

**WARNING: reporting restrictions may apply to the contents transcribed in this document, particularly if the case concerned a sexual offence or involved a child. Reporting restrictions prohibit the publication of the applicable information to the public or any section of the public, in writing, in a broadcast or by means of the internet, including social media. Anyone who receives a copy of this transcript is responsible in law for making sure that applicable restrictions are not breached. A person who breaches a reporting restriction is liable to a fine and/or imprisonment. For guidance on whether reporting restrictions apply, and to what information, ask at the court office or take legal advice.**

**This Transcript is Crown Copyright. It may not be reproduced in whole or in part other than in accordance with relevant licence or with the express consent of the Authority. All rights are reserved.**



IN THE COURT OF APPEAL  
CRIMINAL DIVISION ON APPEAL FROM THE  
CROWN COURT AT WOLVERHAMPTON HHJ  
REBECCA CRANE T20227224

CASE NO 202302977/A4

NCN: [2024] EWCA Crim 1162

Royal Courts of Justice  
Strand  
London  
WC2A 2LL

Friday 20 September 2024

Before:

LORD JUSTICE DINGEMANS

MRS JUSTICE THORNTON

MR JUSTICE LINDEN

REX

V

RUBEN MATTHEW MARKS

Computer Aided Transcript of Epiq Europe Ltd,  
Lower Ground, 46 Chancery Lane, London WC2A 1JE  
Tel No: 020 7404 1400; Email: rcj@epiqglobal.co.uk (Official Shorthand Writers to the Court)

NON-COUNSEL APPLICATION

**J U D G M E N T**

MRS JUSTICE THORNTON:

### **Introduction**

1. The appellant appeals against sentence by limited leave of the single judge, with leave being limited to the unlawful element of the sentence.
2. On 14 October 2022, the appellant pleaded guilty to a count of causing serious injury by dangerous driving, contrary to section 1A of the Road Traffic Act 1988.
3. Subsequently, on 29 June 2023, he was convicted of causing grievous bodily harm with intent, contrary to section 18 of the Offences Against the Person Act 1861.
4. He was sentenced to 9 years and 3 months' imprisonment for the offence of causing grievous bodily harm. No separate penalty was imposed in respect of the driving offence. The appellant was also disqualified from driving and an extended re-test was ordered.

### **The sentencing hearing**

5. Given the narrow issue raised by the appeal, it is not necessary for us to recount the facts, which are summarised in the note prepared by the Court of Appeal Office. In short summary, the appellant drove at speed at the victim, causing a bleed on the brain, a significant wound to his left leg which required a skin graft and fractures to his right pelvis and left elbow.
6. During the sentencing hearing, the judge referred to the case of R v Butler [2023] EWCA Crim 676 and suggested that it was preferable to order the lesser count to lie on the file than impose no separate penalty. However, prosecution counsel raised the issue of the driving disqualification, suggesting the disqualification may only be available if the count

was not ordered to lie on the file. After further discussion, the judge imposed no separate penalty in relation to the driving offence.

### **Analysis**

7. The cases of R v Butler (citation as above), referred to by the judge during the hearing, and R v Ismail [2019] EWCA Crim 290, make clear that, where a defendant is charged with alternative offences and in circumstances where they plead guilty to the lesser offence but are subsequently convicted of the more serious offence, the proper approach is for the court to order the lesser offence to lie on the file rather than to impose no separate penalty on that offence. This is because a guilty plea does not amount to a conviction unless and until a sentence is passed. The practice therefore avoids a defendant being convicted of two alternative offences for the same criminal conduct. However, a decision to impose no separate penalty for a particular offence represents the court's sentence for that offence and gives rise to an additional conviction.

### **Decision**

8. In these circumstances, we quash the sentence of no separate penalty for the count of causing serious injury by dangerous driving and direct that the count lie on the file. The disqualification order remains, but is to be treated as imposed by the Court pursuant to section 164 of the Sentencing Act 2020. The order for an extended re-test is quashed on the basis it applies only to the obligatory disqualification which was imposed under section 36 of the Road Traffic Offenders Act 1988 in relation to the count of dangerous driving, which is now to lie on file.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

Lower Ground, 46 Chancery Lane, London WC2A 1JE

Tel No: 020 7404 1400

Email: [rcj@epiqglobal.co.uk](mailto:rcj@epiqglobal.co.uk)