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IN THE COURT OF APPEAL
CRIMINAL DIVISION



Royal Courts of Justice
The Strand
London
WC2A 2LL

[2024] EWCA Crim 1226

ON APPEAL FROM THE CROWN COURT AT SNARESBROOK
(MR RECORDER JEREMY BARNETT) [01N11385223]

Case No 2024/02833/A2

Thursday 29 August 2024

B e f o r e:

LORD JUSTICE POPPLEWELL

LORD JUSTICE FULFORD
(Sitting in Retirement)

MRS JUSTICE TIPPLES

R E X

- v -

MAVIS ANSERE

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Miss S Wright appeared on behalf of the Appellant

APPROVED JUDGMENT

LORD JUSTICE POPPLEWELL:

Introduction

1. On 19 October 2023 the appellant pleaded guilty at the Magistrates' Court to one offence of dangerous driving and one offence of possession of cannabis. The case was committed to the Crown Court for sentence.

2. On 30 July 2024, in the Crown Court at Snaresbrook, she was sentenced by Mr Recorder Barnett to nine months' imprisonment for the dangerous driving and disqualified from driving for three years four and a half months. It is mandatory for such disqualification also to last until an extended re-test is passed. This requirement was included in the court record but was not pronounced in open court as it needs to have been to form part of the sentence. That does not make it unlawful, and we remedy the position by announcing it in open court now.

3. The appellant appeals against sentence with the leave of the single judge on the sole ground that the sentence ought to have been suspended.

The Incident

4. On 3 October 2023, at around 3.50 pm, Mr Perchlicki was riding his motorcycle in the Essex Road, North London towards the Angel, Islington. The appellant was driving a white Audi A3 with a male passenger. She sought to join the Essex Road and a van let her in. Mr Perchlicki was riding on the main road, overtaking the van, and so appeared in front of the Audi. The two vehicles nearly collided but did not make contact. Fault for the near collision cannot be determined from the CCTV. Each party blamed the other. Mr Perchlicki pulled into the side of the road a few yards further on and the Audi pulled up alongside him. They were side by side for around four seconds, during which a verbal exchange took place. Mr Perchlicki rode off. As he did so he pushed in the wing mirror of the Audi, which sprang back. There was no evidence before the court of any damage to the Audi or any insurance

claim.

5. The appellant set off after Mr Perchlicki in pursuit. As she moved to undercut the traffic in pursuit of him, she hit a bicycle. It and its rider, Ms Kelly, were thrown onto the kerb and pavement. The appellant's Audi was then travelling at between 30 and 40 mph in a 20 mph limit. Ms Kelly sustained a hairline fracture to her collar bone and swelling to her back and foot.

6. The appellant did not stop. It is said in the Grounds of Appeal that she did not notice that she had hit the cyclist. Ms Wright, who appeared on behalf of the appellant in the court below as she does before us, made that submission to us on her behalf, on her instructions. However, the appellant submitted a basis of plea on 6 June 2024 in which she said at paragraph 9:

"I accept that I hit the cyclist. At the time I was not sure if I hit her, but I accept I did not stop to check."

The natural inference from that, as Ms Wright has accepted, was that she had at least suspected that she might have hit the cyclist and that it was that which required a decision to be made as to whether or not to stop.

7. At that stage the appellant had not seen the CCTV footage. On 24 June there was submitted by her an addendum basis of plea after she had watched the footage which shows the collision very clearly. In it she said:

"I resile from paragraph 11 [meaning paragraph 9] regarding hitting the cyclist."

That was obviously not resiling from what had previously been said about accepting that the

cyclist had been hit by her because it is perfectly apparent from the footage. A fair reading of the addendum basis of plea was that it was a withdrawal of her suggestion that she did not know at the time that she had hit the cyclist. It seems to us that that acceptance was inevitable from the CCTV footage itself which we have viewed several times. It shows a very substantial collision, not a glancing blow, which hurls the bicycle and its rider, Ms Kelly across the kerb and onto the pavement. It is inconceivable that neither the appellant nor her male passenger could have been aware of the collision. If she were initially unaware of it herself, it is inconceivable that her male passenger, who must have been aware of it, would not have drawn it to her attention.

8. The appellant continued to chase Mr Perchlicki's motorbike. She weaved in and around the traffic, both undercutting and overtaking. She stopped a little ahead of him. The male passenger got out and went towards him, shouting aggressively. Mr Perchlicki escaped by crossing the traffic on his motorbike to go in the opposite direction and stopped a little distance away. The appellant got out of her car and joined her male passenger in shouting verbal abuse. Mr Perchlicki called the police and turned across the road to let the van behind him pass, so that he was now on the same side of the road as the Audi and facing in the same direction, a little way off behind it in a line of traffic.

9. The appellant and the male passenger got back into the car and she drove towards Mr Perchlicki by turning across the road into a bus lane before coming back to her own side of the road and through a gap in the traffic. She then drove the wrong way in the bus lane on her own side of the road towards him. He passed the Audi on the outside, avoiding the remonstrating male passenger. The appellant's car turned once again to pursue him by crossing the road and travelling again in the wrong direction in a bus lane before rejoining the nearside carriageway. The Audi chased past the motorbike and drew into the bus lane to block its path, bringing him to a halt. He managed to push back with his legs, to go around

the back of the car and to ride off in order to park up in a safe location and await the police.

10. When the police stopped the Audi, the appellant was found to be in possession of a small quantity of cannabis. It is not suggested that she had been under the influence of drugs during the incident.

11. During the incident, which lasted about five minutes, the appellant tried to collide with the motorbike several times. When she was in custody she had said that she was only trying to box him in and had not meant to hit him. However, the Crown's case was that she tried to collide with the motorbike several times, and she fell to be sentenced on the basis of that case. Moreover the pre-sentence report records her as accepting the prosecution case that she attempted to drive into the side of the motorbike on several occasion. Before us, Ms Wright accepted that the appellant fell to be sentenced on the full basis of the prosecution case, although she attempted, with some equivocation, to suggest that that was consistent with the appellant having tried to box him in. It is not. The Crown's case was that the appellant tried to collide with motorbike on a number of occasions, and that was the case which she expressly accepted to the author of the prep-sentence report.

Antecedents

12. The appellant was 38 years of age at the time of sentencing and was relatively lightly convicted. Of relevance, however, was a conviction for dangerous driving in 2017, for which she was sentenced to 13 months' imprisonment suspended for 13 months, disqualified from driving for 18 months and until an extended re-test was passed, with requirements of a 16 week curfew and 200 hours of unpaid work.

13. The Recorder had no details of the facts of that offending. In response to a request from this court, Ms Wright gave us some information about what had happened on that

occasion. In the written Grounds of Appeal she said that the appellant was in a McDonald's car park when she was attacked by a gang of people; that she ended up bleeding and with a fractured eye-socket; and that she then got into her car and drove dangerously into other vehicles within the car park. That was the extent of the incident as referred to in the written grounds.

14. When we explored the matter further during the course of the hearing, Ms Wright told us that at one stage the appellant had driven her car at people as well as at other cars, but said that it was in an attempt to escape, because she was surrounded. Ms Wright said that she was speaking on instructions, but that she had also seen a report from the time of the sentencing for that earlier offence. In response to a query from the court, she said that that report was not on the DCS.

15. Fortunately, the former Vice President, Fulford LJ was able during the course of the hearing to search the DCS and there to find the record of the offending which was provided for the sentencing hearing on that occasion. It gives an entirely different picture from that given by Ms Wright which turns out to have been seriously misleading. It includes the following:

"[The appellant] gets into the black Audi (registered to her) and drives at [one of the people there]. She is then seen to repeatedly drive at several people and cars. She crashes into several of the cars causing a large amount of damage to her car as well as the other cars.

[The appellant] is seen to drive the car towards the exit and then drive back again to continue hitting the cars. The black Audi is lined up with one of the females and if that female had not jumped out of the way, then she would have been seriously injured. At one point the Audi hits the blue car with a person standing in between the open driver's door. The Audi hits the car and if the open door had not been there then the person would have borne the brunt of the impact."

16. It is unfortunate that none of the circumstances of the previous offending was before the sentencing court. It is equally, if not more, unfortunate that the account that we were given by Ms Wright was seriously misleading so as to underplay the seriousness of the appellant's offending.

17. The appellant had what was described in the pre-sentence report as a "poor record of supervision" under the order, which she breached. As a result, she was given a further number of hours of unpaid work to perform (the number of which we do not know) and the suspension period was extended by five months. In the course of the hearing we explored with Ms Wright what the nature of that poor record was. She told us initially that the breaches which gave rise to the variation of the sentence were two occasions in July 2018 when the appellant had failed to appear for unpaid work. On being pressed, it appeared that Ms Wright was also aware of two other occasions on which there had been a failure to appear for unpaid work in October and November of the previous year. Ms Wright's submissions on this question left it unclear to us whether she was herself aware of all of the occasions on which there had been a failure to comply. Of the 42 appointments for unpaid work which had been offered to her, the appellant had attended only 13. After the sentence had been varied, she thereafter complied with the order.

18. There was other material before the Recorder at the sentencing hearing. The short-form pre-sentence report recorded that the appellant accepted the prosecution case as to the facts of the incident and that she accepted her culpability and did not seek to minimise her actions in any way. The author of the report said that she accepted that her actions were "careless" and, with insight into the impact which her actions had had, deeply regretted the injury caused to the cyclist, Ms Kelly. The report said that she had had a happy childhood, had been diagnosed as suffering depression and stress some three years earlier, and that she suffered

from endometriosis, IBS and asthma. The author concluded that custody would have an adverse impact upon the appellant and her family and opined that she would find it difficult to manage her emotional and physical wellbeing if incarcerated. The author said that if the court wished to consider an alternative to custody, the appellant would be suitable for a rehabilitation activity requirement and curfew.

19. There was a character reference from a friend who had known the appellant since childhood who said, amongst other things, that it would be a great misfortune for her to be separated from her adult son; and from a mentor from the charity, Spark2Life, which aims to reduce the risk of re-offending, with which the appellant had engaged on her own initiative in January 2024. These documents made reference to childhood trauma, whereas she had described to the author of the pre-sentence report a happy childhood. The explanation which was given was that she had suffered childhood abuse and that she had only recently felt able to discuss it and to explore it with those she trusted, which involved discussions with her GP. Ms Wright placed some considerable reliance on that childhood abuse and the appellant's present ability to discuss it. However, no documents were placed before the Recorder, or before us, to identify the nature of the abuse or any of the medical treatment.

The Sentencing

20. The offending fell within category A1 of the guideline, which has a starting point of 18 months' custody and a range of one to two years. The Recorder treated the aggravating and mitigating factors as justifying a custodial sentence of nine months, after discount for the guilty plea. Unsurprisingly, no complaint is made about that. It could properly, in our view, have been a good deal longer, even had it been based solely on the circumstances of the current offending and ignoring the previous conviction.

21. In addressing whether the sentence could be suspended, the Recorder referred to the

three factors in the Sentencing Council's Imposition Guideline, which would point to immediate custody. He said that custody was necessary for the protection of the public because there was a risk of repeated behaviour if the appellant got behind the wheel again. The fact of disqualification did not meet that risk, because people drove whilst disqualified. He said that appropriate punishment could only be achieved by immediate custody in light of the CCTV footage, which showed her using a motor vehicle as a weapon. He said that there was a history of poor compliance with court orders in relation to the sentence imposed for the previous offence of dangerous driving. He did not address the factors identified in the Imposition Guideline which can point towards suspending a sentence.

The Grounds of Appeal

22. Ms Wright argues that the Recorder erred in relation to the factors which he considered as requiring immediate custody. There was, she submits, no risk to the public which was not adequately dealt with by the period of disqualification because the risk only arose in relation to road rage when driving and that it was wrong to consider a risk of driving when disqualified when the appellant herself had complied with the earlier disqualification, had taken the extended re-test, and had complied with an interim disqualification which had been imposed for the index offence at the Magistrates' Court. Ms Wright submitted that the appellant did not have a history of disobeying court orders. She had done so once, but had thereafter complied. The offending, it was submitted, was not so serious that only immediate custody had to be imposed. Further, Ms Wright submitted that the Recorder failed to take into account the guideline factors which militated in favour of suspension. The appellant was assessed by the author of the pre-sentence report as suitable for a rehabilitation activity requirement. She had taken steps to address the trauma which underlay her depression and anxiety, all of which pointed to a realistic prospect of rehabilitation. That, too, was supported by an acceptance of her culpability, showing remorse and showing insight.

23. It is submitted that the appellant has strong personal mitigation, comprising the following: that she was the victim of child sexual abuse, which she has only recently been able to address; that she currently suffers from anxiety and depression; that she suffers from the debilitating condition of endometriosis; and that as a single parent she has raised a son who has grown to be a caring, hard-working man who has avoided any trouble in the community where that has sadly not been the norm. Her son is now in his early 20s.

24. As to impact on others, the appellant is not the carer for dependent children, but Ms Wright relies upon the fact that the probation officer and both of the appellant's referees expressed the view that an immediate custodial sentence would have a detrimental effect on her adult son's wellbeing, given the strong bond that they have.

25. Ms Wright also relies on the view of the author of the pre-sentence report, that custody would be detrimental to the appellant, and on the guidance in various sources about the adverse impact of imprisonment on women in particular. Further, she relies on the guidance in *R v Ali* [2023] EWCA Crim 232; [2023] 2 Cr App R(S) 25, and in *R v Foster* [2023] EWCA Crim 1196; [2024] 1 Cr App R(S) 29 in relation to the current conditions of prison overcrowding.

Discussion

26. We take the Imposition Guideline factors in turn. First, "offender presents a risk/danger to the public". This is clearly the case when the appellant is behind the wheel of a vehicle. However, we think that there is some force in Ms Wright's point that the risk to the public would largely be met by the order for disqualification from driving, which would keep the appellant off the road for longer than the period of the custodial sentence. We would not entirely accept that because she had complied with the previous disqualification and the interim disqualification there was no risk of her driving whilst disqualified; but we accept that

the protection of the public is not a strong factor in favour of immediate custody.

27. The next factor is "appropriate punishment can only be achieved by immediate custody". Here the seriousness of the offending points strongly towards immediate custody. This was a serious case of dangerous driving in which, as the Recorder emphasised, the appellant sought to use the car as a weapon to collide with Mr Perchlicki's motorbike in a persistent manner over a period of five minutes. The culpability and harm arises not only in relation to the collision with the cyclist, Ms Kelly, as the appellant seems to think, but also in relation to Mr Perchlicki. The dangerously aggressive driving, in which she sought to collide with him on several occasions, might have resulted in serious injury to him. The seriousness of the offending is then significantly increased by the previous offence of dangerous driving. The circumstances which are now known are of another offence of very serious dangerous driving, which put in danger not merely vehicles but individual people who were at risk of serious injury. The appellant had already had one reprieve in having her sentence suspended for that offending and could reasonably expect that any other serious offending of a similar nature would be bound to result in immediate custody. The gravity of this being a second offence of dangerous driving is not significantly diminished by the first offence occurring some six and a half years earlier. The appellant was a mature adult on both occasions.

28. The next factor in the guideline to be considered is "history of poor compliance with court orders". This, too, points towards immediate custody in this case. The Recorder was justified in placing weight on the fact that, having been spared custody on the condition that she complied with the requirements, the appellant then failed to do so. Such details as we have of the breaches suggest that this was more than some minor failure, which is confirmed by the pre-sentence record that her response to supervision was "poor"; that Ms Wright has told us that there were at least four occasions of breach; and that the breach was treated as sufficiently serious not only to require a five month extension of the suspension period, but to

impose a number of further hours of unpaid work. This was properly described as a history of poor compliance with court orders.

29. We turn to the factors indicating that it may be appropriate to suspend a custodial sentence. The first is "realistic prospect of rehabilitation". In so far as Ms Wright submitted that this was demonstrated by a full acceptance of guilt, full remorse and insight into the impact of the appellant's conduct, we feel unable to accept that that is the case. The material which was before the sentencing court and which is before this court demonstrates that, contrary to the impression given to the author of the pre-sentence report, the appellant did seek to minimise her culpability. She did not fully accept her responsibility and she showed neither full insight nor remorse. She is recorded in the pre-sentence report as saying that when the car and the motorbike first drew alongside each other shortly after the near collision, Mr Perchlicki approached the appellant's side of the car, waving his arms and started kicking her car before he rode off. The CCTV shows this to be untrue. Mr Perchlicki did not get off his motorbike and approach her side. Nor did he kick the car, whether on her side or at all. The appellant submitted a basis of plea, which was later abandoned, in which she suggested that she had only followed the motorcyclist because she wanted to obtain his details for insurance purposes. This was obviously untrue and was not persisted in by Ms Wright before us.

30. These were clear attempts to minimise the appellant's culpability. Moreover, her actions were much more serious than merely being "careless", which was all she accepted to the author of the pre-sentence report. Furthermore, her remorse for the impact on Ms Kelly did not apparently extend to remorse for the use of the car as a weapon to try to knock down Mr Perchlicki, the impact of which was not the subject of any understanding or insight. She showed no insight at all into Mr Perchlicki being a victim of her offending.

31. As to the next factor of "strong personal mitigation", we disagree that such is present. The appellant's health conditions (mental and physical) provide some personal mitigation, but they are not severe disabilities, and they are perfectly capable of being catered for in custody.

32. The last factor is that "immediate custody will result in significant harmful impact upon others". The impact relied upon is, in reality, no more than that her adult son will miss her for the short period she will be detained in custody. This is not significant.

33. In addition to these factors, there also needs to be taken into account the current overcrowding conditions in prison and the matters referred to in *R v Ali* and *R v Foster*.

34. Taking all these matters into account, we do not think that the Recorder can properly be criticised for imposing an immediate custodial sentence. In the light of the seriousness of the offending, the seriousness of the previous offending for dangerous driving which resulted in a suspended sentence (with which the appellant failed fully to comply), and the consequences for Ms Kelly, we have no hesitation in saying that this is a case in which immediate custody was called for.

35. Accordingly, the appeal will be dismissed.

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

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