

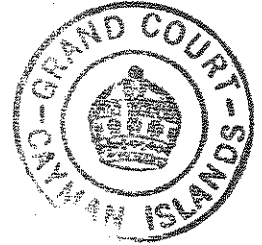
1 **IN THE GRAND COURT OF THE CAYMAN ISLANDS**
2 **CRIMINAL SIDE**

3
4 **INDICTMENT NO: 0013/2014**

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6
7 **THE QUEEN**

8 **V**

9
10 **IGOR DOMLADIS**



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14 **Appearances:**

Ms. Toyin Salako for the Crown

15
16 **Mr. Ben Tonner of Samson & McGrath for**
17 **the Defendant**

18
19 **Before:**

Hon. Mr. Justice Malcolm Swift (Actg.)

20 **Submissions heard:**

27th November 2014

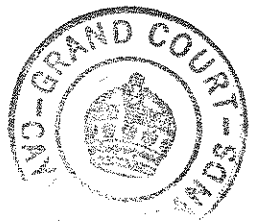
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22 **SENTENCE RULING**
23

- 24 1. On the 18th May 2013, Zak Maun Quappe died of severe head injuries in a road
25 accident. He was born on the 3rd May 1992. He was just 21 at the date of his death.
- 26 2. He died because his Ford Taurus and the Defendant's Mitsubishi Lancer collided
27 with one another.
- 28 3. The Defendant was driving the Lancer at excessive speed (well in excess of 60
29 mph) whilst under the influence of drink, travelling south along South Church
30 Street, on the wrong side of the road, trying to overtake the Deceased who was
31 attempting to outrun the Defendant. A 30 mph limit applied along that road. In
32 short, they were racing each other on the public highway. It was 3am.

1 4. The Crown's expert concluded that the Defendant lost control of the Lancer and
2 caused it to collide with the offside of the Taurus which was forced into a fatal slide
3 and impact with immovable objects. I am told that the defence expert concluded
4 that the Deceased's vehicle may have been the first to lose traction. It seems to me
5 that this is not a major aspect of the case for sentencing purposes and will not affect
6 the level of sentence to be imposed. However I note that the Defendant did claim
7 (at the hospital) that the Deceased had been in the act of overtaking the Defendant
8 so that the Defendant was obliged to brake and that his braking caused the Lancer
9 to spin out of control. On the evidence I cannot accept that as a true explanation.

10 5. The victim had been drinking and was driving over the prescribed limit. The
11 defendant smelled strongly of alcohol though, at first, he claimed he had consumed
12 only a single glass of wine at 7pm the previous evening. He subsequently refused
13 to supply a sample of blood although it appears that he was not first asked to supply
14 a breath sample and was not warned that a failure to supply a sample of blood or
15 urine would be an offence. Later, after being re-arrested and breath-tested 10 hours
16 after the accident, there was still alcohol in his system – the reading was 0.11%. I
17 am entitled to find and I do find that his refusal to supply a specimen of blood was
18 to avoid discovery that he was or might well have been driving when over the legal
19 limit. His refusal is to be treated as an equally important aggravating factor as
20 proof of driving over the limit would have been.

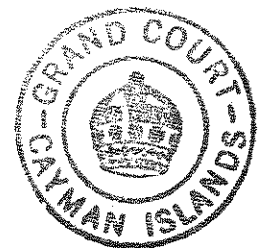
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1 6. The Lancer had no Certificate of Road Worthiness. The Defendant's driving
2 licence had expired. Although these were not contributory causes of the accident,
3 they demonstrate a willingness to ignore the law.

4 7. The Defendant is 24 and is no stranger to road traffic offences and has appeared for
5 drink related misconduct. Barely old enough to drive, he was convicted of speeding
6 on the 9/9/07 (aged 17) – I am told that he was travelling at 40-45 mph in a 25 or 30
7 mph limit; speeding on the 20/4/08 (aged 18) – I am told that he was driving at 60-
8 70 mph in a 50 mph limit late at night - and later of disorderly conduct on licensed
9 premises on the 19/5/10 (aged 20) for which he was admonished and ordered to pay
10 costs.

11 8. The Defendant has expressed remorse and I accept that it is genuine. I also note the
12 unselfish and generous stance taken by the Deceased's mother who realises that
13 tragedies such as this devastate two families. She notes however the additional pain
14 caused to her by the length of time taken by the Defendant to face up to his guilt (he
15 did not plead guilty until the 26th September 2014 – 16 months after the accident)
16 and the unnecessarily lengthy court proceedings, coupled with the lack of effective
17 victim liaison. I am told by the Crown that they nevertheless accept that a plea of
18 guilty in these circumstances should serve to reduce the sentence by one-third. I
19 shall apply that reduction in due course although the plea was not entered at the first
20 opportunity.



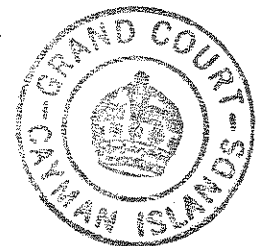
1 9. In a clear case such as this, it is seldom appropriate to await expert evidence before
2 a guilty plea is entered and other Defendants in other cases should not think that full
3 reduction for a guilty plea will ordinarily be given unless the plea is entered at the
4 first reasonable opportunity. Indeed, in clear cases it is not unusual to withhold any
5 reduction in sentence when there is a guilty plea.

6 10. I have read the victim impact statements and materials and the Social Inquiry
7 Report (SIR). I have read the references provided on the Defendant's behalf –
8 everyone speaks highly of him. I have read the defendant's own statement in
9 mitigation in which the effect of his actions on himself and on others is made plain.
10 I have listened carefully to Mr. Tonner's measured mitigation and take into account
11 as far as I am able the points he so ably makes.

12 11. The maximum sentence for this offence is 10 years. The maximum sentence in the
13 UK is 14 years. Reliance on any UK guidelines or guideline cases must reflect that
14 difference and must be reduced accordingly by approximately one-third.

15 12. I have considered *The Chief Justice's Guidelines*¹. It has not been updated for
16 some time. The sentencing levels were fixed in 1998 but, although they do not take
17 into account subsequent sentencing guidelines and guideline cases here and in the
18 UK, they reflect in general terms the sort of approach the courts should take in
19 cases of causing death by dangerous driving.

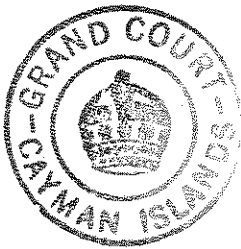
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¹ *Statement on Tariffs and Guidelines for Sentencing for Certain Offences* dated the 16th January 2002

1 13. The local decision in the local case of *R v. Morgan*² is of assistance. The judge in
2 *Morgan* was not laying down guidelines – he was simply following and adapting
3 the guidelines laid down in the UK case of *R v. Cooksley and Others*³ in which the
4 relevant aggravating factors affecting the assessment of the starting point for
5 sentence were set out.

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7 14. The aggravating factors which are to be considered in deciding the sentencing
8 starting point as indicated in *Cooksley* have been largely adopted and expanded in
9 the UK Sentencing Guidelines and are, in so far as they are relevant in this case:

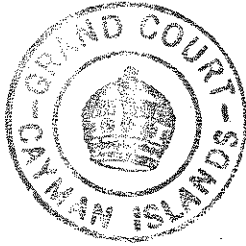


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11 (i) Greatly excessive speed (in my judgment travelling in excess of 60
12 mph in South Church Street is a greatly excessive speed); racing or
13 competitive driving (which is admitted) combined with showing off.
14 These are all according to *Cooksley* simply 4 different aspects of a
15 single aggravating factor. I therefore take the view that these four
16 matters should be considered together and all four apply to this
17 Defendant but as a single factor;

18
19 (ii) In my judgment, the Defendant's failure to provide a sample of blood
20 deprived the Police of an accurate means of assessing his alcohol
21 consumption before the accident, and that failure is properly to be taken
22 into account in assessing the sentencing starting point. I include in my
23 assessment of this factor the attempts by the Defendant, in the account
24 he gave soon afterwards, to minimize his alcohol consumption;

² Ind. No. 5/2011

³ [2003] 2 Cr. App. R. 18; [2004] 1 Cr. App. R(S)



1 (iii) There remains the question of whether the driving was prolonged,
2 persistent and deliberate. I must be careful to distinguish this factor
3 from the issue of racing so that there is no duplicity in the reasoning to
4 be applied. There is here evidence of prolonged, persistent and
5 deliberate bad driving apart from the combination of speed, racing,
6 competitive driving and showing off. It is the fact that this driving
7 lasted for at least half a mile (on the defence admission) and probably
8 more on the evidence of the prosecution eye witnesses and it involved
9 driving on the wrong side of the road.

10
11 15. It follows that in my judgment this is not a Level 2 offence. There are, as I have
12 found, three aggravating factors relevant to the assessment of seriousness which
13 enable me to fix the starting point for sentence at 6 years imprisonment. That
14 would be consistent with discounted UK guidelines and equivalent to a case at the
15 lower end of Level 1 when adjusted downwards in the way I have already indicated.
16 I regard this case as an example of flagrant disregard for the rules of the road and
17 disregard of the great danger caused to others who might possibly be using the road
18 (including pedestrians and oncoming traffic). He was simply fortunate that neither
19 were encountered. These guidelines are not a sentencing straitjacket. The facts of
20 the instant case must be carefully assessed.

21 16. I must be careful not to double-count the factors which fix the sentence at a starting
22 point at 6 years and those other factors of aggravation or mitigation which further
23 affect the sentence.

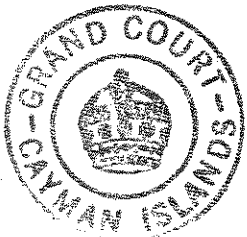
1 17. The aggravating factors which are additional to the factors which determine the
2 seriousness of the case are as follows:

- 3 (i) Previous RT convictions;
- 4 (ii) Causing injury to passenger;
- 5 (iii) A vehicle owned by a member of the public was written off in the
6 accident;
- 7 (iv) Falsely claiming that the deceased caused the accident by overtaking
8 him causing him to brake and lose control;
- 9 (v) Other associated offences – no licence and no certificate of
10 roadworthiness.

11 18. There is no evidence that the Defendant disregarded any warnings about his driving
12 – I interpret that to mean warnings by others (and that is consistent with what Lord
13 Woolf CJ said in *Cooksley*.

14 19. The mitigating features of this case are:

- 15 (i) The victim was a friend (this carries little weight);
- 16 (ii) The victim's actions victim's actions (racing) contributed to the
17 accident;
- 18 (iii) Remorse – I accept that the defendant's contrition is genuine;
- 19 (iv) His guilty plea which I shall deal with separately.



1 20. I take into account also all the mitigating factors previously mentioned. In case the
2 public should think that the sentence is insufficiently severe, I make clear that I give
3 substantial weight to the fact that the Deceased was a willing participant in the
4 furious and wanton driving which brought about his own death.

5 21. It therefore seems to me that the additional aggravating factors and the mitigating
6 factors balance one another out.

7 22. I fix the sentence, taking aggravating and mitigating factors into account at six (6)
8 years imprisonment.

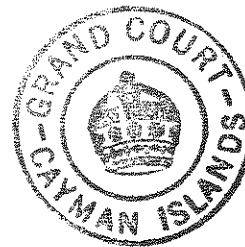
9 23. The plea of guilty was late but I nevertheless accede to the Crown's concession and
10 apply a reduction of one-third. The sentence is therefore reduced to one of four (4)
11 years imprisonment.

12 24. Disqualification must follow and the defendant will be disqualified for holding or
13 obtaining a driving licence for five (5) years. I also order that he should re-pass his
14 driving test before the licence is restored.

15

16 **Dated this the 27th day of November 2014**

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21 **Honourable Mr. Justice Malcolm Swift (Actg.)**

22 **Judge of the Grand Court**