

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 50/82

BEFORE: The Honourable Mr. Justice Carey, J.A.
The Honourable Mr. Justice White, J.A.
The Honourable Mr. Justice Wright, J.A. (AG.)

BASIL GABBIDON v. REGINAM

Mr. H. Edwards, Q.C., for Applicant.

July 5, 1982

CAREY, J.A.:

This is an application for leave to appeal against a sentence of eighteen months of imprisonment imposed upon the applicant in this case on an indictment which charged manslaughter but on which he was convicted for the offence of causing death by dangerous driving. In addition, his licence was ordered endorsed and he was disqualified from holding or obtaining a Driver's Licence for a period of twelve years.

The short facts of the case are that on the 27th of July, last year, some time at around 11 o'clock at night, the deceased, Samuel Allen, and other persons were walking along a roadway in the area of Four Paths, Clarendon, towards May Pen, when a car driven by the applicant came off the road and crashed into them, killing Samuel Allen and injuring another of the pedestrians.

The defence at the trial was a denial of the incident and there was a suggestion that the car was stolen and driven away by other men, and it was these persons who caused the accident. The appeal proceeded on the basis that the trial judge imposed the sentence of eighteen months imprisonment because she was perturbed at the fact that the defence was fabricated. Counsel thought that this disqualification of twelve years was, in the circumstances, manifestly excessive, the sentence would cause the loss of his job, and the imprisonment and disqualification would seriously inconvenience not only himself, but his family.

In so far as the circumstances of this case are concerned, we are of the clear opinion that far from showing mere inattention, he showed a selfish disregard for the safety of other persons using the road.

We would call attention to R. v. Guilfoyle [1973] 57 Cr. App. R. 549. In that case it was said that Road Traffic offences involving accidents, especially those causing death by dangerous driving, fell into two broad categories. Firstly, those in which the accident had arisen through momentary inattention or mis-judgment and, secondly, those in which the defendant had driven with a selfish disregard for the safety of other road users or of his passengers or with a degree of recklessness. If the defendant fell within the first category with a good record, a fine and a disqualification was appropriate. If the record was poor, then his disqualification should be for a longer period. Where the defendant had caused a fatal accident through selfish disregard for the safety of other road users, then a custodial sentence and a longer period of disqualification was appropriate.

In our clear view, the facts of this case fall within the second category in which a custodial sentence is eminently warranted. We were not impressed by the argument of learned counsel that the learned trial judge was influenced by the fact that the applicant had told lies in his defence. It seems to us that in her address to the applicant in the course of sentencing, she was responding to the plea in mitigation that the applicant had an unblemished character and was held in high esteem. It was suggested that this man was suffused with regret. She was contrasting all this with the sort of defence he had put forward.

As we have said, the custodial sentence was eminently warranted on the facts of this case. Moreover, we do not see how a term of eighteen months could be categorised as a long custodial

sentence. As far as the twelve years disqualification is concerned, it is justified, as this applicant, after the accident drove off without stopping. So that this was most serious case of causing death by dangerous driving, indeed.

In these circumstances, the application for leave to appeal is refused.