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IN THE CROWN COURT OF NORTHERN IRELAND

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DOWNPATRICK CROWN COURT
(SITTING AT LAGANSIDE COURTHOUSE)

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THE KING

v

ARTHUR McGRILLEN

_____

HIS HONOUR JUDGE MILLER KC

Introduction

[1] The defendant falls to be sentenced having pleaded guilty to the two charges on the bill of indictment, these being of causing the death of Aiden Fitzpatrick and the grievous bodily injury to Ralph Mills, by driving dangerously on the Killyleagh Road, Downpatrick on the afternoon of Sunday 19 October 2019.

[2] Expressed as a blunt factual statement this does little to convey the enormity of the consequences of what occurred that day and how the impact like the ripples on a pond have grown ever wider and have changed lives forever.

[3] The core function of the court today is to pass sentence upon the defendant for the offences he has committed, but no sentence can restore the life that has been lost or mend the life that has been so damaged. Whilst the nature of the proceedings must focus on the actions of the defendant and his personal circumstances and how this factors into determining the sentence the Law requires it is essential that in so doing those most affected by the events of that day are kept to the forefront of the court's attention.

[4] It is for that reason that I intend taking some time to consider the life of Aiden Fitzpatrick and reflect upon his legacy as outlined in the eloquent and heartfelt statements of his family. In so doing I will also refer to the statement I have from Ralph Mills, who survived that day but who will live with the aftermath for the rest of his days.

Victim Impact Statements

[5] Aiden Fitzpatrick was a 'giant of a man' both in terms of his height at 6'4" but more importantly in his warmth, humanity and love for family and his fellow man. He leaves his widow, Deirdre, sons Peter, Ciaran and Niall, daughters Louise, Niamh and grand-children Holly and Jamie to all of whom he brought security, support, endless patience, devotion and apparently a wonderful sense of humour.

[6] He and Deirdre met in their second year at QUB in 1981 and they were together for the next 38 years, during which time they built a truly happy and close-knit family. It is significant that even after the children had grown up and several left home to build their own lives, Sunday evening remained a sacred time when the family including the new generation, gathered for Sunday dinner. This was a time to catch up on the events of the week and to enjoy each other's company. Aiden was at the head of the household both literally and figuratively, dispensing good advice, providing a listening ear and laughing at his own stories.

[7] The picture of this man, however, radiates beyond the family setting. He held a demanding post working for the Equality Commission but seemed able to find time to do so much more. He was a talented sportsman, winning a 'Blue' at Queen's for his prowess as a Basketball player and later he organised the basketball section of the World Police and Fire Games in 2013. He was actively involved in and hugely supportive of the Special Olympics, starting by refereeing tournaments and then graduating to coaching, first a team in Bangor and then an All-Ireland winning Ulster side. All the while he was involved with his children's diverse sporting and cultural activities, attending GAA, Irish Dancing and Drama festivals. In all of this he took delight in the achievements of others and in particular the Special Olympics athletes. As Deirdre observed:

> "He loved the Special Olympics and really enjoyed his time with the athletes and couldn't wait to tell us stories of their antics. He took great pride in every new skill any of them developed."

[8] This sense of service shines out from the family tributes. Aiden was a blood donor and later a platelets donor giving more than 200 donations of platelets over a 20-year period to help cancer patients. He did so because he felt as someone who enjoyed good health it was important to help others. This sense of giving without thought of reward extended to his last gift, namely that his organs be donated after his death. As he told Deirdre:

> "When I die, give them everything – they'll be no use to me."

Those wishes were fulfilled on 23 October 2019.

[9] There is so much that has been said about Aiden Fitzpatrick and I mean no disrespect either to his memory or to the eloquence of those tributes, all of which I have read, if I do no more than seek to give an impression of his life and with that the unbearable loss experienced by those closest to him who have been left behind. There are so many quotes from those tributes, which I could relate but I hope that if I end with two extracts from Niamh's (the youngest of the family) account this will serve in some measure to reflect how the whole family feel. She said:

> "Overall, dad was a gentleman who left a massive legacy behind. We thought we knew about his kindness and generosity before he died, yet at the wake we were told countless stories of selfless things he had done for others, but never recounted to us. He was humble and so giving without ever asking for anything in return."

[10] Niamh then reflects on the sense of loss, not just for herself and the family but for Aiden Fitzpatrick himself:

> "It's easy to lose sight of how young dad was (58). It hurts to know he was fit and healthy and had so much life left to live. It hurts that we'll never know what he and mum could have done with retirement. It hurts to know he gave so much to others, but that life is cruel and can still take away the best."

[11] Aiden Fitzpatrick lost his life on a bright sunny autumn Sunday afternoon. One of his other great passions was cycling. Indeed, it appears to have been a family joke that his bike was more valuable than his car and could not be left in the cold of the garage but rather was kept in the playroom inside the house. He, in common with Ralph Mills, was a member of the La Lanterne Rouge cycling club, though he and his cycling friends dubbed themselves 'The Hallions.' Both men were experienced cyclists and they, in the company of other club members had completed a morning run around mid-Down. Mr Fitzpatrick was accompanying Mr Mills back from that run when the accident occurred, and I shall say more about the circumstances of what happened later in these remarks.

[12] Although Ralph Mills survived this incident, he sustained very serious and indeed life-changing injuries as a result, and he too could so easily have died. Mr Mills has provided a personal statement, and this is accompanied by a letter from his GP setting out a summary of his treatment up to December 2019. The physical impact of the accident remains to this day with Ralph Mills who was 66 at the time. He is in constant pain, must take Sevredol (a form of morphine) on a daily basis and cannot now do much of what he previously enjoyed such as walking with his family, gardening, DIY and helping with his grandchildren and of course cycling. Running alongside and arising out of the physical injuries are the psychological consequences

of the accident. Mr Mills suffers a form of 'survivor's guilt' that it was his friend who died, and he survived. He suffers from sadness and frustration that he cannot do what he previously as a fit and active mature man, took for granted. It is to be sincerely hoped that he will, as he himself states: make progress and get back to feeling more joy and interest in life.

[13] It is trite to say that this hurt and sense of loss at the void created by the events of the afternoon of 19 October 2019 on the lives of those most closely affected has been immense. Nothing that this court does today will fill that void, heal the hurt, still less restore to the Fitzpatrick family that which has been taken from them. The court extends its sympathy to the entire Fitzpatrick family and to Mr Mills and his family circle.

The background to the court proceedings

[14] Mr Murphy KC has set out in some considerable detail the history of events both leading up to the fatal RTA and thereafter. I shall consider these issues in the context of how they interact with Mr Grant KC's submissions, the court's sentencing powers and how these should be applied. Before doing so, however, I wish to consider the history of the court proceedings from when the defendant was charged to the date of sentencing today.

[15] As noted, this fatal RTA occurred on 19 October 2019 and sentencing will be taking place upwards of 3 years after the event. The court acknowledges that for the Fitzpatrick and Mills families this has been an unbearable wait during which they have felt in a state of limbo. It is important, therefore, to consider that timeframe in a little more detail.

[16] The defendant was first interviewed on 20 November 2019, approximately a month after the accident. He was attended on that occasion by his solicitor, Mr Mulholland, his daughter, Sarah McGrillen and by Oliver Wilkinson who is a Registered Intermediary. The presence of Mr Wilkinson indicated that even at that time there were concerns as to the defendant's capacity to comprehend questions and communicate his responses. Nothing of substance emerged from that interview beyond the defendant stating he had already provided an account to his insurance company and the RI expressing concern that Mr McGrillen had appeared quite lucid when he spoke to him two hours before the interview but was now incapable of answering the most basic of questions?

[17] The second interview took place a week later on 27 November 2019. Ms McGrillen and Mr Wilkinson again attended though on this occasion Ms Bronagh Kelly of Mr Mulholland's practice was also present. Once again there was reference to the statement made to the Insurance Company and concerns were expressed as to the defendant's capacity. Despite being advised not to answer questions relating to the accident, the defendant admitted seeing the cyclists before the accident (Exhibit Page 40). He also referred to hitting his head against the

vehicle (Exhibit Page 38). When asked whether he felt fit enough to drive on that day his response was: "sure I'm in it every day" (Exhibit Pages 41 – 42). He also confirmed that there was nothing wrong with the vehicle (Exhibit Page 43). When pressed as to whether he had informed DVA about his stroke he again gave 'No Comment' responses (Exhibit Page 44).

[18] After a short break the interview resumed at 1.31pm that same day with the same parties in attendance. At this stage police put the allegations to McGrillen and asked him to give his account. He persisted in saying that he had told the Insurance Company and that he was relying on his solicitor to answer before continuing: - 'I'm taking nothing more to do with it now because that's…it wasn't my fault so.'

[19] A file was prepared by police and then forwarded to the office of the Director of Public Prosecutions. Subsequently a direction was issued to prosecute the defendant on the two charges upon which he falls to be sentenced today. He first appeared before Downpatrick Magistrates' Court on 28 October 2021 and thereafter on 11 November and subsequent dates until the PE, which took place on 6 January 2022. He was then remanded to appear before Downpatrick Crown Court sitting here in Laganside in February. He was arraigned and entered 'Not Guilty' pleas to both counts on 21 February and a trial date was fixed for 6 June 2022. It is only fair to point out that whilst the defendant had pleaded not guilty, his counsel had expressed concerns over his capacity and wanted him to be examined by a psychiatrist to assess his fitness before providing him with appropriate advice.

[20] The case was next reviewed on 21 March at which point the court was informed that Dr Iain Bownes (Consultant Clinical Psychiatrist) had been unable to speak with the defendant who was apparently bedridden. On 7 April the court gave further directions that the psychiatric report was to be lodged before 22 April and the case would be reviewed on the 26th of that month with a hope of progress towards a resolution. If this did not take place it was made clear that the trial date would not be moved.

[21] On 11 May Mr Grant informed the court that the defendant had been adjudged fit to stand trial but that he was suffering from a chest infection and counsel were therefore unable to consult with him at that time.

[22] Finally, on 19 May Arthur McGrillen was re-arraigned and entered guilty pleas to both counts on the bill of indictment. The case was then set down for reports and plea and sentence hearing with the intention this would be convened before the end of June. On 1 July, however the court acceded to a defence request for a further adjournment to allow time for Dr Bownes to consider the defendant in respect of geriatric decline from a psychiatric perspective. That then brought us to 26 August when it was anticipated proceedings could have been concluded. It then transpired that the defendant had been admitted to the Ulster Hospital on the evening of Thursday 25th suffering from dehydration. He remained under medical care on the Friday, but it was indicated that he was being transferred to Downe

Hospital on Saturday 27th with a view to his release on Monday 29th. In light of these developments the case was further adjourned to 9 September, but I revoked the defendant's bail so that he would be taken into custody upon his release.

[23] I was out of the jurisdiction until the evening of 6 September and on my return to court the following morning I received emails from Dr Hart, who has care of the defendant indicating that he remained under medical care suffering from delirium. Once again, the indication was that he would be capable of release but that this should be to an environment where he felt secure, namely with his family. It was Dr Hart's view, as expressed to the court that afternoon, that the court would require an additional report from a consultant neurosurgeon in order to assess the impact upon the defendant of a custodial sentence. It was also suggested that a report from a consultant in geriatric medicine would be of benefit and I directed that this too be obtained.

[24] For the reasons given at the outset of the hearing on 9 September I decided that in the interests of justice the defendant should be re-admitted to bail in order that these reports could be prepared at the court's direction. I also decided that the family of the deceased and Mr Mills were entitled to some degree of finality on that occasion and therefore I set out all aspects of my findings up to but not including the final determination of sentence.

[25] I have set these matters out in some detail because of the concerns expressed by the families in this case both as to the protracted nature of the process and specifically of the number of court appearances, which now exceed 20 in total. I accept that this has been a source of frustration not least because up until the change in plea they had little or no idea of precisely what the defendant's version of events was and why he was seemingly unable to face up to the consequences of his actions from the outset.

[26] Whilst I fully understand these concerns, I equally acknowledge that in the exercise of their professional duties to their client, Mr Grant KC and Mr Doherty had to be sure as to his capacity and that he was in a position to give them properly considered instructions and then take their advices. For the reasons articulated in the plea in mitigation this was not a straightforward task.

The defendant's account to the Insurance Company

[27] The defendant's statement to Quest Gates (Chartered Loss Adjusters & Claims Specialists) is dated 5 November 2019. This document was served as additional evidence in this case by notice dated 7 June 2022, several weeks after the defendant was re-arraigned and entered the guilty pleas.

[28] The statement is in the form of a series of single statements presumably prompted by individual questions. It is significant for its detail as the defendant describes his journey, first from Killyleagh to Downpatrick to shop and buy petrol at

the Lidl store and then his return journey. He notes details such as the several signs on the grass verges advertising vegetables for sale, and the presence of the lorry parked in a laneway across the road from a cottage adjacent to these signs.

[29] He said that he was not in a hurry, travelling at less than 40mph well within the 60mph speed limit for a road he knew well as he would travel along it on at least a weekly basis for 50 years. The weather that day was dry, and visibility was good. He admitted seeing the cyclists from a distance of approximately 200 metres.

[30] Turning to the key moments relevant to the accident the defendant said the following:

> "When I got close to the two cyclists, I indicated my intention to go round them. There was no traffic coming from the other direction. There were no vehicles travelling behind me.
>
> I started to move out towards the oncoming lane. The two cyclists moved very suddenly, one to the left and one to the right. Neither of them gave me any warning they were going to change direction.
>
> I now know the two cyclists were avoiding a trench in the middle of the road that Phoenix Gas had not filled in properly. There were no signs on the road warning of road repairs…
>
> When I brought the car to a stop it was in the Killyleagh bound lane close to the grass verge. I did not move it after I initially brought it to a stop…
>
> I don't think the cyclists were aware of my presence. I would have safely overtaken them had they not changed direction suddenly when confronted with the rut or trench in the road."

[31] As is apparent from the Crown outline and from the footage mounted on the rear of Mr Mills' helmet this account is false in all the most salient aspects. The footage plainly shows the Mercedes approaching at what appears to be a constant speed; there is no sign of it indicating to overtake or pulling out to do so.

[32] Whilst the photographs do show patching to the road in the vicinity of the accident neither cyclist deviates from their path at any time before the accident occurs. Simply the defendant ploughed straight into the back of the two cycles on a straight stretch of road on a sunny day with a clear blue sky when there were no signs of obstruction to his view or impediment to his overtaking both men in

complete safety. Indeed, another car effected that very manoeuvre less than a minute before the collision took place.

[33] Another point of interest in this statement is the reference to the defendant's stroke in 2017. He notes that as a result he was diagnosed with Asphasia for which he is not prescribed any medication. He continues:

> "I was advised by my doctor that Asphasia only affects my speech. My doctor also informed me that I did not need to notify DVLA."

This is a matter to which I shall return.

[34] He further stated that he had 'not been convicted of any motoring offences.' This is untrue as he does in fact have several road traffic related offences though in fairness nothing in the previous 30 or more years.

[35] I shall refer to these matters when I come to consider how they factor into the sentencing process.

The Defendant's personal circumstances

[36] The court is in receipt of a PSR prepared by Aisling Finnegan (dated 30 June 2022) together with two reports by Dr Bownes dated 6 May and 15 July respectively. Finally, I have received Mr Grant and Mr Doherty's written submissions dated 8 August 2022.

[37] Arthur Robert McGrillen is now 74 years of age (DOB 04.03.48). He lives alone in a private rented one-bedroom flat in Killyleagh. He separated from his wife in or around 2004 and she subsequently died of cancer in 2009. Tragically two of their four children died at a very young age of carbon monoxide poisoning. He has two daughters remaining, one of whom, Dolores, is the defendant's registered carer.

[38] It is apparent that the defendant's life has been blighted by many tragedies in addition to the loss of his children. His father died when the defendant was only 8 years of age and he described an unhappy childhood as one of seven siblings through lack of finances, loss of his father and his mother's attention being focused on his younger sister who was diagnosed with Downes Syndrome.

[39] Despite leaving school with no qualifications the defendant started work immediately as a trainee welder. He reported a positive employment record and eventually established a company called Springcast Concrete, making kerbs in West Belfast. This came to an end after an incident during the 'Troubles' when he was held at gunpoint for 9 hours, his car was stolen and then used in the murder of a Prison Officer. Subsequently he moved his family to Dromara and purchased a public house in Rathfriland. Sadly, difficulties followed him with both himself and

his family being subjected to sectarian abuse as Catholics living in a predominantly Protestant area. An electrical fault sparked a fire, which destroyed the pub and the family lost everything. It was the culmination of these events that led to the defendant's marriage breaking down irretrievably and the deterioration of his physical health. He now lives on a combination of pension and Disability Living Allowance payments.

[40] Regarding his physical well-being the defendant was diagnosed with Aspergillosis back in 1986, a condition that involves blood clots and a ball of fungus fibres on the lungs, resulting in him coughing up blood most mornings. He is also susceptible to chest infections, something that was exacerbated by Covid-19. In addition, he has mobility issues with blood thinners prescribed for many years to reduce the risk of clots on the legs travelling to his lungs. Moreover, he suffers from Irritable Bowel Syndrome and finally in 2017 he had a stroke, which, as previously noted, resulted in his being diagnosed with Asphasia. This, as already noted, impacts upon his ability to communicate, something that has been highlighted earlier in these remarks. Whilst Ms Finnegan stated there was no suggestion of his drinking to excess, the medical notes accessed by Dr Bownes related to the defendant's admission to hospital on 5 November 2021 record 'abnormal liver function test results consistent with habitual heavy drinking.' There is no history of illicit drug use.

[41] In discussion with Ms Finnegan the defendant described the collision as a 'moment of madness' and said that it happened 'in the blink of an eye.' He appears to have maintained his assertion that the cyclists crashed into him rather than accepting the reality of his ploughing into them. Whilst he acknowledged the sense of loss endured by Mr Fitzpatrick's family and allowing for his communication difficulties, he clearly displayed a degree of minimisation of personal responsibility.

[42] McGrillen comes before the court with 22 previous convictions, 18 of which are in some way, motoring related. The first offence was committed as far back as 1965 and the most recent in 1989. In these circumstances whilst the court cannot ignore previous offending it does not amount to a material aggravating feature in this case. In support of this conclusion, I would place reliance on the observations of Deeny LJ giving the judgement of the court in *R v Declan Doherty* [2018] NICA 52 at paragraphs 31–35, where the question of relevance of old and/or unrelated convictions is considered.

[43] The offences of causing death and GBI by dangerous driving are both serious and specified violent offences as set out in Schedule 1 and Part 1 of Schedule 2 of the Criminal Justice (NI) Order 2008. Ms Finnegan assesses the defendant as presenting a low likelihood of general offending. At the Risk Management Meeting convened on 30 June 2022 it was concluded that notwithstanding the tragic consequences of the defendant's driving on this occasion there was no established pattern of serious violence and that he therefore did not pose a significant risk of serious harm. I accept this conclusion and have therefore determined that the defendant does not

fall to be sentenced as a 'dangerous offender' within the meaning of Article 15 of the Order.

Sentencing principles

[44] 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. During 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 of the need to deter other drivers from driving in a dangerous manner and because of the gravity of the offence."

[45] 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."

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

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

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

[48] The Sentencing Guidelines have been adjusted 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. It should be remembered that these sentences are applicable upon conviction after a contested trial.

[49] 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 defendant's total and abject failure to take any steps to avoid colliding with the two cyclists. While Mr Murphy KC and Mrs Ievers accept this proposition, they submit that the extent of this failure was such as to amount to an additional aggravating factor. Mr Grant KC and Mr Doherty submit that this amounts to double counting. I disagree for the following reasons:

(i) Mr Fitzpatrick and Mr Mills wore bright clothing and were at all relevant times riding two abreast along a straight and flat stretch of road.

(ii) It was a bright, dry, sunny afternoon and there were no obstructions to the defendant's view.

(iii) The defendant conceded that he saw the cyclists from approximately 200 metres back on the road.

(iv) The defendant was travelling at an estimated speed of 56 mph and therefore allowing for thinking time he might reasonably have had upwards of 10 seconds to evaluate the situation and take appropriate action.

(v) There is no evidence the defendant took even preparatory steps to overtake the cyclists notwithstanding that there were no vehicles in the oncoming lane.

(vi) There was no change of positioning in the road or other unexpected movement by the cyclists that could in any way have contributed to the collision.

(vii) In short, the defendant took no steps whatsoever to avoid a full on nose to tail collision and as such this amounts to an exceptionally bad piece of driving, where the consequent resulting fatality and serious injury was inevitable. As such I am satisfied that this amounts to an aggravating feature of dangerousness in this case.

[50] It is not disputed that the fact there are two victims in this case amounts to an aggravating factor. I do not accept the Crown submission that the significant victim impact should also be considered as an additional factor. By its nature cases of this type will inevitably result in a significant impact upon the bereaved and I have already drawn reference to the degree to which that applies in this case. In terms, however, I consider the level of that loss to be an implicit part of the fact that there are two victims.

[51] The last two points relied on by Mr Murphy and Mrs Ievers are the most problematical. These are the issue of the defendant's failure when applying to renew his driving licence in 2018 to report that he had suffered a stroke (or indeed two strokes according to the records seen by Dr Bownes) and his lack of remorse. Mr Grant and Mr Doherty submit so far as the former is concerned that the defendant did not know and nor was he advised by his doctor that he needed to report these incidents. They also argue, I believe correctly, that remorse is a mitigating as opposed to an aggravating factor and its absence, should that be established, will impact upon sentence at that stage.

[52] A driving licence application form completed by the defendant dated as received on 19 February 2018 appears at Exhibit 44, (Page 73). This includes a medical questionnaire and in relation to his neurological condition, he is asked if he has ever had or currently has any of the following medical conditions. These include stroke or more than one TIA etc. The form is marked "No." In the declaration section, (at section 7), Mr McGrillen confirms that he has given truthful information and that he is entitled to obtain a licence for which he is applying. He declares:

> "I declare that I do not suffer from a medical condition which may affect my ability to drive safely. I undertake to notify DVA if I develop a medical condition or if a

previously notified medical condition changes which may affect my ability to drive safely."

[53] The Crown draw attention to the fact that the form also authorises his doctors and specialists to release confidential information to DVA medical advisors if any matter affecting his fitness to drive arises in connection with his application or during the period that the entitlement, if granted, will be in force. It is dated 2 February 2018 and signed A McGrillen.

[54] The defence submit that as the Asphasia resulting from the stroke did not require treatment by medication and as he had not suffered any form of paralysis the defendant did not understand that he had in fact suffered a stroke and therefore was not obliged to notify DVLA. They also draw reference to the fact that when he did make the disclosure in November 2019 after the fatal accident, his licence was not suspended until the following February with revocation taking place in March 2020.

[55] As previously mentioned in the preparation of his reports to the Court, Dr Bownes had access to the defendant's medical notes. At page 2 of the 6 May 2022 report he makes detailed reference to Mr McGrillen's admission to hospital on 26 June 2017 'with a small subacute cerebral infarct and a large acute brain left sided cerebral infarction considered as related to a diagnosis of paroxysmal atrial fibrillation.' He remained in hospital until an unspecified date in July and was then assessed by the Community Stroke Team (CST) and the notes refer to findings of: 'severe receptive and expressive dysphasia, dyspraxia and cognitive impairment including difficulties with attention, executive function.' He was re-admitted to hospital on 11 July 2017 in relation to headache and atrial fibrillation where it was noted that the dysphasia was 'present to a significant degree' and it was observed that Mr McGrillen 'required some supervision for activities of daily living.' At the time of his discharge review by the CST in February 2018 it was noted that he had made 'limited progress' regarding communication.

[56] The application to renew his driving licence was made less than eight months after he was admitted to hospital with the stroke. It was made when he was still subject to assessment by the CST. In these circumstances I am satisfied that he would have been all too aware of his condition and his denial of having had a stroke or TIA and his failure to declare this is a matter of significance. I therefore accept that it is a reasonable assumption to make that had he made the declaration this would have led to a medical investigation with the likely consequence that his licence would have been revoked, as indeed it was the year after this fatal RTA.

[57] My conclusion on these issues means that I find the defendant falls into the category of high and straddling that of the most serious culpability. I remind myself, however, of the admonition of Carswell LCJ (as he then was) at paragraph 16 in AG's References (op cit.) where His Lordship observed:

> "We would, however, remind sentencers of the importance of looking at the individual features of each case and the need to observe a degree of flexibility rather than adopting a mechanistic type of approach."

Credit for the guilty pleas

[58] Mr Grant and Mr Doherty submit that the defendant should receive a significant reduction in sentence by virtue of the guilty pleas. The evidence in this case was overwhelming and convictions would have been all but inevitable had the charges been contested particularly bearing in mind the cycle camera footage. Nevertheless, the pleas did save the families the additional anguish of matters being further protracted and evidence having to be led, all of which would only have added further torment to their distress.

[59] I have also accepted that counsel were obliged to ensure their client was capable of both understanding advice and giving instructions and this combined with the defendant's other health issues took time to resolve.

[60] Turning now to the issue of the defendant's remorse I acknowledge that he regrets what occurred and through his daughter he has expressed his hurt at the devastation he has caused to the Fitzpatrick and Mills families. Nevertheless, I remind myself of what he told the Loss Adjuster instructed by his insurers less than a month after the accident. In terms he sought to blame the cyclists and claimed he was not at fault. I pose the hypothetical question as to whether had it not been for the camera footage, he might have persisted in this lie, (for that is what it was) and brazened matters out to a trial?

[61] In all the circumstances I shall allow a discount of between 25% and 30% on the sentence I would have imposed had the defendant been convicted of these charges after a contested trial. In terms of mitigation aside from these guilty pleas I find none in respect of the offences themselves. I accept, however that due consideration must be paid to the defendant's poor physical and mental health. Any term of imprisonment will present additional hardship for him, and it is to this issue I now return considering the expert reports presented to the court on 11 October 2022 when the case was last before the court to finalise the sentencing process.

[62] On the evening of Thursday 10 October, the defendant was once again admitted to hospital after a report of a further fall at home. He remained in hospital from then until the evening of Wednesday 2 November 2022 when he was transferred to the custody of HMP Maghaberry following his discharge from hospital and pursuant to a court order revoking his bail.

[63] At the outset I wish to record my and the court's gratitude to Dr Rosemary Macartney (Consultant Neuropsychologist) and Professor Anthony Peter Passmore (Professor of Aging and Geriatric Medicine QUB) for the way they have carried out

detailed interviews with the defendant and his family, considered the multiplicity of medical reports and prepared their respective reports for the court literally in a matter of days.

[64] The reports highlight that the defendant's condition has indeed deteriorated in more recent times and his capacity from both a mental and physical perspective to cope with everyday life and functions is considerably diminished. Professor Passmore opines that the defendant 'has a dementia syndrome which is likely to be at the moderate to severe stage.' Significantly he highlights that 'one year after his stroke in 2018 he had a large amount of deficits in cognition and his functional ability was reduced from baseline.' This is particularly worrying because of course the fatal RTA occurred during this very period, only re-emphasising the clear dangers he presented by continuing to drive.

[65] Professor Passmore raises the issue as to whether a prison setting can provide the degree of care that is needed in his case but that clearly a high degree of supervision and practical assistance with daily tasks will be required. He also notes that there 'will be ongoing risks of episodes of delirium. There remains a risk of another stroke. Jail would most likely accelerate psychological and physical decline with impacts on the dementia and general health.'

[66] In the conclusion to her report Dr Macartney opines that she 'did not find any aspect of Mr McGrillen's neuropsychological function that would be adversely affected by a custodial sentence. However, due to his brain injury he will benefit from a structured and supportive environment where he has regular cognitive stimulation through a range of activities (physical and mental). It will also be important that staff ensure that he has understood what is being said to him and what is required of him in various situations. Psychological support should be available if at all possible due to the history of trauma.'

[67] Finally, I note from Dr Bownes' report of 15 July that facilities exist at the Moyola Unit of HMP Maghaberry to cater for older prisoners and those with disabilities.

[68] I have factored these several and various considerations into my conclusion as to sentence in this case.

Conclusion

[69] I take a starting point after consideration of the aggravating and mitigating features highlighted in this case, aside from the guilty pleas of seven years but I wish to make it clear that had the defendant been a younger man in good health that starting point would have undoubtedly been considerably higher such is the seriousness of these offences. Applying the aforesaid discount reduces that sentence to five years in respect of the charge of causing death by dangerous driving. The

sentence in respect of causing GBI by dangerous driving will be four years and both terms will run concurrent to each other.

Sentence

Count 1 - Causing death by dangerous driving – 5 years (2 years 6 months custody followed by 2 years 6 months licence)

Count 2 – Causing GBI by dangerous driving – 4 years (2 years custody followed by 2 years licence) [concurrent]

The defendant will be disqualified from driving for LIFE

Offender Levy - £50.00