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Neutral Citation No. 2024] EWCA Crim 749

IN THE COURT OF APPEAL  
CRIMINAL DIVISION

Case No: 2024/01562/A3



Royal Courts of Justice  
The Strand  
London  
WC2A 2LL

Friday 21<sup>st</sup> June 2024

**B e f o r e:**

**LORD JUSTICE DINGEMANS**

**MR JUSTICE BRYAN**

**HIS HONOUR JUDGE LICKLEY KC**  
**(Sitting as a Judge of the Court of Appeal Criminal Division)**

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**ATTORNEY GENERAL'S REFERENCE**

**UNDER SECTION 36 OF**

**THE CRIMINAL JUSTICE ACT 1988**

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**R E X**

**- v -**

**JOSHUA GREGORY**

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**Mr N Hearn** appeared on behalf of the Solicitor General

**Mr A Wesley** (Solicitor Advocate) appeared on behalf of the Offender

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

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## **LORD JUSTICE DINGEMANS:**

### **Introduction**

1. This is an application by His Majesty's Solicitor General, under section 36 of the Criminal Justice Act 1988, for leave to refer to this court a sentence which he considers to be unduly lenient. We grant leave.
2. On 12<sup>th</sup> January 2024, the offender, Joshua Gregory (now aged 28) pleaded guilty to one count of causing death by dangerous driving.
3. On 28<sup>th</sup> March 2024, he was sentenced to nine years' imprisonment for that offence. The offender had also pleaded guilty to two summary charges: failure to stop at an accident; and causing death by driving without insurance, for which no separate penalty was ordered. We will have to address a number of issues in relation to summary matters, and one matter which in the event turned out not to be summary. The offender was disqualified from driving for seven and a half years, with an extension period of six years, pursuant to section 35A of the Road Traffic Offenders Act 1988. We should record that the extension period had been inaccurately calculated when sentence was first imposed, but was corrected in open court after the matter had been realised later that day.

### **Factual circumstances**

4. At around 5.30 pm on 12<sup>th</sup> December 2023, the offender took a motor vehicle from his employer without consent and he used it over a ten hour period to drive around Nottingham. He travelled to Derby and then returned to Nottingham. It was clear that he had been drinking during this period. When he was later arrested he smelt heavily of alcohol, and told an officer that he was "pissed".

5. The offender first came to the attention of the police at 3.10 am on 13<sup>th</sup> December 2023 in central Nottingham. We have seen compilation CCTV footage of his driving from that time. He was driving erratically, albeit at a slow speed, and swerving on the carriage way. Police officers attempted to pull over the offender by illuminating their blue lights. However, the offender drove into a petrol station, but then turned around and sped away, leaving the police car facing the wrong way.
6. The registration number of the vehicle was circulated by police and the offender's vehicle was located ten minutes later by police officers. The police approached his vehicle from behind at a set of traffic lights. At that stage the offender had again been driving at a reasonably slow speed. When the lights turned to green, the offender drove away from the police vehicle. He turned left through a "No Entry" sign and drove the wrong way down the street. A police chase ensued. The offender contravened a second "No Entry" sign, and when he accelerated to 40 miles per hour in a narrow residential street the chasing police officers decided to drop back.
7. The chase later continued. The offender reached a speed of 55 miles per hour and drove through a red light on the wrong side of the road. He drove on to Huntingdon Street, a four lane carriage way.
8. The deceased, Mr Oshada Jayasundera, a 31 year old university student, was making his way home from a party with a group of friends. He was struck by the offender's vehicle while crossing the northbound carriageway of Huntingdon Street at a pedestrian crossing. A chasing police vehicle was travelling at 78 miles per hour at that point. The offender's vehicle was accelerating further away from the police vehicle, which meant that he was driving at a speed in excess of 80 miles per hour in the middle of Nottingham at that time in the early hours of the morning. Mr

Jayasundera was killed instantly.

9. The offender did not stop after the collision. Shortly afterwards he collided with a traffic light. He got out of the vehicle and ran away. He was chased on foot by police officers. He was detained by police officers and security staff from a nearby shopping centre. He admitted that he had been drinking and that was why he was attempting to evade the police. The police officers handcuffed him and then he attempted to escape lawful custody again. It can be seen from the video footage that he ran away before being restrained again.
10. The offender was arrested. When he was later interviewed, he answered "No comment" to all of the questions put to him.

### **The Sentencing**

11. The sentencing judge was provided with a Victim Personal Statement on behalf of Mr Jayasundera's family, which was read to the court by the younger brother who, together with the victim's father, had travelled from Sri Lanka to attend the hearing. The statement describes Mr Jayasundera's background and considerable life achievements. He had been an outstanding student, both academically and sportingly. He had obtained a degree in Information Technology from the Sri Lanka Institute of Information Technology, and then a Master of Business Administration from Anglia Ruskin University. He was employed as a Process Analyst, an IT Project Manager, and then as a Project Manager by other employers. At the time of his death, he was attending Nottingham Trent University to obtain a Master of Science in Project Managements. The statements describe the devastating personal loss his death has caused to his family.

12. The offender is 28 years old. He has two previous convictions for three offences. One was an old matter for which he had received a Referral Order, but there was a relevant conviction in that on 2<sup>nd</sup> February 2022 he had pleaded guilty to driving on 8<sup>th</sup> August 2021 with the proportion of the drug THC exceeding the specified limit. The reading was three times the legal limit. At the same time he was convicted of possession of a Class B drug (cannabis).
13. The sentencing judge was provided with character references from the offender's parents, a maternal uncle, a family friend and his employer. Each of the references emphasised the offender's shame and remorse. The sentencing judge was also provided with a letter from the offender which expressed his shame and remorse.
14. The judge was also provided with a psychiatric report. The psychiatrist observed that the offender has commenced anti-depressant medication in custody, and was of the opinion that he suffered from PTSD relating to an incident where he was the victim of a violent assault in 2014 when he was aged 18. The report did not suggest that there was a causal link between the PTSD and the offence. However, the report observed that PTSD can make individuals more susceptible to engaging in high risk behaviour.
15. In sentencing, the judge observed that the offender's culpability was very high. The dangerous driving was prolonged, persistent and deliberate. His driving and judgment were clearly impaired by the consumption of alcohol. The offence arose from his attempt to avoid being stopped by the police, and his speed was far in excess of the limits.
16. The judge found that the offence fell within category A for the purposes of the Sentencing Council guideline and adopted a starting point of 12 years' imprisonment.

He found that the offence was aggravated by the previous conviction in February 2022; the fact that the victim was a vulnerable road user (a pedestrian); the fact that the offender failed to stop at the scene; the fact that he escaped from lawful custody by running away after being arrested; the fact that he had wrongly attempted to place the blame for the accident on the deceased (although, as has been pointed out in the submissions this morning, the Better Case Management Form indicated that the deceased "had stepped out", that was not persisted in); and the fact that the offender was not insured to drive the vehicle.

17. The judge adopted an uplift from the starting point of 12 years' imprisonment by 18 months, to reflect the aggravating factors. However, the judge then found that these were counterbalanced by the effect of the mitigating factors: the offender's mental health conditions, which would make a custodial sentence more difficult for him, and his genuine remorse.
18. The judge therefore reached a sentence of 12 years' imprisonment, before giving credit for the guilty plea. He awarded the offender 25 per cent credit for his guilty plea, and therefore arrived at the overall sentence of nine years' imprisonment.

**The relevant guideline**

19. Under the relevant guideline the following culpability A factors were present: (i) deliberate decision to ignore the rules of the road and a disregard for the risk of danger to others. That is evidenced by the driving on the wrong side of the road and other matters; (ii) the prolonged, persistent and deliberate course of bad driving, as the offender attempted to avoid apprehension by the police; (iii) his driving was impaired by the consumption of alcohol and/or drugs. Even the offender admitted that he was "pissed" (as he put it) after he was arrested; (iv) he attempted to avoid the police; (v)

his speed was significantly in excess of the speed limit and highly inappropriate for the prevailing road and weather conditions; and (vi) he carried out some very dangerous manoeuvres.

20. The driving fell into category A, with a starting point of 12 years' imprisonment and range of eight to 18 years. The statutory aggravating factor of a previous conviction was relevant. Other aggravating factors included: the fact that the deceased was a vulnerable road user; blame wrongly placed on others; and failure to stop.
21. As far as mitigation is concerned, the offender is remorseful. That is evidenced by a further prison report that we have seen which shows his progress in prison and his attempts to make use of the time that is available to him. He has suffered from PTSD in relation to an assault he suffered in 2014. He has suffered from depression and has made a number of suicide attempts. The reference from the offender's employer confirms him to be hardworking.
22. On behalf of the Solicitor General, Mr Hearn submits that the gravamen of the offence was that the offender drove in this manner, drove away at speed, exposed himself, the chasing police officers, other drivers, passengers and other road users to a high risk of death or serious injury. That risk became a reality when he struck a pedestrian who was using a pedestrian crossing, at a speed of in excess of 80 miles per hour, causing instant death. He then failed to stop at the scene, abandoned his vehicle and fled from the police. There were multiple category A and aggravating factors. As Mr Hearn put it, there could well have been multiple deaths.
23. The Solicitor General recognises that the offender was entitled to some reduction for his mental health conditions, but submits that any reduction ought to have been



modest. The offender was entitled to some reduction for belatedly expressed remorse, which the judge found to be genuine, but it is submitted that that also ought to have been modest.

24. On behalf of the offender, it is submitted by Mr Wesley that the judge had balanced the aggravating and mitigating factors in an appropriate manner; that the sentence might have been lenient, but that it was not unduly lenient; that the offender had shown real remorse, as is apparent from the prison reports; and that there was mitigation available to him in the form of the psychiatric reports.

### **Unduly lenient**

25. We note that the judge identified the correct bracket for the sentence in the sentencing guideline. The judge identified the correct aggravating and mitigating factors. We consider, however, that for the judge to increase from the starting point of 12 years to only 13½ years for the multiplicity of culpability A factors and other aggravating factors was simply insufficient. We consider that the lowest that the judge could reasonably have increased the starting point to reflect these factors was to 16 years' imprisonment.
26. That figure then needs to be reduced by the mitigation. We do not accept the submissions on behalf of the Solicitor General that the mitigation was in any sense overstated. We therefore allow the reduction of one and a half years that the judge below had allowed. That gives a sentence of 14½ years, before the 25 per cent credit for the guilty plea is allowed. Once that has been taken into account, the sentence is one of ten years and ten months' imprisonment. To that extent the reference is allowed.

27. That means that there will need to be an adjustment to the extension period for the disqualification from driving for the seven and a half year period that was imposed below. The extension period will be two thirds of the ten years and ten months, which, on the maths available to us, is a disqualification period of seven years and two months, pursuant to section 35A of the Road Traffic Offenders Act 1988. In subsequent exchanges with the Court and the parties, Ian Dowty, complex case lawyer in the Criminal Appeal Office identified that the exact days needed to be given were 2,639 days.
28. Accordingly, to that extent the Reference succeeds. The sentence of nine years' imprisonment has been increased to a sentence of ten years and ten months' imprisonment. The disqualification period remains at seven and a half years, but the extension period has increased from six years to 2,639 days.

### **Other matters**

29. We need to deal with a number of other matters that were helpfully identified by the Court of Appeal Office and have been addressed by both Mr Hearn and Mr Wesley.
30. So far as the failure to provide a specimen is concerned (charge 2), one of our number will need to sit as a Judge of the Crown Court and deal with that matter by accepting no evidence in relation to it and therefore dismissing it. This is plainly an appropriate way of dealing with the matter in circumstances where that has been identified as an aggravating factor.
31. So far as the failure to stop (charge 3) is concerned, that will need to be dealt with again in the same manner, with the Crown again offering no evidence.

32. So far as causing death by driving while uninsured (charge 4) is concerned, this was mistakenly identified as a summary matter. In the circumstances the least worst way of dealing with that is to identify that charge 4 was an alternative charge to count 1, to which the offender had pleaded guilty. That would then mean that the endorsement of his licence for that separate matter would be declared to be a nullity.
33. In those circumstances I will invite my Lord, His Honour Judge Lickley KC to sit as a judge of the Crown Court to deal with charges 2 and 3, and invite Mr Hearn to offer no evidence on those matters.
34. **MR HEARN:** Thank you, my Lord. In respect of charge 2 (failing to provide a specimen), I confirm that the Crown offers no evidence in respect of that charge.
35. **HIS HONOUR JUDGE LICKLEY:** Yes, and are you asking for that to lie on the file or for a formal verdict of not guilty to be entered.
36. **MR HEARN:** A formal verdict of not guilty to be entered.
37. **HIS HONOUR JUDGE LICKLEY:** Very well, a formal verdict of not guilty will be entered in relation to the offence of failing to provide a specimen of breath.
38. **MR HEARN:** In respect of charge 3, which is failure to stop, it is the same application. The Crown offers no evidence in respect of that.
39. **HIS HONOUR JUDGE LICKLEY:** Thank you very much. In relation to failing to stop, again there will be a formal verdict of not guilty entered in relation to that count.

40. **MR HEARN:** Thank you, my Lord.

41. **LORD JUSTICE DINGEMANS:** Can I conclude by thanking both Mr Hearn and Mr Wesley for all of their assistance and helpful submissions.

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