APPEAL COURT, HIGH COURT OF JUSTICIARY

[2022] HCJAC 22
HCA/2022/000090/XC

Lord Pentland
Lord Doherty

OPINION OF THE COURT

delivered by LORD PENTLAND

in

Appeal against Sentence

by

IAN MOORHOUSE

Appellant

against

HER MAJESTY'S ADVOCATE

Respondent

Appellant: Paterson, (sol adv); Paterson Bell Solicitors
Respondent: Edwards, QC; Crown Agent

27 May 2022

[1] The appellant pled guilty in the Sheriff Court to an indictment served under the expedited procedure allowed by section 76 of the Criminal Procedure (Scotland) Act 1995. The offence was one contrary to section 2B of the Road Traffic Act 1988 of causing death by driving without due care and attention or without reasonable consideration for other road users. He was sentenced to 12 months imprisonment, discounted for the early plea from a starting point of 18 months.

[2] The facts of the case may be summarised as follows.

[3] On 25 February 2020 the appellant, who was then 61 years old, was driving a gas tanker with a weight of 16,000kg. He was making a number of deliveries in the Stirling area on routes that were familiar to him. At about 11.00am he was driving in an easterly direction on the A811 and was approaching a "Y" junction with the B8037 where the latter road forks off to the right. The appellant was in a line of traffic and was directly behind a slow-moving tractor and trailer. The size of the tractor and trailer meant that the appellant's view of the road ahead of him was substantially impaired. He was not able to see oncoming traffic coming towards him in the opposite carriageway until such traffic had almost passed the tractor and trailer.

[4] When he came to the junction with the B road the appellant turned his vehicle across the westbound carriageway. Before doing so, he did not wait until the tractor had moved far enough ahead of him to allow him to have a clear view of oncoming traffic. Tragically, Mrs B was at that moment driving her Volkswagen Golf in the westbound carriageway. The appellant's tanker crossed right in front of her. She was unable to avoid colliding with it. She sustained multiple and serious injuries, from which she died a short time later. Mrs B was in no way to blame.

[5] The Sheriff explains, in his detailed and helpful report, that in considering the appropriate penalty he had regard to the Scottish Sentencing Council guideline "The Sentencing Process". He assessed the seriousness of the offence, as determined by the appellant's culpability and the harm caused (paragraph 7 of the guideline). As the harm which resulted was doubtless greater than any actually intended by the appellant, the Sheriff correctly recognised that an assessment of culpability would be influenced by the extent to which the appellant ought to have foreseen harm (paragraph 17).

[6] The Sheriff took the view that the harm caused by the appellant could hardly have been more serious. Mrs B was 39; she was married and had four children, aged between 12 and 19. She was employed as a housekeeper and was driving home from work. She was trapped in her car for around 45 minutes until she was cut free. It is not known whether during that time she was conscious, but if she was her death would have been painful, frightening, and traumatic. Mrs B's husband and family attended the Sheriff Court at the hearing when the guilty plea was tendered and later when sentence was imposed. In his victim statement Mr B described the suffering caused to this close family as "crippling" and "the worst of times", to which he could not do justice in writing.

[7] As to the level of the appellant's culpability, the Sheriff considered this to be substantial. He ought to have foreseen the harm he caused. His decision to drive across the opposing carriageway was not a case of momentary inattention or distraction. He deliberately took a chance. There was no need for him to do so. He should have slowed down or stopped to ensure that he had a proper view of the road ahead. In view of his vehicle's slow speed, its size and weight, the time it would take for him to cross the carriageway, and the possibility that cars would be coming towards him at up to 60 miles per hour, there was obvious potential for the very type of collision which in fact happened. As an experienced HGV driver the appellant would (or should) have known this. His dashcam showed two westbound cars passing the appellant's vehicle just seconds before he turned; he would have been unable to see them because of the proximity of the tractor and trailer. So the appellant was put on notice of the precise danger just before he made the fatal manoeuvre.

[8] In these circumstances, the Sheriff regarded the offence as a very serious one, for which only a custodial sentence was appropriate. He considered that the appropriate

sentencing range was between 18 and 24 months imprisonment. A non-custodial alternative would not have been sufficient to address the sentencing objectives of punishment and deterrence; in view of the gravity of the offence, those objectives were paramount. The Sheriff noted that the appellant had one previous conviction: in 2013 in the District Court for using a mobile phone while driving. He had accepted responsibility for the present offence and was remorseful; he had a good employment record and a pro-social lifestyle; he was on medication for his circulation and his cholesterol level.

[9] Taking account of the aggravating and mitigating considerations, the Sheriff concluded that the headline sentence should be at the lower end of the range, namely 18 months imprisonment. He discounted the sentence to one of 12 months in view of the early plea. He disqualified the appellant from driving for 46 months.

[10] Before us Mr Paterson reiterated many of the points that had been made to the Sheriff on the appellant's behalf. The appellant was now 64 years of age. He no longer held an HGV licence and in view of his health problems was no longer able to drive any vehicle. He was though capable of undertaking unpaid work. At the time he was sentenced the appellant was actively looking for work and was a volunteer for a charity. He had no previous convictions for careless or dangerous driving. He had made a terrible mistake in what was a momentary error of judgement. He had displayed remorse and deep regret. He had a supportive family and a good work history. A direct alternative to custody was available. It was accepted that the offence was very serious, but in the whole circumstances the imposition of a custodial sentence was excessive and inappropriate. A community based disposal was sufficient. Imprisonment should be a last resort.

[11] We are unable to accept these submissions. We acknowledge that the appellant was a person of generally good character, although we consider that his previous conviction for

using a mobile phone while driving is a factor that should not be entirely left out of account. The present offence was, however, undoubtedly a very serious one with devastating consequences. The appellant was an experienced heavy goods vehicle driver. He should have appreciated that by deciding to drive across the opposite carriageway of a major arterial road without having a proper view of oncoming traffic he was taking a wholly unjustified risk that carried with it a high probability of causing a collision with potentially fatal consequences. We consider that his standard of driving fell not far short of dangerous driving. We note, as did the Sheriff, that in such circumstances the Definitive Guideline issued by the Sentencing Council for England and Wales suggests that the appropriate starting point is 15 months' custody with a range of 36 weeks to 3 years' custody. The Guideline is a valuable cross-check, particularly in the context of an offence that applies across the United Kingdom. The headline sentence selected by the Sheriff fell within the range given in the Guideline. In our opinion, a custodial sentence was amply merited in view of the high level of culpability and the terrible consequences. A non-custodial sentence would not have met the sentencing objectives of punishment and deterrence in view of the gravity of the present offence. We are satisfied that the approach taken by the Sheriff was one that took proper account of all the relevant considerations. The sentence he imposed was not excessive.

[12] The appeal is refused.