

Judicial Communications Office

Thursday 9 November 2023

COURT OF APPEAL REJECTS LEAVE TO APPEAL SENTENCE IN THE CASE OF ARTHUR MCGRILLEN

Court reminds all drivers that there is no more fundamental duty on any driver than the duty to avoid colliding with any other road user

Summary of the Appeal Court Judgment

Treacy LJ, Horner LJ and Kinney J

Lord Justice Treacy, sitting today in the Court of Appeal, delivered the judgment on behalf of the three judge panel constituted of Lord Justice Treacy, Lord Justice Horner and Mr Justice Kinney and rejected the application for leave to appeal against sentence.

Factual Background

Arthur McGrillen was sentenced to five years' imprisonment, half to be served in custody and half on licence imposed upon him following his guilty plea to one count of causing death by dangerous driving; and one count of causing grievous bodily injury by dangerous driving.

The applicant was committed to Downpatrick Crown Court on 6 January 2022. On arraignment on 21 February 2022, he pleaded not guilty to counts 1 and 2. On 19 May 2022, the applicant applied to be re-arraigned and pleaded guilty to both counts.

On 4 November 2022, following receipt of victim impact materials, a pre-sentence report, medical reports, references, and submissions from defence and prosecution and having heard supplementary oral submissions, the trial judge sentenced the applicant to an immediate determinate custodial sentence. The sentence was five years' imprisonment on count 1 and four years in relation to count 2 (concurrent with count 1), half of the sentence to be served in custody and half on licence. The applicant was also disqualified from driving for life.

The background circumstances are not disputed. The accident occurred on the afternoon of Sunday 19 October 2019. Mr Aiden Fitzpatrick was killed, and his friend and co-cyclist, Ralph Mills, sustained life changing injuries in a traffic collision on Killyleagh Road, Downpatrick.

Judicial Communications Office

The applicant was born in 1948 and is now in his mid-seventies. At the time of the accident, the applicant was retired and had suffered a stroke in June 2017.

While driving his Mercedes car along a straight section of Killyleagh Road and on approach to the cyclists, the applicant drove into the rear of both men. The collision was captured on a rear-facing camera unit on Mr Mills' bicycle. Cameras on a passing ambulance captured images of the cyclists and the car as they approached the collision scene. Camera footage shows cyclists cycling two abreast. The car's speed was approximately 56mph, and the cyclists were in a position to be seen by the applicant for a significant distance of several hundreds of metres away and up to 20 seconds before impact. The applicant had more than sufficient time to react and avoid a collision. The weather and driving conditions were good, with no visibility issues or objects obstructing the applicant's view of the cyclists. There were no vehicle defects contributing to the collision.

On arrival of police at the scene, the applicant was spoken to by Sgt Dunn, who noted the applicant initially saying, 'I didn't see them....I was travelling along the Killyleagh Road, Downpatrick in the direction of Killyleagh. I was travelling and I saw two bikes on my side of the road. The two cyclists were two wide, they weren't travelling in single file. I went to go round them, and they bumped on top of my car.'

On 5 November 2019, a claims inspector interviewed the applicant on behalf of his insurers. The applicant's statement to his insurance company notes that he suffers from aphasia following a stroke in 2017 but he denies taking any medication. He showed no remorse or compassion for the victims. The applicant claimed that he had no previous motoring convictions. He described observing the cyclists from a 200m distance on a clear, sunny day travelling at about 40mph. He had indicated his intention to go around the cyclists when suddenly, one cyclist moved to the right and one to the left without warning. He said the accident would not have happened had the cyclists not changed direction.

Lord Justice Treacy stated that footage from the rear-facing camera mounted on Mr Mills' bicycle shows the applicant's account is demonstrably false in almost all material respects.

When interviewed under caution the applicant essentially made no comment on the advice of his solicitor. However during interview two, he indicated he had seen the cyclists before impact, and had felt fit to drive, and there was nothing wrong with his car. In interview three, he was asked to give his account of a collision in which a man died, to which he replied '*What about me?*' and further stated '*it wasn't my fault*'.

Sentencing

The applicant has 22 previous convictions, 18 of which are motoring offences, but the most recent offence was over 30 years ago.

The Pre Sentence Report highlights that the applicant is a 74 year old single man estranged from his wife, who died in 2009 from cancer. They had four children, two of whom died as

Judicial Communications Office

children from carbon monoxide poisoning. Their two daughters are still alive, and one is the applicant's registered carer.

The applicant had a difficult childhood, left school at 15 with no formal qualifications however he obtained employment after leaving school and had a positive employment history.

Regarding physical health, the applicant was diagnosed with a lung disorder 36 years ago, this has been exacerbated by the defendant contracting Covid. In June 2017, he suffered a stroke resulting in communication difficulties. He was diagnosed with Aphasia which impacts his verbal and written communication skills general comprehension.

In discussing the collision with probation, the court said that it appeared that the applicant, despite his plea of guilty, has returned to what is, in effect, his original false narrative given to his insurers. Probation identified that the applicant failed to declare the stroke he had in 2017 when applying to renew his driving licence on 2 February 2018 and considered this a reckless disregard for road safety.

Probation assessed the applicant as having a low likelihood of reoffending and not posing a risk of serious harm.

The trial judge took into account the victim impact statement which details the life well lived by Aiden Fitzpatrick and the profound loss suffered by his family. The trial judge also describes the physical and psychological impact of the accident on Ralph Mills, who survived the collision.

The maximum sentence for causing death or grievous bodily injury by dangerous driving is 14 years imprisonment, and disqualification is mandatory.

The trial judge when sentencing considered the victim impact statements and recognised the immense loss suffered by the Fitzpatrick family and also detailed the impact of the severe injuries on Ralph Mills. He took into account the description of the incident that the applicant gave to his insurance company which was false. The trial judge noted that the applicant claimed he had never been convicted of any driving offences, which is untrue. He carefully considered the contents of the pre-sentence report, including the applicant's personal circumstances and physical health issues.

The trial judge referred to aggravating factors in the case including the applicant's "total abject failure to take any steps to avoid colliding with the two cyclists". The trial judge considered the additional aggravating factor that there were two victims, and he considered the potential aggravating factor of the applicant failing to declare that he had a stroke in 2017 when renewing his driving licence in 2018.

Judicial Communications Office

The trial judge determined that the applicant fell to be sentenced in the category of high culpability, straddling that of most serious culpability noting the need for flexibility in sentencing rather than adopting a mechanistic approach.

Lord Justice Treacy said today that the trial judge “*applied what we consider a generous discount stating he would apply between a 25% and 30% reduction in sentence for the plea and (limited) remorse expressed by the applicant. He considered the applicant’s health and expert reports provided to the court and factored these into his considerations.*”

The trial judge set a starting point of seven years and reduced this to five years, considering the plea and some limited remorse relating to count 1.

Ground of appeal

The single ground of appeal submits that the judge erred by selecting the wrong starting point of seven years in accordance with the available evidence and the sentencing authorities, which resulted in a manifestly excessive sentence being imposed.

Consideration by the Court of Appeal

Lord Treacy today rejected the application for leave to appeal, and said that the court did not accept the contention that the judge may have been unduly affected by the victim impact statements when imposing the sentence. He said:

It is only proper that a judge conducting such an exercise reflects the grievous loss suffered by the Fitzpatrick family and to the pain and suffering, both physical and psychological, of Mr Mills.....Professional and highly experienced Crown Court judges are well aware of the need to assess and properly take into account victim impact statements. That is precisely what the judge did in this case.

The applicant argued that his failure to declare a stroke in 2017 when renewing his driving licence in 2018 did not play a part in his driving on the day of the collision, and therefore, should not impact the level of culpability. Lord Justice Treacy said this morning:

The applicant knew he had a stroke; he lied to the DVLA about this, he knew he had not been allowed to drive for a significant period after his stroke, and it is a reasonable inference that he did not want to be medically examined because he knew he was likely to fail any medical. We consider that the judge was entirely correct to regard this as a matter of significance and an aggravating factor indicative of high culpability for the consequences of his driving on this occasion.

Delivering the judgment of the court this morning, Lord Justice Treacy said:

The courts have repeatedly emphasised that sentencing in cases involving dangerous driving causing death or grievous bodily injury is intended to deter. Sentencers must bear in mind that in such cases deterrence is an essential element in discouraging others from driving

Judicial Communications Office

irresponsibly given the gravity of the consequences. The legislation focusses on the consequences and harm that flow from dangerous driving that causes death or grievous injury. It is designed to ensure that such consequences of dangerous driving will almost inevitably result in a significant period of immediate imprisonment. It is the role of the judiciary to ensure that the objective of the legislation is achieved and we are satisfied that this was appropriately achieved by the sentencing judge given the woeful standard of driving in this case.

In summing up, the Judge had this to say:

It must be remembered by all drivers, young and old, that there is no more fundamental duty on any driver than the duty to avoid colliding with any other road user. All drivers must realise that if their driving is dangerous and causes death or grievous injury that they will face a significant period of imprisonment – this is because the legislation focusses on the consequences of the dangerous driving. No term of imprisonment can erase the loss of life or family grief resulting from the death and life changing injuries of innocent road users. The purpose of punishment in cases of dangerous driving resulting in these consequences must be focused on the culpability of the offender and the horrific consequences of his dangerous driving. The appeal is dismissed.

NOTES TO EDITORS

1. This summary should be read together with the judgment and should not be read in isolation. Nothing said in this summary adds to or amends the judgment. The full judgment will be available on www.judiciaryni.uk

ENDS

If you have any further enquiries about this or other court related matters please contact:

Catherine Burns
Lady Chief Justice's Office
Royal Courts of Justice
Chichester Street
BELFAST
BT1 3JF

Telephone: 028 9072 4615
E-mail: Catherine.Burns@courtsni.gov.uk