

SENTENCING REPORT

Milligan v HM Advocate

HIGH COURT OF JUSTICIARY

LORD MENZIES AND LADY DORRIAN

8 SEPTEMBER 2015

[2015] HCJAC 84

Justiciary — Sentence — Appeal — Accused convicted of causing death by dangerous driving — Accused sentenced to six years' imprisonment and disqualified from driving for eight years — Whether excessive.

An accused person was convicted of causing death by dangerous driving, contrary to s.1 of the Road Traffic Act 1988. He was sentenced to six years' imprisonment and disqualified from driving for a period of eight years, and until he passed the extended test of competence to drive. The accused appealed the sentence as excessive, arguing that there was an absence of aggravating factors and that the sentencing judge had erred in categorising the offences at level 2 in the English sentencing guidelines for relevant offences.

Held, (1) that too rigid an application of the English sentencing guidelines was to be guarded against and these were to be understood in a different sentencing regime in Scotland (para.5); (2) that there had been aggravating factors as these were identified in the guidelines present (para.5); (3) that the sentences might fall towards the upper end of the appropriate range but the trial judge had had the benefit of having heard all of the evidence and was in a better position than the Appeal Court to assess sentence, and those imposed were not excessive (paras 6 and 7); and appeal *refused*.

Indictment

Ian Milligan was charged at the instance of the rt hon Frank Mulholland, QC, Her Majesty's Advocate on an indictment libelling a contravention of s.1 of the Road Traffic Act 1988.

The accused pleaded not guilty and proceeded to trial at the High Court in Glasgow.

On 23 April 2015 the accused was convicted. On 28 May 2015 he was sentenced to six years' imprisonment and disqualified from driving for a period of eight years, and until he passed the extended test of competence to drive.

The accused appealed against sentence.

Appeal

The appeal was heard before the High Court.

On 8 September 2015 the court *refused* the appeal.

The following opinion of the court was delivered by Lord Menzies:

OPINION OF THE COURT.— [1] The appellant Ian Milligan was convicted on 23 April 2015 after trial at the High Court of Justiciary at Glasgow of contravening s.1 of the Road Traffic Act 1988, causing death by dangerous driving, namely causing the death of Alastair Wells the front seat passenger in his car in a road traffic accident on the A702 near Abington on 8 July 2013.

[2] On 28 May 2015 he was sentenced to six years' imprisonment and disqualified from driving for a period of eight years and until he passed the extended test of competence to drive.

[3] It was submitted to us today that both the period of imprisonment and the period of disqualification were excessive. It was also drawn to our attention that there was no question in this case of excessive speed or of the appellant having been driving whilst under the influence of drink or drugs. He had no analogous previous convictions and it was submitted to us that this was a single manoeuvre, a brief but catastrophic error and that there was an absence of any aggravating factors such as drink, drugs or other driving offences, previous convictions or attempt to drive off or the like. Counsel for the appellant submitted to us that the sentencing judge fell into error in categorising this as falling into the second level of seriousness in the English sentencing guidelines for offences of this nature and that this should properly be categorised as falling within level 3.

[4] We start by observing that the trial judge was correct to describe this as a tragic case. All cases of contravention of s.1 of the Road Traffic Act may be described as tragic, and the tragedy clearly affected the family and friends of the deceased Mr Wells; it also affected those who were injured in this accident, but we also accept that it has affected the appellant himself and his immediate family.

[5] We caution against too rigid an application of the English sentencing guidelines. They are not to be applied even in England in mechanistic fashion and it must be borne in mind that those guidelines in England are to be understood in a different sentencing regime from the Scottish sentencing regime. We observe that there were, even looking at those guidelines, some aggravating factors as these are identified in the guidelines. The third aggravating factor is serious injury to one or more victims in addition to the death and that certainly applies in this case, in which four others were injured, two of them sustaining life threatening injuries. The fourth aggravating factor is disregard of warnings and the trial judge observed that this applied in this case, and having regard to his summary of the evidence with regard to road markings it is clear to us that that is indeed properly an aggravating factor. Again, only looking at the guidelines we

accept that the offender was seriously injured, and we also accept that the victim was a close friend of the appellant, and these are identified in the English guidelines as additional mitigating factors. But the Scottish approach to sentencing is rather less formulaic than the English sentencing guidelines.

[6] The trial judge who heard all of the evidence in this trial imposed a sentence of six years' imprisonment and disqualification for eight years and it may be that these fall towards the upper end of the appropriate range of sentences. However, the trial judge had the benefit of having heard all of the evidence, and unlike sentence appeals in which a plea of guilty is tendered and the sentencing judge may perhaps be described as being in the same position as an appeal court, in this case the sentencing judge is in a better position than we are to assess the appropriate sentence having heard all of the evidence.

[7] The question for us is simply whether the sentence of six years' imprisonment and disqualification for eight years was excessive. Despite the fact that this was not a prolonged course of dangerous driving, despite the fact it was a single manoeuvre, having regard to all the circumstances we are unable to say that these sentences are excessive in the particular circumstances of this case and accordingly we must refuse this appeal.

Counsel for Appellant, Mitchell; Instructed by Faculty Services Ltd, Edinburgh for Bridge Litigation, Glasgow — Counsel for Respondent, Small, AD; Solicitor, C Dyer, Crown Agent.