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(subject to editorial corrections)**

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IN THE CROWN COURT IN NORTHERN IRELAND

R

v

CHARLES MACARTNEY

SENTENCE

HIS HONOUR JUDGE MILLER

[1] The Defendant stands to be sentenced after entering pleas of Guilty to the following charges:

Count 1: Causing the death of Dean Weir by Dangerous Driving; and

Count 2: Causing the death of Sandra Weir by Dangerous Driving

[2] On 5 February 2019 he was arraigned and pleaded not guilty as charged but guilty to the lesser charges of Causing Death by Careless Driving at Count 1, and to Causing Grievous Bodily Injury by careless driving at Count 2. These pleas were not accepted by the Prosecution and the trial was fixed for 13 March.

[3] Mrs. Ievers, on behalf of the Crown accepts that the approach taken by the Defendant at arraignment was to facilitate the compilation of expert reports. Before trial, the defence had also indicated to the prosecution that all of the evidence was agreed, save for the medical and forensic experts.

[4] A number of experts were involved for both Prosecution and Defence. Whilst most of the expert assessments had been concluded by the trial date, a short adjournment was sought to resolve minor outstanding issues.

[5] On 28th March 2019 the Defendant applied to be re-arraigned in respect of the directed charges. The Prosecution had been notified that such an application was likely and witnesses were not inconvenienced. The pleas are particularly welcome in this difficult and sensitive case. It was acknowledged that there were triable issues in particular with regards to causation.

[6] An agreed statement of facts has been opened to the Court, which I adopt for the purposes of these sentencing remarks.

Background

[7] The charges arise from a fatal Road Traffic Collision on 17 March 2017.

[8] Tragically Dean Weir died at the scene and his wife Sandra Weir died approximately five weeks later on 23 April 2017. The couple were from Portavogie. Both were aged 52 at the time of death.

[9] The collision occurred just before 9.00am on Friday 17 March 2017 on the Dunover Road Ballywalter at a stretch governed by the national speed limit of 60mph. Two vehicles were involved: a Nissan Micra DJZ 1074 and a Suzuki Alto RJZ 3626. The Micra was being driven by the Defendant in the direction of Ballywalter; he was alone in the vehicle. Photographs 3 to 9 depict the direction of travel of the Defendant with the photographer moving progressively closer to the collision scene. The photographs show that the approach was a long and generally straight section of road and that there was an incline.

[10] The Alto was being driven by Mr Weir with his wife as his front seat passenger. They were travelling in the opposite direction, towards Carrowdore with the ultimate intention of driving to Dublin to stay with friends.

[11] It was raining at the time. The road was wet with some standing water. The Defendant lost control on a right-hand bend. He struck the nearside kerb before crossing the white line into the opposing lane and into the path of Mr Weir's car. The relative positioning of the vehicles can be seen on the photograph at page 27 of the committal papers.

[12] As indicated, Mr. Weir died at the scene. Mrs. Weir was taken to hospital with severe injuries to her legs and fractures to the ribs. The Defendant sustained a back fracture and he remained in hospital for a number of days.

[13] Gouge marks on the road leading towards the damage to the kerb and grass verge can be seen in photographs 41 to 48. Aerial images of the scene are at pages 22 and 23 of the committal papers within Mr. Callendar's report.

[14] Photographs 72 to 87 are of the Defendant's vehicle and show frontal impact damage. The engine and gearbox had separated from the vehicle as a result of the impact with the Suzuki. The front offside wheel deflated as a result of the collision.

[15] Photographs 30 to 40 are of the Suzuki Alto which had sustained impact damage to the offside and less severe damage to the rear nearside where it had struck the raised bank.

[16] As part of their investigation, police downloaded footage from a dashcam fitted to the Defendant's car. This showed him losing control on the bend after cutting the corner to an extent.

[17] Emerson Callender of FSNI (Forensic Service Northern Ireland) examined the footage and ascertained the Defendant's speed to have been 89mph prior to collision and on approach to the bend. This would have been about the maximum speed that such a car could achieve. Mr. Callender calculated the Defendant's speed to have been 68mph upon impact with the Alto. It was clear that the Alto had been at all times on the correct side of the road. When the Defendant lost control his Micra was coming around the corner and, after the defendant attempted to correct it, it then spun around twice and crossed on to the wrong side of the road striking the Alto.

[18] Mr. Callendar has calculated the approximate speed of the Defendant's vehicle as it travelled over a distance of 1100 metres to the collision locus. The table of his findings appears at page 36 of the committal papers and shows that he was travelling at 89mph when the hazard warning line begins and when the "SLOW" marking appears on the road. He is at 84mph when he enters the right bend in the relevant section and at 79mph when the loss of control begins.

[19] The defendant's speed before the corner combined with his failure to sufficiently slow the vehicle upon seeing the relevant road marking results in this being dangerous.

[20] During the investigation a number of additional facts were established by police:

- There was no evidence of drugs or alcohol in the defendant's system when he was tested at hospital;
- An examination of the Defendant's mobile revealed no evidence of phone activity at or around the time of the collision. It was however obvious from this examination that the Defendant had been using his phone in to the small hours and that he could not have had more than 4.5 hours sleep the previous night;
- Both vehicles were examined and were found to be well maintained with no defects identified that could have contributed to the collision;
- There were no defects on the Dunover Road that could have contributed to the collision. There is a warning sign for the bend on the road, and "SLOW"

is marked on the road prior to the crest. The lanes are separated by hazard warning lines at the collision area;

- The Defendant was wearing prescription sunglasses at the time but would meet the driving standard unaided;
- There were no eye witnesses to the collision but the Defendant did make a significant statement to paramedic Richard Bendall to the effect that he had been driving quite fast and thought he hit the bank and spun into the road.
- The defendant was 18 years of age at the time of the offence; he had been en route to school. He has no previous convictions.

[21] Constable Getty spoke to the Defendant at the scene and recorded their exchange in his notebook (page 43 refers). When asked what happened the Defendant said:

"Coming along the road, as I came over the brow of the hill and round the corner, the back end snapped on me. I tried to correct it but that made it worse."

[22] The Defendant was first formally interviewed on 18 April 2017 – essentially this was a no comment interview upon legal advice.

[23] Mrs. Weir died some days after this interview. A post mortem was undertaken. It was concluded that death was due to pulmonary thromboembolism with the clot having originated within the deep veins of the left leg. One of the risk factors of thromboembolism is bone fractures and immobility. Dr. Gary Benson is the Director of the NI Haemophilia Centre and his report has been served as additional evidence. He opines that the DVT was secondary to the distal fracture sustained as a result of the collision and the consequent immobility. Mrs. Weir had been prescribed anticoagulants to be administered by injection. One injection was missed two days before the death but Dr Benson has expressed the view that a single missed dose would not have altered the outcome in this case.

[24] The Defendant was interviewed again on 27 November 2017. He made full admissions to causing the collision and he also accepted at the end of the interview that the driving was dangerous. He agreed that he had been travelling too fast to take the bend. He said he was the sole user of the Micra and that his "R" restriction period had ended at the beginning of 2017. It was put to him that his dashcam had revealed he had been driving at over 80 mph the day before the fatal collision and he accepted that also.

[25] The Defendant was asked about stickers on his car and comments on his Facebook page indicative of him being a *"boy racer."* He told police that these were intended as a joke as the car he drove was generally considered to be a *"granny shopping car."*

[26] He accepted that he had been speeding and that he had been under a lot of pressure as he was behind in his 'A' level course work. He said that he was

inexperienced at the time and that he did not properly appreciate the potential consequences of his manner of driving. He concluded by saying that he was truly sorry for the family of the deceased and expressed remorse for his actions.

[27] Mr and Mrs Weir are survived by their daughter Katie who has provided a statement setting out some of the family background and the impact which the loss of her parents has had on her. I do not intend reading the contents of the statement in this public forum but it is eloquent, heartfelt, poignant, sobering and speaks powerfully of the sheer loss and damage caused by an act of thoughtless and misplaced over-confidence on the defendant's part. Miss Weir is an only child, herself not much older than the defendant. She had to endure first the death of her father and then several weeks later her mother died in her arms as an indirect result of the terrible injuries she too sustained in the crash. The loss Miss Weir has suffered does not diminish with the passing of time, rather each life event whether graduation, first job, marriage, children of her own must all be seen against the backdrop of the vacuum left by the absence of her parents. Nothing this court can do or say will diminish her pain. Nothing the defendant can do or say can turn the clock back and restore that couple to life no matter how much he may wish that he could do so.

[28] The Court is in possession of a helpful PSR prepared by Paul Thompson (PBNI). Together with several character references all of which speak of his many admirable qualities. He is a young man who has been actively and positively involved in his local community through membership of his church, the Boys' Brigade and vintage tractor clubs. The defendant is described as a quiet and respectful young man who has demonstrated commitment to his employer and to furthering his education at SERC in Newtownards. He comes from a loving and stable background living with his parents and younger brother near Carrowdore. There are no issues with regard to alcohol, drugs or any other deviant behaviour. In short, save for one fatal flaw he is the last person one might expect to appear before a criminal court and particularly a Crown Court.

[29] That flaw is however, his acknowledged interest in speed, something that is evidenced by his Facebook profile and the footage taken from his Dashcam showing that he was prepared to travel along country roads in poor conditions at speeds in excess of 80 mph. As previously noted it was not just on the morning of this fatal RTA that he drove at such dangerously high speeds but on the previous day also. He explained to Mr Thompson that at the time he was not coping emotionally and that speed provided '*a release from feelings of low self-esteem and depression*'. The background to this statement is set out in more detail in a report prepared by Dr Maria O'Kane (Consultant Clinical Psychiatrist) where the defendant asserts that he had got behind with his studies, had split up from his girlfriend and had become very stressed. The doctor records: '*he believes that it was this state of mind that resulted in him driving too fast and recklessly with terrible results*'.

[30] There can be no doubt that the remorse he expresses for his actions is genuine, something that both Dr. O'Kane and Mr Thompson acknowledge and which is evident from the content of the various character references placed before

the Court. Notwithstanding this, however it is clear that the defendant's interest in racing and cars has continued and he expresses a hope to study for a degree in the engineering side of motorsport. This combined with his self-applied description as a 'boy racer' raises the spectre of a significant risk of serious harm and a likelihood of re-offending. Such a conclusion is, however counterbalanced by the lack of previous offending, his stable and secure family background and the fact that he has not come to adverse attention since the date of the RTA during the greater part of which period he was still driving.

Sentencing principles

[31] I have been referred to the relevant sentencing principles, which in this jurisdiction are to be found in a series of con-joined references: **AG's Reference Number 2 6 7 and 8 of 2003**. In the course of judgment in these matters the then Lord Chief Justice, Sir Robert (as he then was) Carswell approved and adopted the Sentencing Guidelines, which had in turn been adopted by the Court of Appeal in England & Wales in *R v Cooksley*; **R v Stride**; **R v Cook**; **A G's Reference (No 152 of 2002)**. At paragraph 11 (iv) Lord Woolf CJ said the following:

"It has to be appreciated by drivers the gravity of the consequences which can flow from their not maintaining proper standards of driving. Motor vehicles can be lethal if they are not driven properly and this being so, drivers must know that if as a result of their driving dangerously a person is killed, no matter what the mitigating circumstances, normally only a custodial sentence will be imposed. This is because the need to deter other drivers from driving in a dangerous manner and because of the gravity of the offence."

[32] Lord Taylor CJ in **Attorney General's Reference Nos 14 & 24 of 1993 (1994) (AR(S) 1640 at 644)** observed:

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

[33] In **Attorney General's Guideline (no 1 of 2009)**, Kerr LCJ stated:

'...it must be recognised that the purpose of punishment cannot be focused solely on the assuaging of grief. Its principal concentration must be on the culpability of the offender.'

[34] It is important to bear both these observations in mind when considering the guidelines applicable to this offence.

[35] The Sentencing Guidelines have been adjusted so as to take account of the increase in 2005 of the maximum penalty for this offence from 10 years to 14 years. The result is the following scale of sentences approved by the Court of Appeal in England & Wales in **R -v- Richardson [2006] EWCA Crim. 3186** (which was adopted in this jurisdiction by our Court of Appeal in **R -v- McCartney [2007] NICA 41**):

- (a) Cases with no aggravating circumstances, where the starting point should be a short custodial sentence of perhaps 12 months to 2 years, with some reduction for a plea of guilty.
- (b) Cases of intermediate culpability, which may involve an aggravating factor such as a habitually unacceptable standard of driving or the death of more than one victim. **The starting point in a contested case in this category is two years, progressing up to four and a half years as the level of culpability increases.**
- (c) Cases of higher culpability, where the standard of the offender's driving is more highly dangerous, as shown by such features as the presence of two or more of the aggravating factors. A starting point of four and a half years rising to 7 years will be appropriate in cases of this type.
- (d) Cases of most serious culpability, which might be marked by the presence of three or more aggravating factors (though an exceptionally bad example of a single factor could be sufficient to place an offence in this category). A starting point of 7 years was propounded for this category rising to the statutory maximum of 14 years in the most severe cases.

[36] The Court must, of course, be careful not to double count in relation to aggravating factors. If driving is dangerous by reason of a particular fact, it is self-evident that the fact that gives rise to the dangerousness is not to be counted as an aggravating factor. In this case the central feature, which denotes the dangerousness, is the high speed at which the defendant was driving when approaching the bend. Further the evidence from his own dash-cam establishes that he travelled at similarly high speeds in the days immediately before this tragic accident. This gives added force to the conclusion that his Facebook profile as a '*Self-confessed boy racer*' was more than just irony on his part and the Court is entitled to consider this as an additional aggravating factor as can the fact that the manner of his driving led to the deaths of two victims.

[37] The car he was driving was sound. He was driving to school and although it is suggested that he had had an interrupted sleep pattern the night before there is no evidence that his capacity to drive was in any meaningful way impeded.

[38] There are on the other hand several mitigating factors, which Mr. Toal asked that the court consider. These include the guilty pleas. There was clear evidence of remorse from the outset and as previously outlined any equivocation in the plea was based upon legal advice and a need to consider the question of causation, with regard to the death of Mrs. Weir. The fact that guilty pleas were entered obviously obviated the necessity of a trial and removed the risk, albeit a relatively small one,

that the jury could have concluded that the defendant's culpability was at the lower level of carelessness rather than dangerousness.

[39] Mr. Toal also drew reference to **R v Mongan [2015] NICA 26**, with regard to discount that should apply in respect of youth. The Court therein cited with approval the following passage from **R v PN [2010] 2 Cr App Rep 97**, at paragraph 23:

"It is an old and well-established principle of sentencing that the youth of an offender should normally lead to a lower sentence. It is to be found in the first edition of Thomas on Sentencing, which goes back to the 1960s in these words: 'Youth is one of the most effective mitigating factors.' That is a stark, simple, unequivocal statement of principle. The principle has been repeated time and time again."(Emphasis added)

[40] This was a serious and tragic incident caused by a combination of factors including an excess of speed and the driving inexperience of the defendant. The latter is recognised as a possible mitigating factor. In the circumstances and particularly bearing in mind his youth, inexperience and therefore greater dependence upon the advice of professionals, I shall afford him the maximum credit of one third discount on the sentence that would otherwise have applied had he been convicted of these charges after a contested trial.

[41] I also bear in mind his personal circumstances, family background and completely clear record.

Conclusion

[42] I must sentence you in accordance with the guidelines laid down and approved by the Court of Appeal. In so doing I note that an immediate custodial sentence will generally be appropriate and necessary. This is in order to underline the responsibilities that fall to all who get behind the wheel of a car and to act as a deterrent against acts of irresponsible and wanton driving without regard as to the consequences. I wish to make it clear that I endorse that view and approach to these cases.

[43] On a balanced view of all the factors highlighted in this review of the evidence I consider that this case falls towards the upper part of the intermediate category wherein the guidelines suggest a sentence of between 2 years and 4 years 6 months upon conviction after a contested trial. But for the additional factor of the defendant's youth I would take a starting point after making due allowance for both the aggravating and mitigating factors aside from the guilty pleas of 4 years. Given this recognized factor, however I take a starting point of 3 years 6 months. Applying the indicated level of discount of one third reduces the total sentence to 28 months, which is the sentence I impose pursuant to Article 8 of the Criminal Justice (NI) Order 2008.

Sentence

Count 1 - 28 Months (14 Months custody followed by 14 Months licence)

Count 2 - 28 Months (14 Months custody followed by 14 Months licence)

Offender Levy - £50.00

In addition you will be disqualified from driving for five years and until tested.

Geoffrey Miller QC

Judge of the Crown Court in Northern Ireland

4th July 2019