

R v McCullagh
COURT OF APPEAL (CRIMINAL)

CARSWELL LCJ11 JULY 1997

11 July 1997 CARSWELL LCJ

(giving the judgment of the Court): This is an appeal against sentences imposed by His Honour Judge McKay QC on 17 February 1997 at Omagh Crown Court. On that date the appellant, Stephen Patrick McCullagh, pleaded guilty to nine counts of driving whilst disqualified and one count of dangerous driving. The appellant was sentenced to four months' detention in the Young Offenders' Centre in respect of each of the ten counts and was disqualified from driving for life. The periods of detention were ordered to be served consecutively. The trial judge put into operation, also to be served consecutively, a suspended sentence of six months' detention which had been imposed at Omagh Magistrates' Court in February 1996 in respect of a series of reckless driving offences. The appellant therefore received a total sentence of 3 years and 10 months' detention.

On the same occasion the appellant pleaded not guilty to an additional count of dangerous driving, which was ordered to be left on the file. Thirty three other offences, involving no insurance and driving whilst disqualified, committed on dates between 15 May 1996 and 15 July 1996 were admitted by the appellant and taken into consideration by the Crown Court.

The appellant sought leave to appeal against the trial judge's order on a number of grounds which we shall set out later in this judgment. Leave to appeal was given by Girvan J on 21 May 1997.

The circumstances giving rise to the offences can briefly be stated as follows. The appellant was initially challenged by police officers on patrol in Omagh on 15 May 1996 and was asked to produce his insurance and driving licence within five days, a request with which he failed to comply. Thereafter on numerous occasions up to 15 July 1996 the appellant was observed by police officers in Omagh to be driving various cars whilst disqualified and on occasions he was again challenged.

On 11 June around 10.30 pm the appellant was observed driving along the Old Mountfield Road, Omagh in the direction of Killyclogher by police officers who were in a vehicle behind him. As the appellant was nearing the brow of a hill on this road he started to overtake the vehicle in front of him, causing a driver who was coming from the opposite direction to bring her vehicle almost to a halt in order to avoid a collision with the appellant's car. A short time later the appellant was stopped at a police checkpoint, where he swore at a police officer who cautioned him. When the officer pointed out that he was committing driving offences he made no reply, revved the engine of his car and reversed at speed, skidding to a halt inches from the front of a police car which was parked behind him. The appellant again revved the

engine of his car, spun the wheels and drove off at speed without checking that his route was clear.

On 13 June the appellant was observed driving whilst disqualified a number of times. On one occasion when he was stopped he swore at a police officer and declined to leave his car, even though he was told he was committing an offence. On another occasion as an officer was cautioning him he revved his engine and drove off, and on the final occasion when stopped by police on that date he drove off, even though the police officer had informed him that if he did so he would be committing a further offence. On 15 July the appellant was again observed by police officers to be driving whilst disqualified and on one occasion when he was stopped by police he resorted to abusive and insulting language.

The appellant is currently 19 years of age and at the time of the offences he was 18 years of age. He was born and brought up in Omagh and his parents separated in 1982 as a result of his father's abuse of alcohol and his violent conduct. It appears that the appellant was placed in voluntary care by his mother because of his disruptive behaviour. The appellant has been before the courts on 17 previous occasions, principally in relation to driving offences and offences of dishonesty. As a result of these appearances he spent periods in training schools, and latterly it appears in St Patrick's and Lisnevin Special Unit. The appellant is currently being detained in a Young Offenders' Centre, serving sentences totalling three years and three months which were imposed on 29 November 1996 at Omagh Crown Court in respect of driving offences and offences of attempted grievous bodily harm with intent. His earliest date of release was given to this court as 1 January 1999. On 29 November 1996 the appellant was also disqualified from driving for five years.

A probation report, dated 17 February 1997, which was before this court states that the appellant could offer no excuse for his behaviour and accepted that he had behaved irresponsibly. He loves driving, however, and believes that it gives him status among his peers.

In sentencing the appellant the learned trial judge's approach was to impose consecutive periods of detention of four months in respect of each of the ten charges to which the appellant had pleaded guilty, making a period of 40 months' detention. Added to that is the six months' detention resulting from the activation of the suspended sentence of six months' detention imposed at Omagh Magistrates' Court on 8 February 1996, making the total period of detention three years and ten months. At first the trial judge was minded to disqualify the appellant from driving for five years, but then stated:-

"In fact it seems on mature reflection that the driving behaviour of this accused is so gross that it would be more appropriate if I were to disqualify him for life".

The appellant has appealed against sentence on the following grounds:-

"(i) The learned trial judge erred, by failing to give proper consideration to the principles governing offences committed during a relatively short period of time or within the ambit of the same transaction.

(ii) The totality of sentence exceeds what is just and appropriate, having regard to the circumstances and gravity of the applicant's behaviour.

(iii) The overall period of imprisonment represents a crushing sentence on the appellant.

(iv) The learned trial judge failed to have any or adequate regard to the summary nature of the offences and in particular to the aggregate which in other circumstances may have applied.

(v) The disqualification for life serves to inhibit the positive rehabilitation of the appellant.

(vi) The learned trial judge erred in failing to properly consider the age of the appellant and his future prospects of employment.

(vii) The learned trial judge erred in failing to invite Counsel to address the Court in respect of the period of disqualification".

Mr Brian G McCartney for the appellant covered these grounds succinctly before this court, focusing on the totality of the sentence imposed on the appellant in light of his age, the view that some of the offences could be regarded as part of the same transaction and the argument that such a stiff sentence would not be conducive to the rehabilitation of this young man.

The driving of the appellant and his behaviour in flouting the disqualifications from driving previously imposed upon him were totally irresponsible and had clearly to be met by an immediate custodial sentence. In the circumstances of this case the trial Judge was quite entitled to make the periods of detention imposed consecutive to each other. Mr McCartney pointed out in the course of argument that three of the counts on the indictment, numbers 6, 7 and 8, arose out of sightings of the appellant driving on the same day, 13 June, and the periods of detention imposed in relation to these might very well have been made concurrent. We nevertheless would not fault the Judge for having made the sentences consecutive, an approach which is entirely appropriate for such a series of offences.

We do, however, accept Mr McCartney's submission that it is necessary to look at the totality of the periods of detention imposed, and although the driving of the appellant was grossly irresponsible and his record is appalling, we consider that the overall period of three years and ten months' detention imposed for this series of offences is too high. Accordingly, we propose to reduce the sentence on each of the ten counts to two months, to run consecutively, making a total of 20 months. We would not disturb the Judge's order activating the six months' suspended sentence in

addition. The total effective period of detention in the Young Offenders' Centre imposed is therefore reduced to two years and two months.

Mr McCartney argued that the disqualification from driving for life imposed on this young appellant is not supported by the modern authorities – see *R v McCluskie* (1992) 13 Cr App R(S) 334, *R v North* [1971] RTR 366 and *R v Ward* 53 Cr App Rep 23. We have given this matter careful consideration and agree with the policy of the Court of Appeal in England, which is increasingly to discourage disqualification for life or for very long periods, particularly where the offender is young. In *R v Tantrum* (1989) 11 Cr App R(S) 348 the Court of Appeal in England stated that very long periods of disqualification tend to inhibit the rehabilitation of the offender and disqualification for life should only be imposed in very exceptional circumstances, for example, where the driver would be a danger to the public for an indefinite time. We agree with that view and would also observe that a life disqualification tends to reduce the incentive to a defendant to observe the ban and stay off the road until the disqualification period has been completed.

We consider nevertheless that a long period of disqualification from driving is required to mark the disapproval of society of the grossly irresponsible behaviour of the appellant. We have noted that substantial periods of disqualification have had no effect to date, and the appellant is already subject to a disqualification from driving for five years from November 1996. The disqualification ordered by the court cannot run consecutively to that disqualification, and if it is to have any meaningful effect it must be somewhat longer than the period which has already been imposed. In the circumstances, therefore, we consider that the appropriate period would be ten years' disqualification from driving.

Judgment Accordingly.