled to be on the road.
- 6 As we have said, the offender approached Mr Kristiansen from behind at a speed in excess of twice the speed limit. There came a point when he was relatively close to Mr Kristiansen that the offender saw the bicycle. We know that because he braked heavily. Because he did

not see the bicycle as soon as he should have done, and because he was travelling far too fast, the offender did not, indeed could not, avoid a collision.

- 7 At the point of the collision, by reference to expert calculations conducted thereafter, his car was travelling at a speed somewhere between 47 and 57 miles an hour. Mr Kristiansen was knocked from his bicycle. He fell back onto the bonnet of the offender's Audi. His head struck the Audi's windscreen, shattering it. He then went up in the air, the Audi passing underneath him as he was in mid-air. Mr Kristiansen then fell onto the road surface. He suffered multiple serious injuries, including severe traumatic cervical spinal damage. He was taken to the Royal London Hospital, where it was determined that his injuries were so serious that there was no prospect of survival. Life support was removed on 25 July, following which Mr Kristiansen died.
- 8 The offender did not stop at the scene of the collision. Rather, he drove into a side street. Mr Smith, whom we have already mentioned, followed him in his car. He caught up with the offender in a street off Romford Road. He told the offender that he needed to go back because he had just killed someone. Clearly, Mr Smith did not know that had happened, but he had seen what had happened to Mr Kristiansen and drawn the obvious conclusion.
- 9 What the offender did was to let a passenger out of his car and drive on, apparently in the direction of Romford Road. However, when he got to Romford Road he drove across into another side road, where he parked. Mr Smith was still following him in his car. Mr Smith spoke to him again. The offender got out of his Audi and said he would go back. The offender went on foot onto Romford Road, but after briefly walking towards the scene of the collision he turned and ran away.
- 10 Over the course of the next 33 hours the police repeatedly attempted to contact him. They had been able to identify him quickly because his Audi had been left in the side road where Mr Smith had last seen him. Messages left with the offender, his family and his place of work yielded no response.
- 11 He eventually went to Forest Gate Police Station on the afternoon of 25 July. When he was interviewed he provided a prepared statement. He said he had been driving at no more than 35 miles an hour along Romford Road. He said that he had suddenly experienced what had felt like to him like a tyre burst. He then saw that his windscreen was damaged. He did not see the cyclist. He said that he drove around the corner and parked up. He walked back to the main road but then panicked because he realised that he may have hit someone. He stated that he had wandered around for hours. Eventually, he had spoken to his brother, who told him that the police wished to speak to him, at which point he handed himself in at the police station. The interviewing officers clearly had many other questions for the offender, which they asked; the offender made no comment. At the trial, the offender's evidence was essentially the same as the account he gave in his prepared statement.
- 12 The circumstances of the collision inevitably were the subject of substantial investigation. Thus, the offender was not charged with the offence of causing death by dangerous driving until April of 2021. He appeared before the magistrates in May of 2021. He was sent for

trial. The case was listed twice for trial during 2022, but on neither occasion was the trial able to proceed due to problems associated with the pandemic. As we have said, the effective trial took place in March 2023. The original date for sentence after conviction was 16 June 2023.

- 13 In the event, the court was not able to accommodate that date because the trial judge was not available. The next available date was 26 June 2023. The actual date of sentence in August was fixed to take account of the availability of the offender's counsel. We see no criticism to be made of anyone for the adjournment for that purpose. It was plainly appropriate that counsel who conducted the trial should be present at sentence.
- 14 The judge had three victim personal statements from Ms Hynes, the mother of Mr Kristiansen. Her first statement was dated 4 December 2020. She explained that her son, in the months before the collision, had appeared to be finally overcoming various difficulties in his life. Whatever those difficulties had been, his health now was improving, his home life was stabilising, he was seeing his mother more often and he was generally seeing life more positively. Ms Hynes spoke of the dreadful moment when the police had arrived at her door and broken the news. She had had to make the appalling decision to remove the life support. She spoke of being with her son when he breathed his last. She said that the offender had written a letter for her attention which the police had read to her. She explained that that letter did not help because she was struck by what she called the "self-pitying tone" of the letter. There was little mention of her son or any introspection by the author on the consequences of his actions. As at December of 2020, Ms Hynes described herself as "struggling day to day".
- 15 She made a second statement in May 2021. She described changes to her mood and personality, becoming more irritable and feeling the need to shut herself away and of the strain it had put on her marriage. She expressed dismay at the offender's unwillingness to accept responsibility for the role he had played in her son's death.
- 16 Her final statement was made after the trial. It reiterated what she had said in the previous statement. She spoke of the effect of the continued delay occasioned during the court proceedings.
- 17 The judge had a pre-sentence report. The offender told the author of that report that he had not driven with any lack of care or at any excessive speed prior to the collision. He said that he had heard a bang, but he had not realised he had hit anyone until after he had parked and another motorist had told him he needed to go back. However, he panicked and left the scene. He said that he was in shock.
- 18 The offender, as the report revealed, was a married man who lived with his wife at his parents' home, together with his adult siblings. He said that he had health problems involving his stomach which were under investigation. In relation to his mental health he said that he had "felt rubbish all the time" since the collision.

19 The judge also had character references from the offender's family, the offender's employer and a local community leader. These established that the offender was a support to his wider family and was active in a positive way in his community. He properly could be described as being of positive good character.

20 In sentencing, the judge set out the facts as we have set them out in this judgment. She then turned to consider the Sentencing Guidelines applicable to the offender. With effect from 1 July 2023, the Sentencing Council introduced a guideline in relation to causing death by dangerous driving which replaced the guideline issued as long ago as July 2008 by the now defunct Sentencing Guidelines Council. The Sentencing Council Guideline applied to all cases sentenced after 1 July 2023. Section 59(1) of the Sentencing Code 2020 provides as follows:

“Every court must, in sentencing an offender, follow any sentencing guidelines which are relevant to the offender's case unless the court is satisfied that it would be contrary to the interests of justice to do so.”

21 The judge said this:

“I turn, now, to the sentencing guidelines. The Sentencing Guidelines Council issued new guidelines for the offence of causing death by dangerous driving effective from 1 July 2023. However, you were due to be sentenced in June. But for the fact that I could not accommodate your sentence, you would have been sentenced in June. Therefore, you would have been subject to the old and former sentencing guidelines. I am entirely satisfied, therefore, that it is just and fair to sentence you under the old sentencing guidelines which would have followed had I not moved the sentence due to other work in which I was engaged.”

The judge's reference to the Sentencing Guidelines Council must have been intended as a reference to the Sentencing Council. She then considered the appropriate sentence by reference to the guidelines issued in 2008 and determined that the proper sentence was 4 years' imprisonment. The correct formulation of what amounts to an unduly lenient sentence is still that provided by the Lord Chief Justice in *Attorney General's Reference Number 4 of 1989* [1991] WLR 41.

“A sentence is unduly lenient, we would hold, where it falls outside the range of sentences which the judge, applying the mind to all the relevant factors, could reasonably consider appropriate.”

22 In this case, we must ask whether the approach taken by the judge in relation to sentencing guidelines was reasonable and, if not, whether a sentence of 4 years' imprisonment fell within the bounds of what was reasonable, given the circumstances of the offence. The question is whether it was reasonably appropriate to identify a sentence of 4 years' custody.

- 23 On behalf of the Solicitor General, it is argued that the applicable guideline was the Sentencing Council Guideline introduced with effect from 1 July 2023. The judge should have considered and applied that guideline. The judge was entitled to part from the guideline insofar as she considered that it was in the interests of justice to do so. Were she to consider it appropriate to meet the justice of the case, she could and should adjust the sentence otherwise identified within the relevant sentencing category. What she was not entitled to do was to ignore the applicable guideline altogether and to refer to a guideline no longer in force.
- 24 In oral argument on behalf of the Solicitor General, it was said that by reference to the guideline applicable from 1 July 2023, this offence fell at or towards the bottom of the range provided in Category A. The judge then could have taken account of the change in the guideline between the date of conviction and the date of sentence and using her discretion and in the interests of justice reduced the sentence still further.
- 25 On behalf of the offender, it is submitted that the judge's approach was the best route to serve the interests of justice. It was said in the written submissions that to do otherwise "could have brought the court's process into disrepute". The offender, so it is said, had a legitimate expectation to be sentenced on the basis of the guideline in force in June 2023.
- 26 Dealing with the guideline applicable from 1 July 2023, it was argued in writing, an argument repeated in oral submissions, that it appears "to unjustly attempt to place many cases into Culpability A when that level of offending ought to be reserved to the most serious episodes of dangerous driving". By reference to the previous guideline, the offender's case was not in the most serious category. The submission made orally was whether one looks at the old guideline or applies the new guideline but places the offence in Culpability B, the sentence imposed was not unduly lenient.
- 27 We are satisfied that the judge's approach was wrong in principle. The applicable guideline was the Sentencing Council Guideline issued on 1 July 2023. The judge was obliged to follow that guideline unless it was not in the interests of justice to do so. There will be cases where the circumstances of the offence and/or the offender are sufficiently unusual to justify a departure from the guideline. That happens from time to time. Judges identify why they are taking the course they do. Sometimes that involves an upward movement beyond the relevant category range. Sometimes the movement will be downward.
- 28 The fact that an offender's sentencing hearing initially was fixed for a date prior to the introduction of a guideline but was then adjourned to a date after the guideline came into effect cannot mean that it would be in the interests of justice not to follow the guideline. There will be many examples of offenders whose sentence happens to be imposed shortly after the introduction of a new guideline which creates a different framework to the one which would have applied if the sentence had been listed a month or even a week earlier. That applies in the context of this guideline in relation to causing death by dangerous driving. It equally applies to other guidelines. In recent months, the Sentencing Council has revised guidelines in respect of cruelty to children and vulnerable people and in relation to

animal cruelty. In both cases, there has been an increase in sentencing levels by reference to those guidelines. In our judgment, it cannot be in the interests of justice in those circumstances to apply the previous guideline.

- 29 As to legitimate expectation, in our view, there is an analogy to be drawn with the position discussed in *Patel & Ors* [2021] EWCA Crim 231 in relation to changes in release provisions. In the various cases considered in *Patel*, appellants or applicants had been due to be sentenced prior to 1 April 2020 when the release provisions were in one form, but, for a variety of different reasons, their sentencing hearings had been postponed, which meant that they found that they were now being sentenced under different release provisions. The relevant principles in relation to that position were set out at [43] and [44] of *Patel*, which we do not need to cite at length. What was emphasised in *Patel* was that there was no question of any “legitimate expectation” because any expectation engendered was, in that case, contrary to the legislative framework. The same principles, in our judgment, must apply to any sentencing guideline at any relevant time.
- 30 The offender, in this case, did not have a legitimate expectation of being sentenced by reference to the guideline introduced in 2008. His only legitimate expectation could have been that he would be sentenced in accordance with the guideline applicable at the date he was sentenced. Far from bringing “the court’s process into disrepute”, application of the guideline introduced with effect from 1 July 2023 would have been in accordance with the law, as clearly stated in the Sentencing Code.
- 31 In his written submissions and orally, counsel on behalf of the offender argued that the Sentencing Council Guideline unjustly places cases into the highest category which is not merited taking account of the nature of those cases. That amounts to disagreement with the approach of the guideline. As explained in *Healey & Ors* [2012] EWCA Crim 1005, that is not a proper argument. Lord Justice Hughes (as he then was) set out the status and function of the Sentencing Council:

“There are inevitably bound to be different views from time to time about the general level of sentencing. In some fields there is a level of public debate, at least about parts of it. That may or it may not be one of the reasons why Parliament elected to create the Sentencing Council as an independent body to take an overview of sentencing and to publish guidelines. At all events, Parliament did so. The Sentencing Council receives a very wide range of information, statistical data, research and opinion, both lay and professional. The collection of information available to it is far wider than the members of this court, individually or collectively, or individual sentencers can hope to have. The Council also engages in a comprehensive consultation programme before it publishes any guideline, frequently with the publication of one or sometimes a succession of drafts for discussion. That process frequently involves extensive testing of commonly encountered scenarios upon experienced sentencers, namely, Crown Court judges and district judges.”

In relation to the argument raised by the offender in this case, he said this:

“That kind of approach, if adopted, would also be contrary to the rule of law to which all judges are committed. Very few judges are fortunate enough to go through life without encountering occasions when they would prefer the law to be otherwise to that which it is. The judge’s duty is, nevertheless, to apply it, whether at first instance or in this court, just as it is the duty of the citizen to obey the law, whether he happens to agree with it or not.”

- 32 The Sentencing Council spent many months considering the guidelines for driving offences introduced on 1 July 2023. The levels of sentence for cases involving a death were particularly anxiously considered. They were the subject of significant consultation, as described by Hughes LJ in *Healey*. Although one factor which was relevant to the Council’s work was the increase in the maximum penalty for causing death by dangerous driving, the guideline was not predicated simply on that increase.
- 33 It follows that, in our judgment, the judge should have considered the Sentencing Council Guideline introduced on 1 July 2023 without reference to the 2008 Guideline. She should not have done what she did do, which was to ignore the new guideline altogether in favour of one which was no longer applicable.
- 34 Had she considered the guideline introduced on 1 July 2023, she would have considered the culpability factors set out in the guideline. She inevitably would have found “deliberate decision to ignore the rules of the road and disregard of the risk of danger to others” and “speed significantly excess of speed limit or highly inappropriate for the prevailing road or weather conditions”, i.e., two factors in Culpability A. There were no factors to be found in any of the other categories of culpability. The starting point for a case falling into Culpability A is 12 years. However, the category range is 8 to 16 years, so as to allow for cases of varying seriousness. There are altogether 10 factors set out under Culpability A. There will be cases in which most, if not all, of those factors are present.
- 35 The judge, in the course of her sentencing remarks, referred to, by reference to the old guideline, Level 1 being reserved for the most serious episodes of dangerous driving. She gave an example of somebody driving at vastly excessive speeds through housing estates, crashing into cars, involving a police chase and resulting in the death of more than one person. That would be a case falling within Culpability A in the new guideline because of the multiplicity of factors within that category. In such a case, a judge would consider towards the top of the category range.
- 36 In this case, we consider that the judge would have been entitled to put the case towards, if not at the bottom, of the category range, namely, 8 years. There were only two high culpability factors. Each factor reflected the same behaviour, namely driving much too fast for the prevailing road conditions. There were relevant aggravating factors. Mr Kristiansen was a vulnerable road user as a cyclist. The offender failed to stop after the accident. Indeed, his behaviour after the accident was reprehensible. There was mitigation. He had a

good driving record, he had positive good character, there was an element of remorse and there was the impact of a first prison sentence on a man with some health issues.

- 37 Taking those matters into account, the appropriate sentence, in our judgment, could not have been less than 8 years' imprisonment. We accept that this is likely to be a longer sentence than would have been imposed had the 2008 guideline been applicable to the offender's case. But it is not certain that this would be the case. Although we do not intend to engage in any detailed analysis of the 2008 guideline, it is not, in our judgment, self-evident that the sentence would have been less than 8 years, even by reference to that guideline. However, whatever the position, it was the Sentencing Council Guideline which applied to this offence and this sentence. The effect of the application of that guideline is a sentence of 8 years' custody.
- 38 It follows that the sentence imposed by the judge was unduly lenient. We give leave to the Solicitor General to refer the sentence. We quash the sentence of 4 years' imprisonment. We impose in its place a sentence of 8 years' imprisonment. The consequence of that is that whilst the discretionary period of disqualification will remain at 4 years, the extension period must now be 4 years also in order to accommodate the time the offender will remain in custody. Therefore, the total disqualification will be 8 years.

CERTIFICATE

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