IN THE CAYMAN ISLANDS COURT OF APPEAL

CACR031/2014
IND 13/14
#00775/2014

BETWEEN:

IGOR DOMLADIS

APPELLANT

and

HER MAJESTY THE QUEEN

RESPONDENT

Before:

The Rt Hon Sir John Chadwick, President
The Hon John Martin, JA
The Rt Hon Sir Alan Moses, JA

Appearances:

Amelia Fosuhene of Brady Law for the Appellant
Greg Walcolm for the Director of Public Prosecutions

Hearing and Judgment delivered: November 2, 2015
Transcript of oral ruling released: February 11, 2016

MOSES, J.A.:

1. This is an appeal against sentence following a guilty plea to one count of causing death by dangerous driving for which this appellant was sentenced on the 27th of November, 2014 by the Honourable Justice Swift to four years' imprisonment.
2. We should start by making clear that this is truly a tragic case. Nothing that we can say by way of appeal, or for that matter the judge could say by way of sentence, can replace the loss of life of this appellant's best friend. And so one young man is dead, another has had a very serious impact on his young and otherwise, apart from his driving, highly-respectable life. We say that because we have been handed today a number of references that make clear how well he was doing and what a good future he had and so this has had a terrible impact on two families. But, this was an extremely serious case of dangerous driving as the facts reveal.
3. On the 17th of May 2013, this appellant, with friends which included the deceased Zac Quappe, had been out socialising in George Town. There is a relevant issue as to how much they had been drinking because the judge in his sentencing remarks clearly took into account the subsequent refusal of this appellant to give a breath test and, despite the absence of evidence of how much

alcohol there was in his blood, the fact that he had been drinking. This young man accepted that he had been with his friends drinking throughout the evening, although he was adamant that that had not impaired the quality of his driving. We are quite satisfied that this must have substantially reduced his inhibition as to how he chose to drive at 3:00 a.m. on that night. By that time it was the 18th of May.

4. He and a friend left their venue and drove from the vicinity of West Bay Road towards South Church Street. His friend Zac Quappe had also left and was in a different car and it appears that Mr. Quappe was alone in the car that he was driving whilst Mr. Domladis was behind in a Mitsubishi Lancer. Mr. Domladis had a single passenger. Ahead, Mr. Quappe's vehicle pulled out from Snooze Lane at a fast rate heading towards North Church Street. He was then overtaken by this appellant who plainly had to do so by driving on the wrong side of the road seeking to race past him. There can be no precise figure for the speed that this appellant was driving at but it appears to have been something in the region of 60 miles an hour. A collision then occurred as Mr. Domladis' vehicle became embedded in the stone wall, having struck the car driven by Mr. Quappe. Mr. Quappe died. Mr. Domladis managed to get out of his vehicle although his passenger was injured and the police officer said that subsequently, although it was not noticed at the time, there appeared to be alcohol in his breath. Since he admits drinking, that is not surprising.

5. It is therefore clear from those facts that this appellant had chosen to race his friend in a built-up area at a speed something double the speed limit allowed in the middle of George Town. It is truly good fortune, but merely only chance, that no one else was killed or injured apart from the passenger and of course the deceased. Other vehicles were struck and damaged during this piece of driving.

6. The question then arises, and it is the issue in this appeal, as to whether the sentence of four years' imprisonment following a plea of guilty was manifestly excessive. In clear and cogent submissions which support her full written argument, Ms. Fosuhene has identified what she contends to be a substantial error in the approach of the judge in sentencing this young man. The judge took the view, as is clear from his sentencing remarks, that this is a case that would, in the United Kingdom, have merited a sentence where the starting point was 14 years being of Level One. Level One cases in the United Kingdom are those most serious offences encompassing driving that involved a deliberate decision to ignore or a flagrant disregard for the rules of the road and an apparent disregard for the danger being caused to others. In the United Kingdom the starting point would be eight years and the sentencing range between seven to 14.

7. Ms. Fosuhene's submission is that this was not a Level One case but was rather a Level Two case where driving created a substantial risk of danger and which are characterised, as she identifies, by "greatly excessive speed" or "racing" or "competitive driving against another driver". If that was so in the United Kingdom the starting point would be five years' custody with a sentencing range of

between four to seven. She says that there was no basis for saying other than this was a Level Two case.

8. In the circumstances where the Cayman Islands has not raised the maximum from ten years following the lead of the United Kingdom where it was raised to 14 years there has, she contends and as the judge accepted, to be a discount to make the sentences consistent with the guidelines within the United Kingdom and she therefore says that there ought to be at least a third reduced from a starting point of five years or at least something between four to seven years. That is the essential gravamen of her grounds of appeal. We do not agree.

9. In our view this clearly was a case which would have fallen within the United Kingdom guidelines of a Level One case. This young man chose to ignore the rules of the road by racing, by driving on the wrong side and by driving at a vastly-excessive speed on a small road within the middle of George Town. In those circumstances it seems to us impossible to say that Level Two is the only level apt where there has been racing driving. It is true that one of the characteristics of Level Two may be racing or competitive driving but in our judgment that merely applies to racing, for example, on a motor way or a dual-carriage way. It is wholly inapt when it takes place in George Town.

10. The judge regarded the fact that this young man had taken alcohol as an aggravating factor. We agree. Ms. Fosuhene rightly points out that there was no evidence of a reading since the specimen was refused and in any event the procedure for asking for a specimen was not complied with. We remind ourselves he was not charged with refusing a specimen and in our judgment the fact that this young man, to his credit, accepted that he had been out drinking that night was an aggravating feature. It is true that there is no particular evidence that an excess of alcohol impaired his ability to drive but it is, as we have already indicated, beyond question that it will have reduced his inhibition as to how he chose to behave on that night.

11. There were further aggravating features relating to his previous convictions. He is, as we have said, only a young man, but for a young man to have had two speeding offences in his comparatively short driving career is, in our view, a seriously aggravating feature when he chose to drive so fast in the early hours of that morning. The other feature that the judge took into account as an aggravating factor was the injury to the passenger. That merely underlay the gravity of this manner of driving on this occasion.

12. There were, it is true, mitigating features. The plea of guilty, although it came late, was taken into account by the judge. Perhaps that was merciful but it does not seem to us right to go behind that and he therefore should be given the full credit even though that may be to his good fortune.

13. The young man who died was his best friend. We accept that that will have a very serious impact on this young man and his family for the rest of his life and is a factor that we should take into account. However, standing back and bearing in mind that in the Cayman Islands the Chief Justice had in his Statement of Tariffs as long ago as 2002 spoke of sentences in the range of five years where one of

these features, we have identified is present. We are unable to see that the judge was in any way wrong in fixing this case in Level One. It is important in sentencing not to become over focused on distinctions between cases which fall at the bottom of the range of Level One or the top of the range of two and to stand back and ask whether this is a fair and just sentence, having regard to the gravity of the offending. For the reasons we have given, we regard this case as being very serious indeed and therefore, despite the mitigation, and all the good that is said about this young man, in our judgment this sentence was not manifestly excessive and we dismiss the appeal.

Chadwick P
Martin JA
Moses JA