

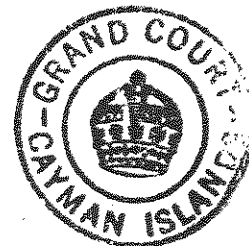
1 **IN THE GRAND COURT OF THE CAYMAN ISLANDS**
2 **CRIMINAL SIDE**

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4 **INDICTMENT NO: 0017/2012**

5
6 **THE QUEEN**

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8 **V**

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10 **DORLISA PIERCY**



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13 **Appearances:**

**Mrs. Tanya Lobban-Jackson on behalf of
the DPP for the Crown**

**Ms. Lucy Organ of Samson and McGrath
for the Defendant**

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19 **Before:**

Madam Justice Carol Beswick (Actg.)

20 **Heard:**

22nd April 2014

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23 **SENTENCE RULING**
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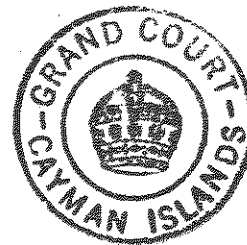
- 25 1. On the 21st February 2014, after a trial lasting two weeks¹, Ms. Dorlisa Piercy was
26 found guilty of causing death by dangerous driving, contrary to s.67(1) of the
27 Traffic Law (2003) Revision. Sentencing was deferred pending the receipt of
28 reports and submissions. These are now available and I therefore proceed to
29 sentence Ms. Piercy and to give reasons for so doing.

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¹ Monday the 20th to Friday the 24th January 2014. Monday the 27th was a public holiday and the trial continued from Tuesday the 28th January to Saturday the 1st February 2014 – dates inclusive.

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2. The particulars of the indictment on which Ms. Piercy was convicted were that she “on Sunday the 14th day of August 2011, drove a Toyota Altezza motor car registered 141188 on Seaview Road, in the vicinity of Half Moon Bay, East End, Grand Cayman, dangerously, having no regard to the manner of driving, thereby causing the death of Karen Imonie Edwards.”
3. The evidence which was accepted as true was that Ms. Piercy on that fateful day drove the car with three passengers along Seaview Road at 65mph, at least, in a vicinity where the speed limit was 50 mph. I found that the manner in which she drove was dangerous in the particular circumstances where the road accommodated traffic going in two directions, had only two lanes, and was not straight. The dangerous driving resulted in the death of Ms. Karen Edwards who, at the time, was in the third trimester of pregnancy. The two other passengers were injured, one seriously, and Ms. Piercy herself also received serious injuries.



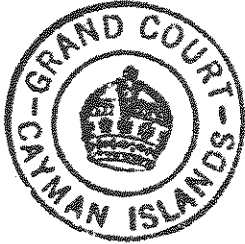
CROWN SUBMISSIONS

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4. Counsel for the Crown relied on the **Guidelines**² issued by the Honourable Chief Justice which recommend a tariff of five (5) years for this type of offence if there are aggravating factors, and three (3) years if there are none. She also highlighted what she regarded as being the aggravating factors in the commission of this offence as referred to in *R v. Cooksley*³. Counsel argued that this matter should be regarded as falling into category three (3) of the categories outlined in *Cooksley* or alternatively between categories 2 and 3. She viewed the aggravating factors as including excessive speed, disregard of warnings from fellow passengers, previous convictions, serious injury to others and irresponsible behaviour in blaming another passenger for the death.

5. Counsel also submitted that the Court should consider as aggravating the fact that Ms. Piercy had been on bail at the time of the incident although it was for an unrelated offence which has now been dismissed in her favour because of the absence of witnesses.

6. Ms. Lobban agreed with the Defence submissions that no account should be taken of any alcohol drinking. However she submitted that although only one person was killed, it should be borne in mind that the victim was in her eighth (8th) month of pregnancy and should therefore be regarded by the Court as being vulnerable. This therefore would be another aggravating circumstance.

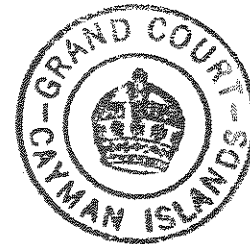


² *Statement on Tariffs and Guidelines for Sentencing for Certain Offences* dated the 16th January 2002.
³ [2003] 2 Cr. App. R 18

1 7. Counsel relied on *R v. Jarrett Morgan*⁴, *R v. Brooks-Dixon*⁵ and *Josh Terry v. R*⁶
2 as support for her argument that the sentences in matters similar to the instant
3 matter were reduced only when remorse was shown by the defendant and there had
4 been a guilty plea.

5 8. As it concerns mitigating factors, Counsel argued that there may be two – being the
6 age of the defendant, and, the fact that the Defendant had been injured herself.

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⁴ Indictment 5 of 2011 delivered 12.9.2011

⁵ [2012] 1 CILR Note 14

⁶ Criminal Appeal no. 47 of 2000 (Indictment No. 8 of 2001) delivered on July 31st 2002

DEFENCE SUBMISSIONS

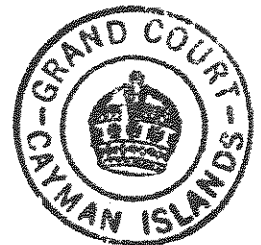
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9. Counsel, Ms. Organ, on behalf of Ms. Piercy also relied on *Cooksley*, where the Court enunciated guidelines in the sentencing process of this type of offence.

10. Counsel urged the Court to regard this case as falling into category 2 of the *Cooksley* guidelines. Her submission was that the speed at which Ms. Piercy drove could not be regarded as being “*grossly excessive*” and there were no circumstances which would cause the driving to be regarded as being “*highly culpable*”, warranting classification in category 3 of the *Cooksley* guidelines.

11. Counsel pointed out what she urged the court to accept as being mitigating factors. At the time of the offence Ms. Piercy was twenty-four (24) years old. She showed stability in her employment record in that, she had been employed after leaving school excepting for short periods. She had herself been seriously injured in the accident. She had been described as being “critically ill” and had been hospitalized for months. She had not been able to walk unassisted for four (4) months.

12. Another mitigating factor on which Counsel placed much reliance is the change in the circumstances of Ms. Piercy since the offence. Ms. Piercy had been informed that she was incapable of becoming pregnant. However, she had a daughter in October 2012, is breastfeeding the child and is the primary caregiver. Counsel argued that there was much delay in the prosecution of this matter and now her incarceration will be disturbing for the young child.



1 13. In addition, Ms. Piercy has become withdrawn and reports mental scars and
2 recurring pains. The persons with whom she still associates however indicate that
3 she has made positive changes since the incident, and some have given character
4 references describing Ms. Piercy in a very positive light.

5 14. In view of these aggravating and mitigating factors, Counsel urges the Court to
6 consider that the appropriate sentence should be at the “bottom end” of the
7 sentences suggested in *Cooksley*, that is, the bottom end of the 2 to 3-year term of
8 imprisonment which was there recommended.

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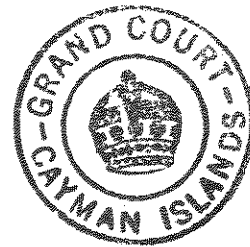
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1 *ANALYSIS*

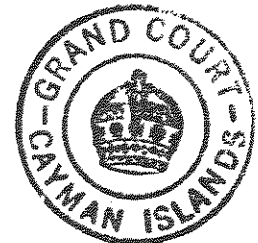
2 15. The oft repeated observation in *Attorney General's Reference Nos. 14 and 24 of*
3 *1993 (Peter James Shepherd, Robert Stuart Wernet)*⁷ bears repetition. There
4 Lord Taylor CJ said:

5 *"We wish to stress that human life cannot be restored, nor can its loss be*
6 *measured by the length of a prison sentence. We recognise that no term of*
7 *months or years imposed on the offender can reconcile the family of a deceased*
8 *victim to their loss, nor will it cure their anguish."*

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10 16. It has nonetheless been accepted that normally only a custodial sentence will be
11 imposed for the offence of causing death by dangerous driving because of the
12 severity of this offence and the need for deterrence⁸.

13 17. Section 67(3) of the Traffic Law (2003 Revision) prescribes a maximum sentence
14 of ten (10) years' imprisonment for this offence, and in addition, disqualification
15 from holding or obtaining a driver's licence for five (5) years or such longer period
16 as the Court may think fit.

17 18. In determining the appropriate sentence I have paid particular attention to the
18 **Guidelines** (*supra*), where tariffs were recommended, i.e. sentences to be applied in
19 a typical case. Mitigating factors would reduce the sentence and aggravating
20 factors would increase it.



⁷ [1994] 15 CAR 640 at 644

⁸ *R v. Cooksley* [2003] 2 Cr. App R 18 , [2003] EWCA Crim. 996)

1 19. In the **Guidelines** the tariff of five (5) years' imprisonment was stated as being
2 appropriate for the offence of causing death by dangerous driving involving
3 alcohol, speed or other aggravating factors. In the absence of such aggravating
4 factors, the tariff is three (3) years.

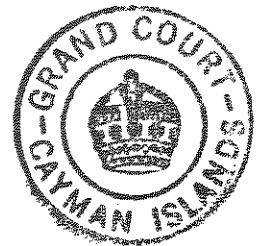
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6 20. In these **Guidelines** the Honourable Chief Justice referred to the primary aims of
7 sentencing as "rehabilitation, deterrence, incapacitation and restitution, but not
8 necessarily in that order" and I have borne those aims in mind.

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10 21. In *Cooksley (supra)* the Court of Appeal of England and Wales set out clear
11 guidelines for the sentencing procedure for convictions for causing death by
12 dangerous driving. These were adopted and approved by the Cayman Islands Court
13 of Appeal (CICA) in *Cayasso v. R⁹*.

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15 **AGGRAVATING FACTORS**

16 22. Lord Woolf in *Cooksley (supra)* stated the factors to be regarded as being
17 aggravating. Included in those factors were the following:

18 *"....greatly excessive speed, disregard of warning from fellow passengers,*
19 *previous convictions for motoring offences, serious injury to one or more*
20 *victims in addition to the death, irresponsible behaviour at the time of the*
21 *offence, e.g. claiming one of the victims was responsible for the crash."*



⁹ CICA 1 of 2008 dated 14 August 2008.

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MITIGATING FACTORS

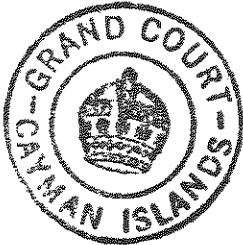
23. Lord Woolf also set out the mitigating factors including:

“... (a) a good driving record; (b) the absence of previous convictions; (c) a timely plea of guilty; (d) genuine shock and remorse, especially where the victim was a close relation or friend; (e) the defendant’s age; (f) the fact [that]the offender had been seriously injured as a result of the dangerous driving.....”

SENTENCING PROCESS

24. Lord Woolf then detailed the considerations for the sentencing process. He said:

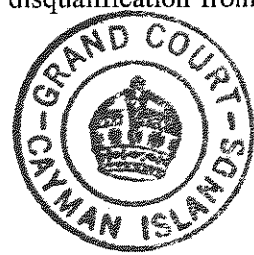
“For adult offenders, four starting points for sentences for causing death by dangerous driving were set. (i) in cases in which no aggravating features were present, a short custodial sentence of between 12 and 18 months imprisonment, a custodial sentence only being avoidable if there were exceptional mitigating features in the cases; (ii) the offences involving a momentary dangerous error of judgment or short period of bad driving that was aggravated by a habitually unacceptable standard of driving on the part of the defendant (namely the presence of one or more of the aggravating factors.....a custodial sentence of between two and three years, but in certain circumstances five years’ imprisonment would be appropriate due to the aggravating features...; (iii) in cases where the standard of the defendant’s driving was more highly dangerous, a custodial sentence of between four and five years’ imprisonment, indicating the presence of two or more of the aggravating features.....; and (iv) in cases involving an extremely high level of culpability on the defendant’s part, indicating three or more of the aggravating features,a custodial sentence of six years imprisonment. A maximum sentence of 10 years imprisonment would be reserved for the most serious cases.”



1 28. In *Henry York Carter v. R*¹¹, the CICA affirmed the sentence of three (3) years
2 imposed by the trial judge, and substituted a period of disqualification from holding
3 a drivers licence for fifteen (15) years, instead of the period of life which had been
4 imposed at the trial. The court held that the period of disqualification must be
5 specific. There the appellant had hit down a pedestrian with his vehicle. He had
6 pleaded not guilty and his record of traffic offences was extensive.

7 29. The effect of real remorse was obvious in *Josh Terry v. R*. There the CICA reduced
8 the sentence which had been imposed, to one of twelve (12) months' imprisonment,
9 and affirmed the period of disqualification from driving for five (5) years where the
10 appellant had pleaded guilty, had good character witnesses and no previous
11 convictions and had expressed remorse. Before the trial commenced the widow of
12 the deceased had written to the Attorney General asking him to refrain from
13 prosecuting the appellant, indicating that the deceased's family had forgiven the
14 appellant who had visited them and who had expressed remorse.

15 30. The effect of remorse was also evident in *R v. Jarrett Morgan* where Quin J. had
16 been faced with determining the appropriate sentence where the life of a young man
17 was extinguished as a result of the dangerous driving at a very high speed of his
18 friend, the defendant. There the defendant pleaded guilty, had no previous
19 conviction, expressed great remorse and had the support of the family of the
20 deceased who, by the time of sentencing, had forgiven him. The learned judge
21 opined that the circumstances of the case straddled categories 2 and 3 of *Cooksley*
22 and imposed a sentence of two (2) years imprisonment with disqualification from
23 holding a driver's licence for five (5) years.



¹¹ 2010 (1) CILR Note 6

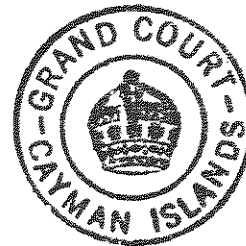
SOCIAL INQUIRY REPORT (SIR)

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33. This report showed that Ms. Piercy suffered from behavioural problems in her youth but always had a solid family support system. The SIR lists previous convictions, none of which is related to a traffic offence. She is now a homemaker but has the ambition of becoming a physiotherapist, born of her new appreciation of the contribution of that profession when she received help from them during her own recovery from the accident.

34. This report also stated that Ms. Piercy has indicated that she has changed her life style since the accident and no longer “goes out drinking and socializing with friends” but instead spends time with family and no longer misuses any drug.

35. Ms. Piercy reported that she had a plate, nail and screws in her pelvic area and had been told that she would never be able to bear a child. However, she has proven that prognosis to be wrong. Her physical injuries have mended well, she stated, but she believes that the mental scars of what she describes as her “ordeal” will never be better.



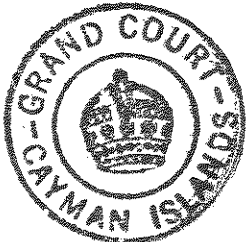
VICTIM IMPACT REPORT (VIR)

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36. In this report, Mrs. Donna Robb, mother of the late Ms. Karen Edwards, indicated that neither Ms. Piercy nor her family has offered any acknowledgment or condolence. She is surprised by this because she describes the community as small and Ms. Piercy’s mother had been her co-worker previously. Also she had seen the family at every court appearance but there had been no expression of sympathy apart from one contact from one of Ms. Piercy’s family shortly after the accident. However Mrs. Robb regarded that contact as being for a different reason than to express sympathy.

37. In addition the deceased’s siblings viewed Ms. Piercy’s conduct while in Court as being “seemingly insensitive” to their pain as she was observed talking and laughing. They report that Ms. Piercy has not expressed any remorse or sympathy to them even though she was said to have been a friend of their deceased sister.

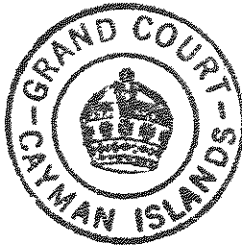
38. Mrs. Robb states that she has forgiven everyone involved but wishes Ms. Piercy to be punished as she “carelessly handed Ms. Edwards and her unborn son a death sentence”. Further the siblings of Ms. Edwards state that they too have forgiven Ms. Piercy for the killings but wish her to be sentenced in such a manner as to allow her to contemplate what she did and the pain that she has caused to many persons.



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CHARACTER REFERENCES

39. Character references from upstanding members of the community in the Cayman Islands, and abroad, assisted me in my deliberation. They showed Ms. Piercy to be an exemplary member of the community.



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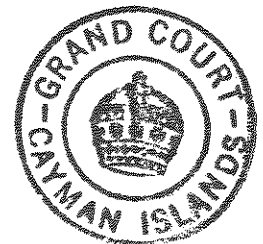
DISPOSITION

40. I have gained much assistance from the submissions and authorities submitted by Counsel, from the character references and from the SIR and VIR, both of which were extremely comprehensive. I have used them to assist in the process of determining the appropriate sentence.

41. In applying the *Cooksley* guidelines, I regard this matter as falling within the second band, (*see par 25 supra*) that is, an offence which would typically receive a custodial sentence of between two and three years, but where in certain circumstances five (5) years' imprisonment would be appropriate due to the aggravating features.

42. I consider, firstly, whether there are mitigating factors which would reduce the sentence.

43. Ms. Piercy had indulged in a short period of bad driving. She is young, almost 24 years old at the time of the incident, and is the mother of a 17-month old child. The SIR confirms that she herself endured a lengthy period of hospitalization and rehabilitation as a result of the injuries which she sustained in the accident. She has good character references and has shown stability in employment. These are mitigating factors which reduce the sentence but, in my view, there are no exceptional mitigating factors that would cause this case to be out of the normal or typical category.



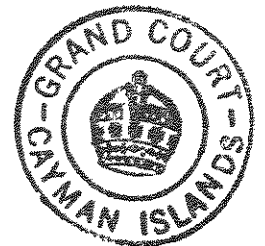
1 44. The aggravating factors must now be noted. There was excessive speed, previous
2 violations for motoring offences, injuries to more than one other passenger, one of
3 whom was seriously injured. I do not however consider the effect of any warning
4 from fellow passengers because the evidence was that it was not clear whether Ms.
5 Piercy could have heard any such warnings. Nor do I consider that she was on bail
6 at the time of committing this offence because the offence was unrelated. There was
7 evidence of alcohol drinking but there was no evidence that she was adversely
8 affected by that or that it was of such an amount that she must have been adversely
9 affected¹². I therefore do not consider that in sentencing.

10 45. There is however a further aggravating factor. Ms. Dorlisa Piercy was driving a
11 passenger who was obviously pregnant, and was in fact in her third trimester of
12 pregnancy and therefore properly regarded as being vulnerable.

13 46. Ms. Piercy has shown no genuine remorse at the death of her friend/acquaintance at
14 her hands. She has maintained, until now, that she was not the driver of the car on
15 that fateful occasion. She therefore did not plead guilty to the offence. However,
16 having now been found guilty, she will not benefit from any reduction of the
17 sentence to which she would have been entitled if she had pleaded guilty.

18 47. I recognize that a custodial sentence must impact Ms. Piercy's family life as her
19 young daughter in particular will be deprived of her personal care for a certain
20 period of their lives. That is a result of Ms. Piercy's choices.

21 48. I respectfully adopt the words of Quin J when in *Morgan* (*supra*) he opined:



¹² *Terry v. R* [2002] CILR Note 17

1 *"The drivers who drive dangerously and find themselves in situations such as*
2 *the one in which this defendant now finds [herself], must realize that no matter*
3 *what their mitigating circumstances, a custodial sentence will be imposed."*

4
5 I would only add that dislocation in personal affairs is a natural consequence of
6 incarceration.

7 49. I have considered all the circumstances of the case as I have detailed above and I
8 am mindful of the **Guidelines** where the suggested tariff is five (5) years'
9 imprisonment where there are aggravating factors and I now pass what I regard as
10 the appropriate sentence.

11 a. The Defendant is disqualified from obtaining or holding a driver's licence for
12 five (5) years. This five-year disqualification is to commence from the date of
13 the expiration of the term of imprisonment.

14 b. The Defendant is sentenced to five (5) years' imprisonment.

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18 **Dated this the 24th April 2014**



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21 *CA Beswick*
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30 **Madam Justice Carol Beswick (Actg.)**
31 **Acting Judge of the Grand Court**