

31-5-12

1 IN THE GRAND COURT OF THE CAYMAN ISLANDS
2 HOLDEN AT GEORGE TOWN, GRAND CAYMAN

3
4 CAUSE NO. IND 1/2012 &
5 IND 1/2012A
6

7
8 R
9

10 V.
11

12 PATRICK R. BROOKS-DIXON
13
14

15 Appearances: Ms. Candia James for the Department of Public Prosecutions
16 Ms. Lucy Organ of Samson & McGrath for the Petitioner
17

18 Before: Hon. Justice Williams

19 Heard: 25th May 2012

20 Delivered: 31st May 2012

21 Circulated: 11th June 2012
22
23



24 *Road traffic – causing death by dangerous driving - driving at excessive speed– driving*
25 *whilst under the influence of alcohol – sentence – Application of guidelines in R v*
26 *Cooksely [2003] 3 All ER 40 - mitigation – plea of guilty – length of disqualification*
27 *from driving- approach to character references – approach to victim impact statements*

28
29
30 **SENTENCING**
31
32

33 1. Mr. Brooks-Dixon, you have pled guilty to causing the death of Dr. Richard
34 Douglas Martin, driver of a Honda Logo motor vehicle, due to your dangerous
35 driving on 30th November 2011. Dr. Martin received massive blunt force trauma
36 to the chest and abdomen, severe blunt force impact injuries to his extremities,

1 multiple cutaneous lacerations and abrasions and lacerations to his face and scalp.
2 Tragically Dr. Martin succumbed to his injuries and the autopsy report gives the
3 cause of death to be “exsanguination due to cardiac rupture and avulsion of the
4 inferior vena cava.” The passenger in the deceased’s motor-vehicle was also
5 seriously injured but thankfully survived. Your wife, also injured and requiring
6 ongoing treatment, thankfully survived. The responsibility now falls on this Court
7 to consider and arrive at the appropriate sentence.

8
9 2. The evidence, which I accept and is not disputed by the Defence, is that in the
10 early hours of Wednesday 30th November 2011 on Esterley Tibbetts Highway, in
11 the vicinity of Lakeside Villas, in Grand Cayman, you were driving a Chevrolet
12 Trailblazer. Your wife was a passenger in the vehicle. Prior to driving you had
13 been consuming alcohol, in interview you said about five beers, and to the social
14 worker you said about six bottles of beer. Whatever the exact quantity of
15 alcoholic drinks may be, you were clearly over the legal blood alcohol limit,
16 which is 100 mg over 100 ml. Your reading was considerably over, being 173 mg
17 alcohol in 100 ml of blood. I note with interest that the legal limit in the Cayman
18 Islands is significantly higher than England and Wales where it is 80 mg over 100
19 ml and considerably higher than the majority of European countries where it is
20 only 50 mg over 100 ml. I must sentence having regard to the legal limit in
21 Cayman. However, I mention the international levels as, due to the prevalence of
22 accidents caused on the road in which a driver has been drinking, it may be that
23 the time has come for consideration to be given to reviewing the levels having

1 regard to the scientific evidence as to the effects of alcohol on a driver above 50
2 mg.

- 3
4 3. Mr. Redden, an expert, accident re-constructionist, post-crash vehicle inspector
5 and crash analyst reviewed the crash scene and in his report he stated that:

6 *"The Esterley Tibbetts Highway is a two-lane highway with good*
7 *asphalt surface. The imposed speed limit for the highway is 40*
8 *mph. The road was dry on that night. This section of the highway is*
9 *well lit by streetlights on the southbound side. The width of the*
10 *highway is 23'6" with a northbound shoulder of 8 feet in the area*
11 *of the accident."*

- 12
13 4. Mr. Redden went on to say that you were driving the Trailblazer in a southerly
14 direction towards the Butterfield roundabout. The Crown contended that due to
15 the analysis of the crash scene it is established that you were driving at a high rate
16 of speed. Mr. Redden formed a view that you attempted to negotiate the left-hand
17 bend which has a positive camber or super elevation. He stated that you then lost
18 control and the vehicle started side slipping with the rear bumper and lift gate area
19 contacting the trees on the right side of the road heading south. This is evidenced
20 by yaw marks and the tree limbs which were broken and also pieces of tree limbs
21 and leaves embedded on the lift gate and the right side tailgate and the tree
22 contact marks on the rear of the vehicle. The vehicle travelled a total of 538 feet
23 before finally coming to rest. The vehicle travelled 243 feet side-slipping before it

1 impacted the east side of the real estate sign which is painted white at the back,
2 with its right rear door area as shown by the contact damages and white transfers,
3 carrying parts of the sign with it. He said that your vehicle continued to side-slip
4 for another 31 feet before the side impacted the north side curb for the exit road
5 for Lakeside Condos which caused it to go airborne travelling over the exit road
6 and touching down in the centre median impacting the "No Right Turn" traffic
7 sign 30 feet later. The front bumper then impacted the first palm tree severing the
8 trunk 12 feet, later carrying it along with it, then a second palm tree 16'10" later
9 with the trunk of the tree being severed and carried along and leaving some of the
10 palm branches in the median - the shape of the tree trunk was imprinted in the
11 front bumper. He found that your vehicle then travelled South another 14'2" when
12 the left front bumper corner and left front fender impacted the utility poles,
13 ripping the corner piece of the bumper and front fender off, then a white 4 inch
14 PVC pipe filled with concrete with the left front rim and tire which was ripped out
15 of the ground and shattered. This caused the vehicle to rotate to the left counter-
16 clockwise, causing the rear tires to leave yaw marks on the entrance road of the
17 Lakeside Condo Development. Your vehicle then travelled 53 feet and 8 inches to
18 where the right front impacted the right front of the Honda Logo which was
19 travelling into the entrance road of the Lakeside Condos at the time of the
20 collision. This is shown by the first set of gorge marks in the roadway from the
21 right side lower control arm, its front mount and the centre engine mount and tire
22 mark from the Honda as it under rode the much bigger and heavier SUV at this
23 point. The right front tire of your vehicle over-rode up onto the right front fender

1 and hood of the deceased's vehicle. The Honda was pushed backwards to the
2 Highway travelling 75 feet and 6 inches leaving 2 other gorge marks, the third
3 gorge mark was from the engine oil pan for the Honda which was rubbed through
4 leaking oil onto the road surface. At this point the Honda rotated 180° counter
5 clockwise, separating from your vehicle and travelling across the Highway
6 leaving marks and stains for 165 feet and 3 inches, finally coming to rest half in
7 the Southbound lane facing South and half on the hard-shoulder. The Honda
8 travelled 240 feet and 9 inches from impact to where it finally rested. Your
9 vehicle travelled sideways after separating from the Honda through the grass and
10 impacted the trees until the tires dug a wedge which caused it to go airborne for a
11 second time, travelling 23 feet before coming to rest facing West in the trees.

12
13 5. Mr. Redden noted that there was a field of debris covering both lanes of the
14 Highway and the road shoulder leading up to the entrance to the Lakeside
15 Condos.

16
17 6. Mr. Redden also examined both vehicles and he concluded that the right front of
18 the Honda had received a high-speed offset frontal impact from being impacted
19 by the right front of your vehicle which caused extensive contact and damage.
20 Your vehicle on examination was found to have received extensive contact,
21 rollover and induce damages as a result of a high speed collision.

22
23 7. Mr. Redden concluded:

1 *"The collision is as a result of the driver of the Trailblazer*
2 *attempting to negotiate the left-hand bend at a high speed and lost*
3 *control of the vehicle which went into yaw travelling at total of 538*
4 *feet before finally coming to rest after impacting the real estate*
5 *sign, palm trees, utility pole, PVC pipe, the Honda and going*
6 *airborne twice."*

7
8 8. Significantly, Mr. Redden went on to say:

9 *"This is consistent with between 100 to 110mph which resulted in*
10 *the Honda being pushed backwards then rotated and projected*
11 *down the road in the opposite direction before finally coming to*
12 *rest after travelling 240' 9" from the impact."*

13
14 9. Mr. Redden has reached his conclusion about the speed based upon live
15 controlled crash testing conducted of vehicle crashes where the speed is known
16 and the contact damages and movements of the bike and crash test dummy are
17 measured, photographed and documented and crash data downloaded and
18 analysed, which he has taken part in on a yearly basis. He says that he has over 20
19 years of experience in investigating, inspecting and analysing approximate 4000
20 collisions hundreds of them involving vehicle crashes, many of which resulted in
21 fatalities.

1 10. PC Lenford Butler also provided a traffic accident re-constructionist report. The
2 findings are very similar to those of Mr. Redden. In his report he concluded:

3 *“The driver of the Black Trailblazer registration 132916 was*
4 *travelling from West Bay direction going towards George Town*
5 *and was under the influence of alcohol when he tried to negotiate*
6 *the left-hand bend approaching Lakeside Condos, he was*
7 *travelling too fast and the centrifugal force overcame the*
8 *centripetal force and caused the vehicle to slide off towards the*
9 *right shoulder and rotated in a counter-clockwise direction along*
10 *the said road shoulder.”*

11
12 11. He continued:

13 *“The critical curb speed at that corner is 105.88 mph or 155.22fps*
14 *which indicated that the Chevrolet Trailblazer was travelling in*
15 *excess of 105.88mph for it not to follow that curvature of the bend.*
16 *The said left-hand bend has a positive super elevation which*
17 *allows vehicles to negotiate the bend at such high rate of speed.”*

18
19 12. PC Butler finally concluded:

20 *“In closing, the main cause of this accident in my opinion was due*
21 *to the fact that the driver was under the influence of alcohol and*
22 *was travelling dangerously too fast, as a result he approached the*
23 *said left-hand bend too fast and lost control of the Chevrolet*

1 *Trailblazer where he slide off onto the right road shoulder and*
2 *collided with numerous objects mention above before collided with*
3 *the Honda Logo car and causing fatal injuries to the driver and*
4 *extensive damages to both vehicles after pushing it back the Honda*
5 *Logo 240 feet along Esterley Tibbetts Highway.”*
6

7 13. Importantly the expert evidence, which is not contested by you, shows that you
8 were driving well over the speed limit, well over twice the speed limit, in an area
9 of the Highway where there is a bend and an entrance to a residential
10 development, having consumed alcohol well over the legal limit. That said, I
11 accept that the alcohol blood level is not at the top end of the scale, but it is
12 clearly of a sufficient quantity to significantly impair a driver of a vehicle,
13 especially one driving at speeds in excess of 100 miles an hour. This is, by all
14 accounts, an atrocious and shameful piece of driving by a man under the influence
15 of alcohol resulting in a vehicle collision with the further consequence that the life
16 of another man who was innocently driving his vehicle has been taken, depriving
17 his family of this man's love and support.

18
19 14. I accept that you have been deeply troubled by Dr. Martin's death. This is
20 evidenced by the Social Inquiry Report filed on 23rd May 2012 and the
21 Counselling Report dated 18th May 2012. Your difficulties have been
22 compounded by the fact that your wife was badly injured in the accident and has
23 required a number of surgeries to her arm. I also accept that you deeply regret the

1 outcome of your actions on that day. I also accept that there is no evidence to
2 show that this was dangerous driving over a prolonged period. I accept that you
3 hitherto have a good driving record and, although you have a previous conviction,
4 it is not for a driving related matter and does not negatively concern me today.
5

6 15. In carrying out this exercise it is right that the Court have regard to guidance
7 given by precedent. Each case admittedly turns on its own facts, including
8 aggravating and mitigating circumstances. Before I review the sentencing
9 precedents I remind myself of **Lord Taylor CJ's** observations in **Attorney**
10 **General's Reference Nos. 14 and 24 of 1993 (Peter James Shepherd, Robert**
11 **Stuart Wernet)** [1994] 15 CAR (S) 640 at 644 when he said:

12 *"We wish to stress that human life cannot be restored, nor can its*
13 *loss be measured by the length of a prison sentence. We recognise*
14 *that no term of months or years imposed on the offender can*
15 *reconcile the family of a deceased victim to their loss, nor will it*
16 *cure their anguish."*
17

18 16. I also remind myself of what the Cayman Islands Grand Court stated in **R v**
19 **Emelio Borden Castillo** IND No. 39 of 2008, dated 28th September 2009:

20 *"Accidents caused by dangerous driving have resulted in immense*
21 *human suffering and this is a significant element of such offences*
22 *which the court must take into account. Regrettably the Cayman*

1 *Islands has a very bad record for offences of this nature and the*
2 *court must also be mindful of this fact.”*

3
4 17. The English case of **Cooksley** [2003] 3 All ER 40, has been referred to and relied
5 upon on a number of occasions by the Courts in this jurisdiction. The Court of
6 Appeal in **Cayasso v R** CICA Number 1 of 2008 specifically adopted and applied
7 the **Cooksley** guidelines on sentencing for the offence of causing death by
8 dangerous driving. In **Cooksley** the Court of Appeal in England & Wales issued
9 fresh sentencing guidelines. I embrace the view held here for a number of years,
10 that those guidelines can assist a Court in Cayman to, as *Blackstone's* succinctly
11 puts it, “*strike an appropriate balance between the level of culpability of the*
12 *offender and the magnitude of harm resulting from that offence, with the former*
13 *being the primary consideration.”*

14
15 18. In **Cooksley**, Lord Wolfe CJ, stated that as in the case of sentencing for any
16 offence a sentence of imprisonment should only be imposed if necessary and then
17 no longer than necessary. He then stressed that, because of the need for deterrence
18 and the gravity of the offence, “*no matter what the mitigating circumstances,*
19 *normally only a custodial sentence will be imposed.”*

20
21 19. In relation to the appropriate length of sentence the Court of Appeal in **Cooksley**
22 arrived at four bands of culpability, starting at the lowest end, where there are no
23 aggravating circumstances. That is not the case in the matter before me which

1 does not fall into this band. I note that for this band the starting point for sentence
2 is a short custodial sentence of between 12 to 18 months. If there has been a guilty
3 plea there may of course be an appropriate reduction in the length of sentence.

4 20. The next band, one of intermediate culpability, is one where:

5 *“an offence involving a momentary dangerous error of judgment*
6 *or a short period of bad driving may be aggravated by any*
7 *habitually unacceptable standard of driving on the part of the*
8 *offender...”*

9
10 This band deals with circumstances where for example other driving offences
11 were committed at the same time, where there are previous convictions for
12 motoring offences involving bad driving, where there is the consumption of
13 excessive alcohol before driving, or where there has been more than one injury as
14 a result of the driving and irresponsible behaviour at the time of the offence. The
15 starting point for sentencing for this band is 2 to 3 years. Again, I'm of the view
16 due to the nature of the driving and the surrounding circumstances that this case
17 does not fall into the second band.

18
19 21. The next band comes under the heading **higher culpability** and it is where the
20 standard of the offender's driving is more highly dangerous. The Sentencing
21 Advisory Panel recommended that appropriate starting point of sentence would be
22 a custodial sentence within the range from 2 to 5 years. The Court of Appeal in
23 **Cooksley** felt that the 2 to 5 years bracket was too wide and suggested that

1 sentencers should take the starting point of 4 to 5 years if it were a contested case.
2 The Court of Appeal went on to indicate that there will be cases, particularly
3 where there is a guilty plea or significant mitigating factors, where the sentence
4 should be less than four years.

5
6 22. The Court of Appeal in **Cooksley**, adopting the panel’s recommendations, stated
7 that this third band could, amongst others, apply in circumstances such as:

- 8 (i) the consumption of drugs or alcohol, ranging from a couple of drinks to a
9 motorised pub crawl; and
10 (ii) greatly excessive speed; racing; competitive driving against another
11 vehicle “showing off”;

12
13 The level of sentencing for this band would be determined by the dangerousness
14 of the driving and by the presence or absence of other aggravating or mitigating
15 factors. The panel and the Court of Appeal have viewed these as aggravating
16 factors pointing to a highly culpable standard of driving at the time of the offence.
17 In the matter before me the evidence, which is not disputed, establishes that you
18 were driving at a greatly excessive speed having consumed alcohol to such a level
19 that it impaired your ability to drive safely. Therefore, the combination of alcohol
20 well in excess of the legal limit and speeding over twice the legal limit amounted
21 to dangerous driving which in the circumstances led to the death of Richard
22 Douglas Martin. Your case falls within the third band of cases envisaged by the
23 Court of Appeal in **Cooksley**.

1 23. In Cooksley, Lord Woolf outlined the mitigating factors and they included:

2 (a) *a good driving record;*

3 (b) *the absence of previous convictions;*

4 (c) *a timely plea of guilty;*

5 (d) *genuine shock and remorse, especially where the victim was a close*
6 *relation or friend;*

7 (e) *the defendant's age;"*

8
9 24. When I sentence today, I have in mind as mitigating factors that you have a good
10 driving record, I am content for the purposes of this sentencing to say that there is
11 an absence of relevant previous convictions - I do note that you have committed
12 this offence whilst subject to a 12 month probation order made on 3rd March
13 2011, but I reiterate that I do not view that or the previous conviction as an
14 aggravating feature today. In fact, having read the Social Inquiry Report filed on
15 23rd May 2012, to your credit you have been generally compliant with the
16 supervision and reported at scheduled probation appointments. I accept your plea
17 of guilty, although strictly not entered at the earliest opportunity, to be a timely
18 plea as you had to wait for the expert reports to be produced due to your lack of
19 memory about the circumstances of that night. I accept that you have shown and
20 still feel genuine shock and remorse. I also have regard to the impact on your
21 family of a custodial sentence.

1 25. In the case of Terry v R [2002] CILR Note 17 the Prosecution, as in the matter
2 before me, did not pursue a second charge of causing death by driving whilst
3 intoxicated once the plea had been entered on the charge of death by dangerous
4 driving. The Court of Appeal made it clear that the fact that the appellant had
5 been drinking was relevant to sentencing only if there was evidence that he was
6 adversely affected by the amount that he had consumed or that the amount was
7 such that he must have been adversely affected. In that case the appellant was
8 only marginally over the speed limit, his blood-alcohol level was only 107mgs,
9 and a sentence of 12 months was imposed. In the matter before me the amount of
10 the alcohol consumed by you is of such an amount that you must have been
11 adversely affected, although you in interview stated that you felt you were, in
12 your words, "*fully conscious*". In the matter before me, unlike in Terry, the
13 blood-alcohol level was not minimally over the prescribed limit, and it should be
14 taken into account as a relevant factor in considering the aggravating factors to be
15 taken into account in the sentencing process. Secondly, unlike in Terry, you were
16 considerably over the speed limit and that such a case can be distinguished.

17
18 26. In the case of Rivers v R [1988-89] CILR 77, **Georges J.A** stated at page 81:

19
20 *"In R v Boswell the court indicated that in "bar cases" where a*
21 *defendant had driven with reckless disregard to others after taking*
22 *alcohol he should expect to lose his liberty for two years or more."*

1 27. In the recent case of R v Jarrett Eniko Morgan IND No. 5/11, 12th September
2 2011 the accused pled guilty to the offence of causing death by dangerous driving
3 of a passenger in his vehicle. The Crown's case was that he was racing with
4 another vehicle at speeds in excess of 100 miles an hour. At this time he lost
5 control of the vehicle and collided with a concrete wall. **Quin J** accepted that
6 there were mitigating factors including a guilty plea, no previous convictions, a
7 good work record, complimentary references from the community, genuine deep
8 remorse by a person who has contributed to the community by being a member of
9 the Cayman Islands National Association Football Team. However, **Quin J** went
10 on to say that he could not ignore the fact that the car was being driven at a
11 seriously dangerous speed of over 100 miles an hour. Unlike the case before me,
12 there was the aggravating feature deriving from evidence that he was overtaking
13 vehicles and racing at the time.

14
15 28. **Quin J** stated:

16 *"The court must impose a sentence which in some measure drives*
17 *home the message of the dangers that can result from dangerous*
18 *driving on the public road. The gravity of the consequences that*
19 *can flow from drivers not maintaining proper and lawful standards*
20 *of driving has to be appreciated by all drivers. The drivers who*
21 *drive dangerously and find themselves in situations, such as the*
22 *one in which this defendant now finds himself, must realise that no*
23 *matter what their mitigating circumstances, a custodial sentence*

1 *will be imposed.*” I share the Learned Judge’s succinctly put
2 sentiments.

3
4 29. **Quin J** went on to say when passing sentence:

5 *“However, despite the fact that this offence would appear to*
6 *straddle between category two to category three of the R v*
7 *Cooksley guidelines, I will only impose a sentence of two years*
8 *imprisonment and disqualify the defendant from driving for five*
9 *years.”*

10
11 30. It is clear in that matter that **Quin J**, when imposing a sentence of only two years,
12 thought that there were extremely strong mitigating circumstances for that
13 particular young man. Although, I accept that a distinguishing factor between that
14 case and the matter before me is that you were was not racing, another important
15 distinguishing factor, and an aggravating factor, is the fact that you had been
16 drinking to such a level that it influenced your ability to drive safely. As such,
17 your case does not straddle the two bands, it is firmly within the third band.

18
19 31. I have found the guidance from the Court of Appeal in **Cooksley** and its
20 application in the Caymanian precedents to be most helpful in carrying out my
21 task today. This type of offence, in the undisputed surrounding circumstances, can
22 only be dealt with by means of an immediate custodial sentence. This is consistent
23 with sentencing for this offence in the past in the Cayman Islands. There are no

1 exceptional mitigating circumstances that take this case out of the normal
2 category.

3
4 32. The character references do not amount to exceptional circumstances, although
5 they do assist in mitigation and finding the appropriate level of sentence. I have
6 received references from Karen Bennett, Al Valentino Bennett Woods, Graham
7 Rankine, Carmen Zelaya Bush and Gilbert Bush. Although directly requesting
8 leniency when it comes to the Court's sentence, these are appropriate references
9 as they do not seek to make recommendations about the appropriate sentence for
10 they are not sentence recommendation reports. They are provided for the correct
11 purpose which is to enable persons who know you well, to share their knowledge
12 with the Court and let the Judge know more about the person who he is to pass
13 sentence on. The Court must treat each person who comes before it individually
14 and a well written reference may assist the Court to better know the real man.

15
16 33. Although the Court would not expect a character statement to speak in anything
17 but supportive tones for the accused, I think it is important that those who take the
18 time to make them understand that they, if realistic in content, are potentially an
19 important part of the sentencing process. It is also important that when providing
20 such a report that their authors understand that it is a serious undertaking, and
21 comments should only be made after much careful thought. It is extremely
22 important that persons providing the references realise that they must be willing,
23 outside and as well as inside the courtroom, to genuinely stand by their opinion as

1 to your character when they ask for leniency if that is appropriate in the
2 circumstances of the particular case. As I say to jurors before they retire to
3 consider their verdict at a trial, "*you should let yourself be led by the evidence and*
4 *not be affected by personal prejudice or favour. Be dispassionate. Be true to*
5 *yourselves and to the evidence. This is your community. In the end you decide*
6 *what standard of law and justice applies here.*" These words are a useful guide to
7 jurors when considering their verdict and to a judge when he is sentencing and
8 they may well help those who write character letters, especially if they might in
9 the future inappropriately seek to address the type of sentence, to also have regard
10 to their responsibilities to the community as a whole when they do so.

11
12 34. Having read the submitted character references, I am satisfied that generally you
13 are an upstanding member of the community who may be willing to help others
14 when needed. I am satisfied, despite the occasional problems in your marriage,
15 that you do have a bond with your family and friends. I accept that you are not a
16 man who, save for this tragic incident, one might expect to see in the future in a
17 Criminal Court. I have regard to all of these attributes when I come to sentence
18 you.

19
20 35. I also have regard to the devastating effect that a custodial sentence would
21 inevitably have on you. I accept that you may lose the opportunity of
22 employment. You are not in regular employment but take on construction work if

1 it is available. I accept that you will not be able to play the paternal role that you
2 do within your family whilst imprisoned.

3
4 36. I also have regard to the fact that you are a 32 year old man who has Caymanian
5 residency with a right to work. You have been here continuously since 2005.
6 You have been married to your wife, a Caymanian national, since 2007. Sadly,
7 that marriage has not passed without incident. But, as it stands, you reside with
8 your wife in your purchased matrimonial home. Her children from a previous
9 relationship reside on occasion with you and on other occasions with their
10 grandmother. I am informed that when in work you pay \$800 for the children's
11 upkeep.

12
13 37. I also have before me what might be termed victim impact statements or reports.
14 It is appropriate that the Court may pay regard not only to the effect of an
15 offender's actions on the accused and his family, but also the effect on the victim
16 and/or his family and friends. I accept, having regard to the English **Practice**
17 **Direction (Criminal Proceedings: Consolidation) 2002 1 WLR 2870,**
18 **paragraph 28, Personal Statements of Victims** that when considering the
19 statements setting out the views of Dr. Martin's family and friends I have to treat
20 the expressed views with caution.

21
22 38. As with the Accused's character statements, I have carefully read the victim
23 impact statements provided by the deceased's wife, his adult child, his sister,

1 Molly Gee, Nicole Wesley and Sheryl Hawk. What jumped out of all of these
2 statements is that the late Dr. Richard Martin will be greatly missed by those who
3 had the privilege of knowing him and being related to him. It is a tragedy that as a
4 consequence of your deplorable conduct on 30th November 2011 that a wife has
5 lost a husband, an 82-year-old mother has lost a child, that children, one of them
6 being only seven years of age, have lost a father and stepfather, a sibling has lost a
7 sibling, students have lost a mentor and that friends have lost a friend. It is also
8 clear that, although it is evident that Dr. Martin was a family man, his loss is one
9 for the whole community. The community has lost a potential educator from
10 whom future generations could have benefited.

11
12 39. It is clear from the victim impact statements that Dr. Martin is irreplaceable. It is
13 clear from the impact statements that those who knew him are deeply hurt by his
14 sudden and needless loss. I can understand their expressed sentiments, born
15 through their own pain, towards the Accused. I have regard to their insightful
16 comments in relation to Dr. Richard Martin the man and the dreadful effect that
17 his loss has had on them. However, I must still ensure that I sentence having
18 regard to the guidelines set down in the case law, having regard to the aggravating
19 and mitigating circumstances in this particular case.

20
21 40. I am grateful to the social worker for the report. I have had regard to it in the
22 sentencing process. It is clear that you expressed remorse to the social worker.
23 The report rightly leaves the sentencing up to the Court.

1 41. I have an extremely difficult exercise to carry out in this case. Sentencing in this
2 type of case always troubles the Court greatly and requires the utmost thought.
3 The problem facing sentencers was put very concisely by **Professor Martin**
4 **Wasik**, who was Chairman of the Sentencing Advisory Council in England and
5 Wales, when recommending that there should be fresh guidelines for this type of
6 offence. He pointed out that:

7 *“This offence causes particular difficulty for sentencers. By*
8 *definition, it is one which always gives rise to extremely serious*
9 *harm: the death of at least one victim (and in some cases serious*
10 *injury to others). Understandably this often leads to calls from*
11 *victims’ families, and from the wider community, for tough*
12 *sentencing. On the other hand, an offender sentenced for causing*
13 *death by dangerous driving did not intend to cause death or*
14 *serious injury, even in the extreme case where he or she*
15 *deliberately drove for a prolonged period with no regard to safety*
16 *for others.”*

17
18 42. I must consider all of the aforementioned mitigating factors, the attributes that
19 you possess and the effect of a custodial sentence on you and on those who rely
20 upon you. On the other hand I must have regard to the fact that you drove at
21 greatly excessive speed whilst under the influence of alcohol and when doing so
22 collided with the vehicle being driven by Dr. Martin, the said collision resulting in

1 his death and serious injuries to two others. Dr. Martin's unnecessary passing has
2 had devastating consequences for those who knew him.

3
4 43. Importantly, I must also consider the deterrent factor, to ensure that those who
5 consume alcohol and then drive dangerously on our roads, and unfortunately there
6 are many, should think twice before they do so, realising that if their case comes
7 before this Court they can expect a hard line to deter it.

8
9 44. Having regard to the case of Cooksley, this case falls in the band for a sentence
10 ordinarily between 4 to 5 years for a not guilty plea. This is a "starting point" so
11 the sentence could be more having regard to any aggravating features that there
12 may be and it could be less having regard to any mitigating features that there
13 may be, including a plea. I am acutely conscious of the inappropriateness of
14 double accounting when sentencing for this particular offence in the
15 circumstances of this case. Therefore, I am satisfied, having regard to the
16 guideline cases and the mitigating circumstances in this case that, on a not guilty
17 plea, a sentence of 4 years imprisonment would have been appropriate. Although,
18 on the evidence, a guilty plea was the only sensible course for you to take, I give
19 you a significant discount for your guilty plea. Accordingly, I sentence you to a 3
20 year custodial sentence.

21
22 45. I must suspend your driver's licence and determine the length of the suspension.
23 The Court of Appeal in H. Carter v R [2010] (1) CILR Note 6 confirmed the

1 statutory provision that a suspension must be for not less than 5 years, but added
2 that it must not be for an indeterminate period. Due to the nature of your driving
3 whilst under the influence of alcohol, a suspension of seven years is appropriate
4 and I so order.

5
6
7 **DATED this 31st day of May 2012.**

8
9
10 

11 **Hon. Richard N. Williams**
12 **Judge of the Grand Court**

