



THE COURT OF APPEAL

[107/23]

**The President
McCarthy J.
Kennedy J.**

BETWEEN

THE PEOPLE AT THE SUIT OF THE DIRECTOR OF PUBLIC PROSECUTIONS (DPP)

RESPONDENT

AND

JAMES DOYLE

APPELLANT

JUDGMENT of the Court delivered on the 1st day of February 2024 by Birmingham P.

Introduction

1. This is an appeal against severity of sentence. The sentence under appeal is one of three and a half years imprisonment, which was imposed on 28th March 2023 in Dublin Circuit Criminal Court, in respect of the offence of dangerous driving causing serious bodily harm, contrary to s. 53(1) of the Road Traffic Act 1961, as amended ("the 1961 Act"). On that occasion, provision was made for disqualification from driving for a period of six years.

Background

2. The background to the offence is to be found in an incident that occurred on 23rd April 2020. On that occasion, the appellant was travelling on his motorbike on Cromwellsfort Road, and the injured party was out for a walk while listening to music on her headphones. The evidence put before the Circuit Court was that the headphones being worn by the injured party were not noise cancelling headphones. The injured party crossed the road from the south side of Cromwellsfort Road to the north side. It might be noted that road conditions were good; the road was dry, visibility was good and traffic was light. The injured party did not see or hear the now appellant approach on his motorbike, and she was impacted by the motorbike. A forensic report produced by An Garda Síochána estimated that the speed at the point of impact was approximately 84km/h; this, in circumstances where the speed limit applicable was 50km/h. Prior to the impact, the appellant's brake lights had been seen to illuminate, at a point approximately 54 metres before the impact point. By reference to CCTV footage, which was harvested, the appellant's average speed was noted to be between 122km/h and 127km/h.

3. Examination of the motorbike indicated that it was roadworthy. It was also established that the rider of the bike had the appropriate licence and was covered by insurance. The appellant was asked to provide a blood sample, which he did, and this tested negative for the presence of

any form of intoxicant. In essence, the case presented was one that turned exclusively on speed at the location where the road traffic accident occurred.

Personal Circumstances of the Appellant

4. In terms of the appellant's background and personal circumstances, there are some unusual factors which required consideration. He was born in October 1986, was involved in a long-term relationship, and is the father of three young children aged two, four and six years. The appellant was employed as a heavy goods vehicle driver and documentation was put before the Court establishing that his employer was supportive of him. It appears the employer's fleet is equipped with telematic devices which allow the behaviour of drivers to be monitored and measured. The records in relation to the appellant are positive, and according to the employer, put him in the top performance group. The appellant's employer would wish to be in a position to continue offering employment, albeit that it was likely the case that the appellant would no longer be permitted to drive a vehicle for a significant period of time, irrespective of the overall outcome of the case.

5. What was unusual in terms of the appellant's background and personal circumstances, is the fact that he had suffered from ADHD as a child and had been prescribed Ritalin. After he stopped taking this medication, he developed serious addiction issues. It was contended on his behalf that this led to a condensed period of offending between the ages of 16 and 20 – the period between December 2002, when the appellant was aged 16, and which ended in September 2006, when he was aged 20 years. Thus, it was the situation that the appellant's most recent previous conviction had been committed approximately 17 years earlier. The appellant had the opportunity to enter residential treatment for his addiction problems in both Coolmine Therapeutic Centre in 2006 and the Rutland Centre in 2012. Documentation verifying this was put before the sentencing Court, and it appears to be accepted that after undergoing this treatment, the appellant has successfully avoided relapsing. During this condensed period of offending, 47 convictions were recorded against the appellant, of which 20 were recorded under the 1961 Act, and of these, two were for dangerous driving contrary to s. 53(1), one for careless driving contrary to s. 52, five under s. 49, and four convictions for unauthorised taking of a vehicle contrary to s. 112.

The Appeal

6. In the course of sentencing remarks, the judge referred to a headline or pre-mitigation sentence of between six and seven years. The appellant takes issue with this and says that the figure nominated was too high. The maximum sentence for dangerous driving is ten years or 120 months. If the available penalty was divided into thirds, in the usual way, this would see a low range of 0-40 months, a midrange of 41-80 and an upper range of 81-120. It is said that if that arithmetic exercise is undertaken, the upper part of the midrange would be somewhere between 67 and 80 months, but against that, the actual headline sentence nominated was one of 72 to 84 months, being at the upper end of the midrange or the lower end of the upper range. The appellant says that the judge was in error in placing too much emphasis on the only aggravating factor present, which was speed, and not paying sufficient regard to the absence of other

aggravating factors. Instances referred to on behalf of the appellant as not featuring included showing off, dangerous overtaking or other reckless conduct.

7. It is argued on behalf of the appellant that the sentence imposed was excessive, disproportionate and overly punitive. The appellant draws attention to sentences which were imposed in a number of cases that he relies on as comparators, and says that if regard is had to these, the present sentence was out of kilter. It is submitted that the consequences of the dangerous driving under consideration in some of the comparator cases relied on were more serious than the present case, serious as the consequences in this case were, often involving fatalities and/or catastrophic injuries and sometimes involving more than one victim. The point is also made that, in some of the cases which have come before the courts, it has not been unusual to find multiple aggravating factors present, involving drink or drugs, racing or other similar activity, and these perhaps taking place at a time when the driver was disqualified.

8. It is trite to observe that the consequences of dangerous driving, which is prosecuted on indictment, are usually very severe; indeed, the offence would not be prosecuted on indictment unless the dangerous driving had resulted in serious harm or a fatality. This case was no exception. It was one where the consequences were very severe indeed.

9. The sentencing Court was given details of the injuries sustained and the injured party read a victim impact report to the Court. The physical injuries included fractures to both legs, spinal fractures, dislocation of the right shoulder with a fracture of the right humerus, the upper arm bone, and a splenic laceration. The injured party was initially treated in St. James's Hospital. Treatment involved the application of external fixators to both legs, followed by a right intramedullary tibial nail on 29th April 2020, a left nail two days later, and skin grafting to the leg took place on 5th May 2020. On 27th May 2020, the injured party was transferred from St James's Hospital to Clontarf Orthopaedic Hospital for further rehabilitation and convalescence, which involved intensive physiotherapy and occupational therapy. On 9th June 2020, she was discharged home. On discharge, the injured party required crutches for mobilisation and required assistance for all aspects of living, including mobilising, showering and so on. Her family made adaptations to the house prior to her discharge from hospital and her bedroom was moved downstairs as she was not in a position to manage stairs. Her mother gave up work for period so as to take care of her daughter at home when discharged from hospital. She was described as having made a slow but steady physical recovery. It was pointed out that she remained quite anxious after the accident, her physical injuries continued to affect her, and she questioned her ability to recover. The Court heard that the injured party had undergone surgery on two further occasions in June and December 2020 to remove the metalwork, first from the left leg and then from the right leg. There was significant postoperative pain and she found recovery difficult. The victim impact report which was read to the Court by the injured party was a powerful document. She describes her experience in hospital and the experience that her family members had of her hospitalisation. What emerges is that the difficulties she and her family experienced – given the severity of the injuries, there were always going to be major difficulties – were compounded by the fact that the period of hospitalisation was during the Covid pandemic.

10. It is clear that the injured party remains significantly affected and affected in multiple ways. She has limited mobility in the shoulder area and wonders if, in the future, she has children,

will she be restricted in her ability to hold a baby for extensive periods. Her social life is affected and is likely to be affected into the future. She wonders if her friends decided to go skiing, could she or would she want to go. The extent of her scarring would make her uncomfortable in a swimsuit and she wonders whether people would be staring at her scarred legs.

Discussion and Decision

11. The focus of this appeal has been very much on the headline sentence referred to by the judge in the course of his sentencing remarks. We can understand how such a focus, with the linked focus on comparator cases, must, at times, seem artificial to those who have suffered injury or sustained loss as a result of dangerous driving, involving, as it does, the comparison of one case against another, the identification of aggravating factors present in one case which are absent in another.

12. The first point made on behalf of the appellant – though it is perhaps not the point on which the greatest emphasis is placed – is on the fact that there was no actual specific headline sentence identified. Rather, the judge said that if asked to set a headline sentence, he would say “between” six and seven years. The point was made that this approach makes it difficult to identify exactly where the headline or pre-mitigation sentence was placed and therefore how much credit was being allowed for mitigation. On a closer reading of the judge’s sentencing remarks, it seems to us uncertain whether the judge actually proceeded to nominate a headline sentence or a headline range. He speaks of what the headline would be if asked to set a headline. It seems to us that this was an exercise not in the two-stage process of sentencing, but was actually an exercise in so-called instinctive synthesis sentencing. Stepping back and viewing the offending conduct, it seems to us that this was serious offending indeed. While at one level, it was a single factor dangerous driving, a case involving speeding, it was speeding at a particular level at a particular location, an urban built-up area, where high speed was bound to be particularly dangerous.

13. We do acknowledge that, in general, the cases which have been put into the top tier bracket have involved multiple aggravating factors, but we do take the point made by counsel for the Director that there can be cases where more than one factor is present, but where, on analysis, a case where there was only one single factor present will actually prove to be more serious. Here, it was a single factor case: speeding, but speeding in a dangerous location, an urban built-up residential area. We have no doubt that this must be seen as a midrange offence at least. The egregious factors that would see placement into the upper tier are absent, such as drink/drugs, racing, etc. On the other hand, in our view, it could not be seriously suggested that the level of speeding involved in an urban area could be regarded as being a low-level offence. If the case is, as we feel it ought to be, placed in the midrange, that raises the question of where in the midrange it is to be located. We have concluded that it is appropriate to place it at the midpoint, or the middle of the midrange. If the two-stage sentencing approach is adopted, this would give rise to a headline or pre-mitigation sentence of the order of five years. It seems to us that there is an appreciable divergence from that midrange midpoint and the indicative headline of between six and seven years, assuming six and a half years, as referred to by the sentencing judge. It seems to us that whatever route is followed, whether a two-stage sentencing process which involves a headline or pre-mitigation sentence and applying mitigation, or an exercise in

instinctive synthesis, the sentence ultimately arrived at by the sentencing judge is higher than we are accustomed to seeing in cases of this nature. In making that observation, we are not ignoring the fact that speeding involves a degree of intentional conduct or deliberation which is not always present in other cases of dangerous driving. The motorist who engages in dangerous overtaking may not intend to overtake dangerously, or the driver who crosses onto the wrong side of the road, taking a bend, may not intend to do so. Generally speaking, a driver, or in this case, rider, who travels at a high speed, one significantly in excess of the applicable speed limit, intends to drive fast. We are also conscious and remind ourselves of the fact that a judge dealing with cases of this nature must be afforded a margin of appreciation. Despite that, we have come to the view that an intervention on our part is required.

Resentencing

14. In resentencing, we are obliged to do so as of today's date. Up to date information has been put before us in the form of a Governor's report which indicates that the appellant was transferred to Loughan House in November 2023. The Governor's report is extremely positive and the fact of a transfer to an open place of detention at a relatively early stage of the sentence is very encouraging. Earlier in this judgment, we referred to unusual features present in terms of the appellant's background and personal circumstances, and what has been described as a condensed period of offending, followed by clear evidence of a life successfully turned around. We agree with the sentencing judge that the previous convictions at this stage are old and that their relevance is that they should have meant that the appellant was someone who would have known better. Like the sentencing judge, we feel there are significant mitigating factors present in this case, including but not necessarily limited to the fact of the early plea, the expression of remorse, his positive prosocial life as an adult and his good work record.

15. In those circumstances, we think it appropriate to reduce the identified headline or pre-mitigation sentence to a sentence of two and a half years. Accordingly, we will quash the sentence imposed in the Circuit Court and substitute therefor a sentence of two and a half years imprisonment. The sentence will date from the same day as in the Circuit Court and we will not interfere with the order made in relation to disqualification from driving.