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Neutral Citation Number: [2023] EWCA Crim 1510

IN THE COURT OF APPEAL

CRIMINAL DIVISION

CASE NO 202303654/A4

Royal Courts of Justice
Strand
London
WC2A 2LL

Wednesday, 6 December 2023

Before:

LORD JUSTICE EDIS
MR JUSTICE JEREMY BAKER
SIR ROBIN SPENCER

REX
V
KYLE HODGSON

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MR D HUGHES appeared on behalf of the Appellant

J U D G M E N T

SIR ROBIN SPENCER:

1. This is an appeal against sentence brought by leave of the single judge.
2. On 22 September 2023 in the Crown Court at Sheffield, the appellant, who is now 23 years old, was sentenced by Mr Recorder Serr to a term of 12 months' imprisonment for an offence of dangerous driving. He had pleaded guilty at the first hearing in the Magistrates' Court and had been committed for sentence to the Crown Court. He had also pleaded guilty to associated offences of driving without insurance, driving without a licence, criminal damage and possession of cannabis, for which he had also been committed for sentence. The judge imposed no separate penalty for each of those offences, save to order appropriate endorsements for the motoring offences. On the charge of dangerous driving, the appellant was disqualified from driving for 18 months and until he passed an extended retest.
3. The grounds of appeal in short are that the judge's starting point of 18 months for the dangerous driving was too high. Although that was properly reduced to 12 months with a full one-third credit for his early guilty plea, it is said that the judge failed to give any credit for the appellant's personal mitigation. It is said that if a custodial sentence was required at all it should have been suspended.
4. We are grateful to Mr Hughes for his written and admirably succinct oral submissions.
5. The dangerous driving took place at around 10.40 am on 14 June 2023. The appellant was driving a Vauxhall Astra. He told the probation officer who prepared the pre-sentence report that the car belonged to a friend who had bought it but had no licence and had asked the appellant to drive. The appellant had no licence either and he was not insured to drive the car.

6. A police car came up behind the Astra by chance. A routine check revealed that the only person insured to drive the vehicle was female, whereas the police officer could see that the driver and the passenger were both males. Another police car began to follow the Astra with its blue lights illuminated. It attempted to stop the Astra but the appellant accelerated away at considerable speed.
7. There then followed a prolonged piece of very dangerous driving by the appellant which was captured almost in its entirety on the dashboard camera of the police car following the appellant. It lasted for some five minutes. We have watched the footage for ourselves. We agree with the judge's description that it is extremely disturbing.
8. It is unnecessary to describe every twist and turn of the dangerous driving. Suffice it to say that it included driving at grossly excessive speeds in built-up areas where the limit was 30 mph and sometimes only 20 mph. He drove at speeds up to 70 mph. In an attempt to shake off the police car he made sudden dangerous turns into side roads, cutting corners. On occasions his path was blocked by vehicles ahead which the appellant avoided by mounting pavements. At a junction with a main road he drove across the junction without braking. For a while he lost control when attempting to make another sharp right turn before crossing two pavements to rejoin the main carriageway. He ignored attempts by the police car to get him to stop.
9. In Collinson Road he found his path blocked by a skip lorry which was stationary in the middle of the road. There was also a parked car blocking the offside carriageway of this fairly narrow road. In a desperate attempt to get away the appellant drove onto the offside pavement at speed, through a narrow gap, colliding in the process with the offside of the parked car, albeit striking it only a glancing blow.
10. We note on the footage at this point that the appellant's front seat passenger had opened

the front nearside door just before passing the parked car, shutting it again just in time to avoid a far more serious collision with that car as the appellant mounted the pavement.

We infer that the passenger was not expecting the appellant to be able to get past this blockage of the road and had been about to decamp from the vehicle.

11. Only a short distance further down the road the car stopped. The appellant and his passenger got out and abandoned the vehicle. The appellant climbed into the garden of a neighbouring house damaging a fence panel, hence the charge of criminal damage. The cost of a new panel was around £80.
12. The police were able to chase and detain the appellant but his passenger was not apprehended. The appellant was found to have a small amount of cannabis in his trouser pocket. The appellant told the probation officer that it was because he had this cannabis on him, and because he knew he was driving with only a provisional licence, that he panicked when the police car began to follow him on blue lights.
13. The appellant had no previous convictions but he had cautions for possessing weapons in a public place and for possession of cannabis. His last caution for cannabis was 12 months earlier.
14. There was a pre-sentence report. The appellant told the probation officer that he had been caring for his partner, who was suffering with post-natal depression, and for their two children. He was also the carer for his mother who had mental health issues and whose partner had recently died in tragic circumstances. The appellant was not in regular employment but had recently started work for his partner's father on civil engineering contracts for a probationary period. The appellant expressed to the probation officer remorse for his dangerous driving, telling her when asked about the potential victims: "It doesn't bear thinking about." The recommendation in the pre-sentence report, if custody

could be avoided, was for a two year community order with various requirements. There were glowing character references from the appellant's mother, from his partner and from his partner's mother.

15. In passing sentence, the judge concluded that the dangerous driving was a Category 1A offence under the relevant Sentencing Council guideline. It was culpability A for several reasons: this was a prolonged, persistent and deliberate course of driving; it involved obviously highly dangerous manoeuvres; it was a deliberate decision on the part of the appellant to ignore the rules of the road and there was disregard for the risk of danger to others. It was Category 1 harm because damage had been caused to property. The judge was satisfied from viewing the footage that the appellant had collided with the parked car when he went up on the pavement to get past it. Mr Hughes confirmed in his oral submissions this morning that it is accepted that contact was made, albeit the damage was not serious.

16. Under the guideline the starting point for a Category 1A offence was 18 months' custody, after trial. The judge identified as mitigating factors the lack of relevant convictions, the appellant's personal circumstances as set out in the pre-sentence report which we have outlined, and to an extent his relatively young age. He concluded that after a trial the appropriate sentence would have been 18 months which he reduced to 12 months for the early guilty plea. The judge continued:

"I have considered whether this sentence can be suspended and I've considered the guideline [on] imposition of community and custodial sentences. In my view, it cannot. The offence is simply too serious and appropriate punishment can only be achieved by immediate custody given the seriousness of this driving."

17. Mr Hughes submits first that the judge was wrong to find that this was a Category 1A

offence. Category 1 harm can be found only if one of the two specified factors exist, namely that the offence results in injury to others, or that damage was caused to vehicles or property. He submits that any damage to the parked car was minimal; there had been no complaint from the owner or keeper, and there was no photograph of the presumed damage. However, Mr Hughes accepts that the inference was properly drawn that some limited damage must have been caused. He points out that had the judge assessed it as Category 2A rather than 1A the starting point would have been nine months rather than 18 months.

18. Second, Mr Hughes submits that even if the judge was entitled to find it to be a Category 1A offence with a starting point of 18 months, the only reduction the judge made was in respect of the guilty plea, the full one-third to which the appellant was entitled. There was no credit for the personal mitigation which the judge had identified in his sentencing remarks.
19. Third, Mr Hughes submits (and this is the nub of his argument this morning) that any custodial sentence should have been suspended. Looking at the Sentencing Council guideline on the Imposition of Community and Custodial Sentences he submits that the appellant satisfied all three of the relevant criteria favouring suspension: there was a realistic prospect of rehabilitation; there was strong personal mitigation; immediate custody would result in significant harmful impact upon others. On the other side of the equation, he submits that two of the three factors militating against suspension were absent: it could not be said that the appellant presented a risk or danger to the public; there was no history of poor compliance with court orders.
20. As Mr Hughes put it in the grounds of appeal, the only issue to be determined was whether the offending was so serious that only immediate custody could be justified. On

that issue Mr Hughes submits that the appellant was still a young man; this was his first appearance in any court; he was of good character; he had recently started employment and appeared to be doing reasonably well. There were supporting character references.

21. We have considered all these submissions very carefully. We think the judge was entitled to conclude that this dangerous driving was a Category 1A offence under the guideline. The judge was entitled to find that damage had been caused to the car with which the appellant collided, damage which could have been so much worse leaving aside the question of potential serious personal injury. The judge was therefore correct to take a starting point of 18 months.
22. The only aggravating factor under the guideline, although the judge did not mention it as such, was that other driving offences were committed at the same time as the dangerous driving. That would not in our view have merited a significant increase in all the circumstances, nor would the offences of criminal damage and possession of cannabis which would normally have been met only with a modest financial penalty.
23. However, there was some mitigation as the judge identified in his sentencing remarks. The appellant had no previous convictions and was essentially of good character. There was the personal mitigation of his domestic circumstances. We think that this mitigation called for some reduction from the starting point of 18 months before the final reduction for the guilty plea.
24. For that reason we think that the sentence of custody of 18 months reduced to 12 months was manifestly excessive. We think that the proper sentence after trial would have been 15 months, not 18 months, and with credit of one-third for plea the sentence should have been 10 months rather than 12 months.
25. As to the question of suspension, it was for the judge alone to decide whether in the

exercise of his discretion the sentence could properly be suspended. Although the judge did not specifically address each of the factors in the guideline for and against suspension, which is best practice, he clearly had all of those factors in mind. As the guideline makes clear it is for the judge to weigh the factors for and against; it is not a question of numbers. We think the judge was entitled to conclude that this dangerous driving was so serious that only immediate custody could be justified. We are unable to say that his discretion was exercised wrongly.

26. The appellant has already been in custody for nearly 11 weeks. We note that he was due to be released on home detention curfew in some two weeks' time on 22 December. In those circumstances, he will shortly have served the equivalent of the 10 month sentence we propose to substitute.
27. In view of this reduction in the sentence, we are also obliged to reduce the period of the disqualification. The judge imposed a mandatory 12-month disqualification, plus an uplift of six months, equating to half the length of the custodial sentence. Half of the custodial sentence as substituted will be five months not six months. It follows that the disqualification should be reduced from 18 months to 17 months.
28. We therefore allow the appeal. For the charge of dangerous driving we quash the sentence of 12 months' imprisonment and substitute a sentence of 10 months' imprisonment. We quash the disqualification of 18 months and substitute a period of 17 months. All other orders remain as before.