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*Judgment: approved by the court for handing down
(subject to editorial corrections) **

Delivered: 10/01/2025

IN THE CROWN COURT IN NORTHERN IRELAND

THE KING

V

JOHN NOBLE LINDSAY

David Russell KC and Mark O'Hara BL (instructed by the PPS)
Frank O'Donohue KC and Stephen Molloy BL (instructed by Johnsons solicitors)

Her Honour Judge Smyth

Recorder of Belfast

Introduction

[1] John Noble Lindsay is to be sentenced having pleaded guilty to the single charge of causing the death of Scarlett Rossborough by driving dangerously on High Street, Carrickfergus, on the morning of 9 August 2023.

[2] The enormity of the tragedy cannot be put into words. Scarlett was a beautiful, happy child, loved by all who knew her. She was eight years old, and the kindest, most sensitive, empathetic little person. She was the paternal grandparents only granddaughter, described as the Princess of the family. She was determined and passionate practising for sports day with her uncle Martin and in particular, practising for the school annual race which took place on her birthday. She was a gymnast, reaching level 5, and was forever doing cartwheels in the garden, teaching her little brother Garrett everything she had learned. He is lost without her.

[3] Scarlett was an all-rounder- she had a business head on her shoulders, was good with numbers- and planned to own an apartment in New York one day. She spent hours as a little artist, mixing water colours and creating cards and booklets with her granda. But she loved just spending time with her mum, organising donations for the charity shop as they laughed together.

[4] Home was a very happy place, pizza nights and movie nights for all four of them; now there is an empty chair and sadness. Scarlett loved Dolly Parton and Johnny Cash and memories of her laughter because a girl in her class was called Jolene are held tightly. She was in the Rainbow club then the Brownies and there is no doubt that she left her mark on all those who knew her beyond her family circle. A tree now stands in her memory, a tribute to the beautiful caring child she was.

[5] There is no sentence that I can pass that will bring any comfort to Scarlett's parents and family who are suffering so much. The shocking circumstances of her death have affected so many people and nothing can turn back the clock and restore the precious young life that has been lost. In order to pass sentence, I am required to focus on the defendant's driving which caused this tragedy and his personal circumstances and how these factors affect the sentence. However, it is important to acknowledge that it is Scarlett's family that is at the heart of this sentencing exercise.

The background

[6] On the morning of 9 August 2023, Carolanne, Scarlett's mother has described the excitement as the children looked forward to a day trip to Carrick. Scarlett's granny had bought her a lovely green summer dress with white shorts socks and trainers. As they passed their granda's house, they waved. That is the last memory that they have.

[7] At approximately 11:40 am, the defendant was driving on Antrim Street and stopped his car in order to parallel park into a disabled parking space. He moved the car forward and backwards while steering left and right to park the car close to the kerb. As the car slowly reversed one final time, with the front wheels steered to the right, the car suddenly accelerated, jolting onto the kerb and colliding with Scarlett and two other children who were walking on the pavement as part of the group on the Summer Scheme outing.

[8] Scarlett was trapped against a wall by the car and suffered catastrophic injuries to her throat and airway, significant injuries to the lungs, extensive fractures of her face jaw and skull with associated brain injury and other serious injuries, which would have caused rapid death. The two other children were not seriously hurt. Members of the public rushed to help and police and paramedics soon arrived. Scarlett could not be saved, and death was recorded at 12:15 pm.

The impact on the family

[9] I have read every one of the many victim impact statements provided to me. They are distressing to read and the enduring suffering of each of the family members, particularly Scarlett's parents, is heartbreaking. This was a very close extended family. Uncles, aunts and grandparents were such a part of Scarlett's life that there is no way to describe the impact of her death upon them. Scarlett had a unique relationship with

everyone in the family, and although he is too young to articulate his feelings, the confusion and loss that little Garrett feels is visible to his parents.

[10] Carolanne, Scarlett's mother, has counted the days that she had with her little daughter - 3243 days. She is haunted by the details of Scarlett's death, and it is a sad fact that the world continues to turn and the pressures of returning to work and providing some kind of normality for Garrett have to be faced, despite her life having been irrevocably changed. Scarlett's father has barely been able to work since and he struggles to understand how he can have lost his precious daughter and brought a new life into the world, his son, whom Scarlett was so excited to meet.

[11] In the midst of such suffering Carolanne has thought about me, the judge, and the difficult task of administering justice in such terrible circumstances. She has also thought of the defendant, John Lindsay whose life, she knows, has also been devastated by the knowledge that his driving caused Scarlett's death.

[12] Scarlett's mother wants something good to come from this unimaginable tragedy. For reasons that I will explain shortly, she wants the law changed, and a new Scarlett's law enacted, which will protect the public from the dangers posed by elderly drivers, whose cognitive abilities inevitably decline and impact on their ability to drive safely. It is for the legislature in Northern Ireland to consider this matter, but the research supports her call for action and the terrible consequences in this case demonstrate the need for change. John Lindsay supports Carolanne and wishes that he had returned his licence earlier. He surrendered it the day after and has not driven since.

The impact of age and cognitive decline on driving

[13] Expert evidence from Mr Young, Forensic Scientist confirms that the average speed of the defendant's car was 11-13 mph on impact with Scarlett. Both Mr Young and Mr Dunn, Consultant Engineer instructed on behalf of the defence agree that "*pedal misapplication*" is a possible cause of the acceleration or the defendant becoming disorientated carrying out the manoeuvre. The car was an automatic and on examination, no defects were found.

[14] Professor Passmore, expert in Geriatric medicine, researched incidences of pedal misapplication, particularly amongst the elderly. The defendant was 90 at the time of Scarlett's death and is now 92. In summary, research indicates that although unintended acceleration caused by pedal misapplication is a cause of accidents, fatal accidents may be avoided if drivers realise their error immediately and quickly correct how they are stepping on the pedal. The ability to quickly correct, may decline with age because the rate of fatal accidents is "fairly higher" for older adults in comparison to younger. Generally speaking, there is a likelihood of a reduced reaction time in older drivers which is associated with lowered driving performance.

[15] Put simply, advanced age results in a higher likelihood of collision even when medical tests indicate fitness to drive.

[16] Dr Passmore has estimated from tests that the defendant had mild frailty at the time of the collision. Currently, test scores indicate a cognitive deficit consistent with his age and his level of independent living. He is likely to make more safety errors in driving than a younger person. However, this would not have been considered a reason not to drive, under current guidance.

[17] The Defendant, when spoken to at the scene by Constable Darnell and asked what happened, said "*I don't know*". He said he had been trying to get into the space and when asked which space said he didn't know, and he thought he hit the accelerator by mistake. The Defendant was interviewed with a solicitor present on 29 August 2023 and provided a pre-prepared statement in which he accepted being the driver and that his vehicle travelled over the footpath and hit a wall but initially was not aware of any collision with a pedestrian; he had been driving for 72 years and had no criminal record or penalty points.

[18] His licence was issued on 11 August 2020 and was due for renewal on 18 September 2023; he explained his movements that day and that as he was parking his car it suddenly shot backwards at speed but he could not explain the sudden loss of control. The Defendant ultimately accepted that he collided with Scarlett and the other children and expressed his condolences both to Scarlett's family and to the other children injured. On legal advice he responded "*no comment*" to further questions.

The law

[19] The maximum sentence for dangerous driving causing death is 14 years imprisonment and disqualification is mandatory. In *R v McGrillen* [2023] NICA 68, Treacy LJ set out the relevant sentencing principles:

Relevant sentencing principles

[24] The maximum sentence for causing death or grievous bodily injury by dangerous driving contrary to Article 9 of the 1995 Order is 14 years imprisonment, and disqualification is mandatory. Both offences are 'serious' and 'specified' offences within the meaning of the Criminal Justice (NI) Order 2008.

[20] In *AG's Reference Nos 2, 6, 7, and 8 of 2003* [2003] NICA 28, the NI Court of Appeal approved and adopted the England and Wales sentencing Guidelines in *R v Cooksley & Ors* [2003] EWCA Crim 996, which noted that if a person is killed as a result of dangerous driving normally a custodial sentence will be imposed; no term of imprisonment can reconcile a loss of life or family grief and the purpose of punishment must be focussed on the culpability of the offender.

[21] In para [11] et seq, of *AG's Reference Nos 2, 6, 7, and 8 of 2003*, Carswell LCJ set out the guidelines to be followed in cases of dangerous driving causing death or grievous bodily injury:

“[11] The Sentencing Advisory Panel propounded a series of possible aggravating factors, which were adopted by the Court of Appeal in *R v Cooksley*, with the caveat that they do not constitute an exhaustive list. The court also pointed out that they cannot be approached in a mechanical manner, since there can be cases with three or more aggravating factors which are not as serious as a case providing a bad example of one factor. The list is as follows:

Highly culpable standard of driving at time of offence

(a) the consumption of drugs (including legal medication known to cause drowsiness) or of alcohol, ranging from a couple of drinks to a 'motorised pub crawl'
(b) greatly excessive speed; racing; competitive driving against another vehicle; 'showing off'
(c) disregard of warnings from fellow passengers
(d) a prolonged, persistent and deliberate course of very bad driving
(e) aggressive driving (such as driving much too close to the vehicle in front, persistent inappropriate attempts to overtake, or cutting in after overtaking)
(f) driving while the driver's attention is avoidably distracted, e.g. by reading or by use of a mobile phone (especially if hand held)
(g) driving when knowingly suffering from a medical condition which significantly impairs the offender's driving skills.
(h) driving when knowingly deprived of adequate sleep or rest
(i) driving a poorly maintained or dangerously loaded vehicle, especially where this has been motivated by commercial concerns.

Driving habitually below acceptable standard

(j) other offences committed at the same time, such as driving without ever having held a licence; driving while disqualified; driving without insurance; driving while a learner without supervision; taking a vehicle without consent; driving a stolen vehicle
(k) previous convictions for motoring offences, particularly offences which involve bad driving or the consumption of excessive alcohol before driving.

Outcome of offence

(l) more than one person killed as a result of the offence (especially if the offender knowingly put more than one person at risk or the occurrence of multiple deaths was foreseeable) (m) serious injury to one or more victims, in addition to the death(s).

Irresponsible behaviour at time offence

(n) behaviour at the time of the offence, such as failing to stop, falsely claiming that one of the victims was responsible for the crash, or trying to throw the victim off the bonnet of the car by swerving in order to escape (o) causing death in the course of dangerous driving in an attempt to avoid detection or apprehension (p) offence committed while the offender was on bail.' We would add one specific offence to those set out in para (j): taking and driving away a vehicle, commonly termed joyriding, which is unfortunately prevalent and a definite aggravating factor.

[22] The Sentencing Guidelines were subsequently adjusted to take account of the increase in 2005 of the maximum penalty for this offence from ten years to 14 years. The result is the following scale of sentences approved by the Court of Appeal in England and Wales in *R v Richardson* [2006] EWCA Crim 3186 were adopted in this jurisdiction in *R v McCartney* [2007] NICA 41, these are:

“(a) Cases with no aggravating circumstances, where the starting point should be a short custodial sentence of perhaps 12 months to two years, with some reduction for a plea of guilty.

(b) Cases of intermediate culpability, which may involve an aggravating factor such as a habitually unacceptable standard of driving or the death of more than one victim. The starting point in a contested case in this category is two years, progressing up to four and a half years as the level of culpability increases.

(c) Cases of higher culpability, where the standard of the offender's driving is more highly dangerous, as shown by such features as the presence of two or more of the aggravating factors. A starting point of four and a half years rising to seven years will be appropriate in cases of this type.

(d) Cases of most serious culpability, which might be marked by the presence of three or more aggravating factors (though an exceptionally bad example of a single factor could be sufficient to place an offence in this category). A starting point of seven years was propounded for this category rising to the statutory maximum of 14 years in the most severe cases.”

[23] As indicated in *Cooksley*, the sentencing court must be careful not to double count in relation to aggravating factors. If driving is dangerous by reason of a particular factor, it is self-evident that the factor that gives rise to the dangerousness is not to be counted as an aggravating factor.

[24] As to the weight to be attached to personal mitigation and remorse the courts have emphasised that sentencing in cases involving dangerous driving causing death is intended to deter. Accordingly, the impact of personal mitigation is reduced – see para [30] of *R v David Lee Stewart* [2017] NICA 1 where this principle is underlined. Sentencers must bear in mind that in such cases deterrence is an essential element in discouraging others from driving irresponsibly given the fatal and life changing consequences.

[25] In relation to remorse, the court in *Stewart* at para [31] stated that the discount for a plea:

“... generally reflects an element of remorse. Accordingly, the degree of mitigation by way of discount for the plea can be higher than would otherwise have been the case if there is positive evidence of remorse. If, however, such discount is included in the plea it should not be repeated by way of personal mitigation...”

[26] That sentencing for cases involving dangerous driving causing death is intended to deter brings into focus Morgan LCJ’s statement in *DPP’s Ref (Nos 13, 14, and 15 of 2013) (R v McKeown and others)* [2013] NICA 63 (“DPP Ref 13-15/2013”):

“[11] ... Where a deterrent sentence is required previous good character and circumstances of individual personal mitigation are of comparatively little weight. Secondly, although in this jurisdiction there is no statutory requirement to find exceptional circumstances before suspending a sentence of imprisonment, where a deterrent sentence is imposed it should only be suspended in highly exceptional circumstances as a matter of good sentencing policy. Thirdly, where there is compelling evidence such as video material, an offender is unlikely to get full credit for admissions and a plea where there realistically was no

alternative. It was submitted to us that such a sentencing approach was only appropriate for those involved in petrol bombing or similar offences. Although we accept that *R v Blaney and others* [1989] NI 286 is authority for the proposition that deterrent sentences are required in such cases, we do not accept that this inhibits in any way the need for deterrent sentences in these cases.”

The question of age, disability and life expectancy

[27] The Defendant is now elderly, frail, wheelchair bound and enduring a number of physical health conditions. It is not necessary to detail the daily symptoms since they are personal and sensitive. In *Attorney General's Reference (No 1 of 2006) Gary McDonald, John Keith McDonal and Stephen Gary Maternaghan* [2006] NICA 4 (“AG Ref 1/2006”) the Court of Appeal provided the following guidance:

“[39] It is permissible to have regard to any physical disability or illness which will subject the offender to an unusual degree of a hardship if he is imprisoned – see, for instance, *R v Leatherbarrow* (1992) 13 Cr App R (S) 632; *R v Green* (1992) 13 Cr App R (S) 613. It is less clear that the illness of a relative can be taken into account for the same purpose. The effect that personal circumstances may have on the selection of a sentence was discussed by this court in *R v Sloan* (Neutral Citation no. (2000) 2132). In that case Carswell LCJ said:

“There is a well settled line of authority that in certain cases the court can impose a lighter sentence than that which would normally be appropriate for the type of offence where the offender suffers from some physical or mental disability: see, e.g., the discussion in *R v Bernard* [1997] 1 Cr App R (S) 135 and the principles deduced from the previous reported cases by Rose LJ at pp 138-9:

‘(i) a medical condition which may at some unidentified future date affect either life expectancy or the prison authorities’ ability to treat a prisoner satisfactorily may call into operation the Home Secretary’s powers of release by reference to the Royal Prerogative of mercy or otherwise but is not a reason for this Court to interfere with an otherwise appropriate sentence (Archibald Moore);

(ii) the fact that an offender is HIV positive, or has a reduced life expectancy, is not generally a reason which should affect sentence (Archibald Moore and Richard Moore);

(iii) a serious medical condition, even when it is difficult to treat in prison, will not automatically entitle an offender to a lesser sentence than would otherwise be appropriate (*Wynne*);

(iv) an offender's serious medical condition may enable a court, as an act of mercy in the exceptional circumstances of a particular case, rather than by virtue of any general principle, to impose a lesser sentence than would otherwise be appropriate.'

We respectfully agree with the approach of the court in that case, but would emphasise that it is important to bear in mind the passage which Rose LJ earlier cited from *R v Wynne* (1994, unreported):

'It is always to be borne in mind that a person who has committed a criminal offence, especially one who has committed a serious criminal offence, cannot expect this or any other court automatically to show such sympathy so as to reduce, or to do away with altogether, a prison sentence purely on the basis of a medical reason. It is only in an exceptional case that an exceptional view can be taken of a sentence properly passed. In this case a proper sentence was passed for a serious offence.

[28] In *R v Vincent Lewis* [2019] NICA 26 at [12] and [19] and in *R v KT* [2019] NICA 42 at [43] as to older offenders. In *R v KT*, Morgan LCJ said:

"[43] The offender is in his eighties. The English Court of Appeal in *R v Clarke* [2017] EWCA Crim 393 reaffirmed the principle established in a number of cases that the court is always entitled to show a limited degree of mercy to an offender of advanced years because of the impact that a sentence of imprisonment can have on an offender of that age. The principle is that an offender's diminished life expectancy, his age, health and the prospect of his dying in prison were factors legitimately to be taken into account in passing sentence, but only in a limited way since they had to be balanced against the gravity of the offending, including the harm done to victims, and the public interest in setting appropriate punishment for very serious crimes. The focus of the court will be on the extent to which a custodial sentence will be more onerous, compared to a younger, fitter offender and in that respect, it is important to have reports to engage with and consider such issues. This court in *Director of Public Prosecution's Reference*

(Number 1 of 2018) *Vincent Lewis* [2019] NICA 26 12 applied that principle in this jurisdiction. We would add that ordinarily as in *Vincent Lewis* by the time very old offenders fall to be sentenced, the questions of rehabilitation, dangerousness and further offending are unlikely to be significant ...”

[29] In *R v Hendry* [2022] NICA 77 which involved an 80 year old defendant convicted of sexual offences, Treacy LJ provided the following guidance as to how the court should consider suspension of a sentence generally:

“Suspension of sentence

[43] Article 23 of the Criminal Justice (Northern Ireland) Order 1996 inserted subsections (1C) and (1D) into s18 of the Treatment of Offenders Act (Northern Ireland) 1968. Those subsections would, if enacted, have created a requirement that the judge find exceptional circumstances before imposing a suspended sentence upon a defendant. Article 23 has never been brought into force, but this court has held that where a court would normally be required to pass an immediate custodial sentence (eg, because of the need for deterrence, or to mark society's condemnation of certain behaviour) then it should carefully enquire into the circumstances of the offence to see whether a suspended sentence could be justified on the basis of exceptional circumstances.

[44] In relation to the judicial assessment of “exceptional circumstances”, albeit in a somewhat different context, the court in *R v Rehman & Wood* [2006] 1 Cr App R (S) 77 stated at para [11] that “it is not appropriate to look at each circumstance separately and to conclude that it does not amount to an exceptional circumstance. A holistic approach is needed. There will be cases where there is one single striking feature, which relates either to the offence or the offender, which causes that case to fall within the requirement of exceptional circumstances. There can be other cases where no single factor by itself will amount to exceptional circumstances, but the collective impact of all the relevant circumstances truly makes the case exceptional.”

[30] The “circumstances” of a case are capable of embracing the facts and factors relating to the individual offender, coupled with facts and factors relating to the actual offending (see: *R v Lin and others* [2023] NICA 11 at [94]).

[31] Mr Russell KC on behalf of the prosecution has helpfully summarised the relevant principles as follows:

- (a) this offence calls for deterrent sentencing;
- (b) highly exceptional circumstances are required before a sentence in such circumstances can be suspended;
- (c) by the time very old offenders fall to be sentenced, the questions of rehabilitation, dangerousness and further offending are unlikely to be significant;
- (d) the Defendant's age, health and the prospects of his dying in prison are legitimate factors to consider in determining sentence but only in a limited way because they must be balanced against the gravity of the offending, including the harm done to victim(s), and the public interest in setting appropriate punishment for very serious crimes; and
- (e) if considering (d) the court should focus on the extent to which a custodial sentence will be more onerous, compared to a younger, fitter offender, and in that respect it is important to have reports to engage with and consider such issues.

The aggravating circumstances

[32] The prosecution submits that the aggravating features are:

- (a) Two other children were injured, albeit not seriously.
- (b) The impact on Scarlett's family.

It is not submitted that those factors would place this case in a higher category than that of 12 months - 24 months imprisonment after a trial, but rather that they are relevant to where this case falls within the category.

The mitigating circumstances

[33] The defendant has been devastated by causing Scarlett's death and his health has plummeted since then. He wishes to make it clear however, that any impact upon him is nothing compared with the harm to Scarlett's family and in particular to her mother. He has been driving for 72 years and in that time has not even had a parking ticket, that alone penalty points or a conviction.

[34] He spent his working life from 1952 until 1977, when he retired from the RUC, in public service. He had an exemplary service record and his actions in protecting the public during the very dark times in our society were formally recognised. He was an advanced driver which meant that he was specially trained to drive in very difficult circumstances. A very high level of driving skill is needed to pass the relevant training courses.

[34] After his retirement, he worked in a range of jobs, also volunteering at the Northern Ireland Hospice for four years. References confirm that he is a man of principle and integrity.

[35] I have taken into account the contents of the presentence report and a report from Dr Ackerman, a Consultant Psychiatrist. The defendant had a difficult childhood and suffered violence at the hands of its father, watching him inflict violence on his mother. Despite winning a scholarship to Foyle college, his father made it impossible for him to remain at school and he was forced to leave at 15 to work on his father's farm.

[36] The defendant has at all times admitted responsibility for Scarlett's death and had always indicated that he wanted to enter a guilty plea. However, there was a legal issue in dispute between prosecution and defence which related to the culpability of the driving. The prosecution maintained that Scarlett's death was caused by dangerous driving whilst the defence argued that the level of culpability was careless.

[37] In some cases, it is clear that the driving was dangerous and in others that it was careless. There are however cases where this is unclear, and where ultimately a jury of 12 members of the public have to decide whether the driving fell far short of the standard expected (dangerous), or simply short of that standard (careless). In my view, there was a triable issue because a jury may not have been sure that momentary pedal misapplication met the test for dangerousness.

[38] Despite the advice received, which in my view was sound, John Lindsay chose to enter a guilty plea to dangerous driving causing death in order to spare Scarlett's family the further distress of a trial. There is no question that the defendant has shown genuine remorse, and he has not sought, through his lawyers, to prevent me seeing the full extent of harm caused to family members, some of which ordinarily would not be admissible. Unlike many defendants, he has read those detailed, distressing statements.

The appropriate sentence

[39] It is agreed between prosecution and defence of the range of sentence is between 12 and 24 months in prison before reduction for the guilty plea. Taking into account the aggravating and mitigating circumstances I consider that the appropriate starting point is one of 15 months.

[40] In determining the extent of reduction which should be applied in this case, it is important to note that responsibility for the death has never been disputed. Detailed expert reports were required on the question of the cause of the collision and I accept that there was a triable issue regarding culpability which delayed the entry of a guilty plea. The defendant declined to follow his legal advice to contest the charge, wanted to spare the family further distress and wanted to be sentenced before Christmas to bring some kind of closure for them. I am therefore reducing the starting point by one third. Whilst he was too ill to be sentenced at that time, I took the unusual step of explaining to the family the sentence that I would pass when he was well enough, and my reasons, with the defendant's agreement.

[41] The complex issue is whether there are exceptional circumstances to justify suspending this sentence. The medical evidence that has been provided has convinced me that the impact of prison would be extremely difficult on the defendant due to his current state of health and indeed it is unlikely that the prison service could cope with those issues. I have decided as an act of mercy, that there are grounds for suspending the sentence because of the defendant's extreme age, now 92, his reduced life expectancy, now nine months to a year, his state of health and previous unblemished character.

[42] The sentence I am passing is one of ten months suspended for 12 months.

[43] A driving disqualification is mandatory and I make it for two years. It is academic since the defendant will never drive again.