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IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

THE QUEEN

-v-

CHARLES MALACHY OLIVER POLLOCK

Before Kerr LCJ and Sheil LJ

KERR LCJ

[1] This is an application by Charles Malachy Oliver Pollock for leave to appeal against a sentence of 12 years imposed on 21 October 2004 by Coghlin J at Belfast Crown Court for the manslaughter of Constable Norman William Thompson on 19 August 2000.

[2] The background to this case is set out in the judgment of this court on the applicant's appeal against conviction (reported at [2004] NICA 34) and need not be repeated here at any length. Shortly stated, in the early hours of 19 August 2000 the applicant drove a motor car in various areas of west Belfast and along the M1 Motorway at grossly excessive speeds and in an outrageously dangerous fashion. He ignored repeated signals to stop and defied all attempts by the police to bring his vehicle to a halt. This disgraceful episode culminated in the applicant's car colliding with and killing the police officer who had thrown a 'stinger' device in its path.

[3] The applicant was convicted of the murder of Constable Thompson. That conviction was quashed by this court for the reason that the court entertained a doubt that the applicant intended to kill or cause grievous bodily harm to the police officer. The court was in no doubt, however, about the wholly reprehensible behaviour of the applicant on this occasion. We said this about his driving: -

> "The driving of the applicant in the early hours of 19 August 2000 was nothing short of outrageous. It has had calamitous consequences for the family of R/Constable Thompson, a police officer prepared to face considerable risk to himself in an effort to curb the disgracefully criminal conduct of the applicant."

[4] In light of his conviction of murder the appellant had not been sentenced for the offence of manslaughter. When the murder conviction was quashed the case was remitted to the trial judge for sentence on the manslaughter charge to which the applicant had pleaded guilty on his original trial. On 21 October 2004 Coghlin J imposed a sentence of twelve years' imprisonment on that count.

[5] On behalf of the applicant Mr G A Simpson QC informed the court that there were two limbs to the application: firstly, that the learned trial judge did not take sufficiently into account the intention of the applicant at the time that his car collided with the police officer; and secondly, the judge failed to make a sufficient discount on the sentence to reflect the applicant's early plea of guilty to the manslaughter count.

[6] This court dealt with the question of the applicant's intention at paragraph [45] of its judgment as follows: -

> "After much anxious consideration each of the members of this court has come to the conclusion that he could not be sure that the applicant's intention was to collide with the police officer. We find it impossible with the level of certainty necessary to support a conviction for murder to exclude the possibility that the applicant had been trying to avoid the stinger, rather than deliberately strike the officer."

[7] Mr Simpson submitted that the judge should have sentenced the applicant on the basis that he did not intend to strike the officer. It should be noted that this court did not declare itself satisfied that the applicant had no such intention. We concluded that we could not be certain that such was his intention. For sentencing purposes, however, the applicant is entitled to the benefit of the doubt that he had such requisite intention necessary to ground the charge of murder. In his sentencing remarks Coghlin J said: -

> "Ultimately your conduct that night resulted in the death of a police officer who was bravely seeking to perform his duty to protect the community. You forced upon that officer the fatal risk that he took to compel you to stop. Attempting to drive round him

> after the stinger had been deployed was reckless and foolhardy in the extreme and demonstrated a total disregard for the officer's personal safety."

[8] Referring to this passage Mr Simpson suggested that the sentencing judge had failed to expressly acknowledge that the applicant had not intended to cause injury to the deceased officer. We do not consider that this omission is of any significance. As was pointed out during the course of submissions (and accepted by Mr Simpson) it was not a matter of mitigation on the offence of manslaughter that the applicant did not intend to kill. This was not an ingredient of the offence on which the applicant was being sentenced. The applicant had had his conviction for murder quashed precisely because the Court of Appeal had considered that there was insufficient proof of an intention to kill or cause grievous bodily harm. The trial judge was therefore not obliged to refer to this aspect of the case; indeed, there was no occasion for him to do so since that was not a matter that was germane to the sentencing exercise that he was called on to perform, other than to recognise that this case was in a different category from those cases of manslaughter where a car was driven deliberately at the person killed.

[9] Mr Simpson drew our attention to cases in England and Wales where sentences had been passed on drivers convicted of manslaughter who had driven deliberately at their victims and suggested that this case ought to be distinguished from those. This is unquestionably correct but that is not a matter of mitigation; it is rather the absence of an aggravating feature. It therefore does not serve to reduce the sentence that would otherwise be imposed; the effect of the absence of an aggravating feature is that it avoids the increase in the sentence that would otherwise be warranted.

[10] In dealing with the discount that the applicant was entitled to on account of his plea of guilty and other mitigating factors, Coghlin J said: -

> "I take into account your difficult background, the fact that you did express some genuine remorse for the death of Reserve Constable Thompson and the impact that his death would have upon his family – once the effect of alcohol and drugs that you had consumed wore off – and that you were prepared to plead guilty to manslaughter when you were offered the opportunity. However, any discount must be very limited in view of the circumstances of the offence and your subsequent apprehension and interviews and, in my opinion, the importance of deterrence in this case."

[11] On the question of the discount that should be given for an early plea of guilty, Mr Simpson drew our attention to the guideline issued by the Sentencing Guidelines Council for England and Wales in December 2004. Although this does not apply in Northern Ireland, Mr Simpson submitted that it represents best practice in sentencing at present. Mr Simpson focused on paragraph 2.3 of the guideline which provides: -

> "The sentencer should address the issue of remorse, together with any other mitigating features present, such as admissions to the police at interview, separately, when deciding the most appropriate length of sentence *before* calculating the reduction for the guilty plea."

[12] Mr Simpson pointed out that this was not the approach adopted by the sentencing judge. He had dealt with all mitigating and aggravating features together and had not isolated from these the important issue of reduction for a guilty plea. Inasmuch as the judge's sentencing remarks betokened an intention to reduce the amount of discount attributable to the applicant's plea of guilty they were, said Mr Simpson, misconceived. None of the grounds on which such a reduction might legitimately be made (see *Allen & McAleenan, Sentencing Law and Practice in Northern Ireland* 3rd Ed paras 6.187 – 6.191) was present here.

[13] The Sentencing Guidelines Council document states in paragraph 5.2 that since the purpose of giving credit is to encourage those who are guilty to plead at the earliest opportunity, there is no reason that credit should be withheld or reduced where an offender is caught red-handed. It appears to suggest that the full measure of reduction for a guilty plea (specified in the guidance as one third) should be applied even in such cases. Mr Simpson prayed this passage in aid in his submission that the judge cannot have made a reduction of one third for the applicant's guilty plea.

[14] There is much to commend the approach suggested in the guideline document of calculating the total gross sentence that would be imposed without taking into account the reduction to be applied for a guilty plea and then applying the necessary discount to reflect the timeliness of the plea. In this way the court will be seen to have fulfilled its statutory obligation under article 33 of the Criminal Justice (Northern Ireland) Order 1996 which provides: -

> "**33.**—(1) In determining what sentence to pass on an offender who has pleaded guilty to an offence a court shall take into account—

> (a) the stage in the proceedings for the offence at which the offender indicated his intention to plead guilty, and
>
> (b) the circumstances in which this indication was given."

[15] The fact that the judge did not follow the recommended approach in the present case does not, of course, vitiate his decision, not least because the guideline does not apply in Northern Ireland. This guidance as to how the discount should be handled, although it might be considered by sentencers in this jurisdiction to be a useful tool, is not compulsory and there may well be occasions where a rather more comprehensive and less compartmentalised manner of dealing with the various issues in a sentencing exercise will be preferred. Judges will therefore want to consider whether the structure recommended in the guideline suits the particular circumstances of the case in which they are passing sentence but they are not bound to adopt it.

[16] There are two principal issues to be considered in this context. The first is whether the judge reduced the amount of discount necessary to reflect the plea of guilty on account of other factors and the second is whether the level of discount in fact allowed for the plea was sufficient.

[17] On the first of these we do not consider that there is any reason to suppose that the judge reduced the discount that he would otherwise have allowed for the guilty plea. Mr Simpson is right in his claim that, apart from the question of being caught red-handed, none of the usual circumstances that justify such a reduction arises in the present case. A reduction in the discount to be applied for a timely guilty plea will be warranted where, for example, the offender has absconded or where a *Newton* hearing is required to determine the factual basis of the defence or where in the case of a violent or sexual offence a protective sentence is passed. Nothing like this is present in the circumstances of this offence. There was therefore no occasion for the judge to make a reduction in the discount to be allowed for the guilty plea except in relation to the applicant's apprehension within a short time of the offences having been committed.

[18] While we can understand the reasons that a reduction of the discount for having been caught red-handed should no longer apply in England and Wales, we do not believe that the situation in Northern Ireland should be taken to be equivalent. We consider that a strong case can still be made in this jurisdiction for distinguishing between those cases where the offender is caught red-handed and those where a viable defence is available. The incentive to plead guilty in the latter category of case should in our view continue to be enhanced in this jurisdiction. It follows that the discount in cases where the offender has been caught red-handed should not generally be

as great as in those cases where a workable defence is possible. Since the applicant had no viable defence we consider that the discount should not be as great in his case.

[19] There were many aggravating features in this case which merited a substantial increase in sentence. The applicant was driving under the influence of drink and drugs. He had driven for a long period and over a considerable distance in an outrageously dangerous fashion. The police officer was clearly visible to him and he was shockingly reckless as to his safety. While we must accept that it is possible that he swerved in an effort to drive around the back of the policeman, this was a hideously perilous course to take. All of these factors combine to make this one of the worst cases of driving that this court has encountered in recent years. We do not consider that the judge failed to allow a sufficient discount for the applicant's plea of guilty. Apart from the factors outlined above, offsetting that reduction was the need to impose a sentence that carried a strong element of deterrence. Sadly, although this is one of the most serious cases that we have recently had experience of, this type of driving remains disturbingly prevalent. A substantial sentence was required to meet the requirements of retribution and deterrence. In our judgment the sentence was fully justified. The application for leave to appeal against it is dismissed.