

JERSEY / JUDGMENT

Gomes v AG [2024] JRC 205 (04 October 2024)

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JUDGMENT

THE DEPUTY BAILIFF: 1. We reserve the right to amend or alter our reasons which we are now going to give. 2. This is an appeal against sentence. The Appellant was convicted by her early guilty plea on 4 July 2024. She was convicted of the offence of causing serious injury by careless driving and sentenced the same day. The circumstances of the offence were as follows. On 5 October last year a motorcyclist was riding along Route du Sud in St Brelade at approximately 30 mph. The Appellant's motor car pulled out in front of him giving him insufficient time to stop. The motorcyclist was unable to avoid a collision and he collided with the Appellant's vehicle, fell off his bike and sustained injury as a consequence of the accident. 3. The principal injuries were to four metacarpal bones in his right hand which were either broken or dislocated. The motorcyclist spent four days in hospital and underwent an operation. He has permanent metal plates and screws implanted into his right hand and has required outpatient physiotherapy in order to gain strength and movement in that hand. The Appellant was interviewed by the police and although initially unprepared to admit that she was responsible for the accident ultimately did so and pleaded guilty at the first opportunity. The Appellant has no previous convictions and was 57 years old at the date of the collision and is now 58. She is a cleaner and uses her vehicle for travel to work. 4. When she was sentenced Defence counsel said that the Appellant deeply regretted the incident. It was said on her behalf that the case had taken too long to come to court. Various letters in support of her good character were furnished to the court. Defence counsel said that this was a case of a momentary lapse of concentration or misjudgement. It was urged upon the Magistrate that the Appellant should not be disqualified from driving as it would affect her ability to earn a living and on appeal it is argued again that the Magistrate should have exercised her discretion so as not to disqualify the Appellant from driving. 5. The Magistrate, having heard submissions, adjourned to consider her sentence and in the reasons she subsequently gave she described it as a serious accident. She had regard to the Magistrate's Court Sentencing Guidelines then in force and treated the case as a Category A case, which is the least serious category for the purposes of the offence of causing serious injury by careless driving. 6. In her reasons the Magistrate said the Appellant had failed to take sufficient care at what was a junction with a mirror at it, which suggested that visibility was limited and required greater care. The Magistrate expressly took into account the fact that the disqualification would have an

impact on the Appellant's work, the absence of previous convictions and the guilty plea at the first opportunity. 7. The Magistrate also recognised that there had been unexplained delay on the part of the Prosecution and accepted that the Appellant was "very very sorry" about the accident and that it had been on her mind for a long time. 8. Nonetheless, the Magistrate observed that the Appellant should have seen the motorcyclist and held that in consequence of her driving there had been an accident causing the injured party serious and complex injury, and in particular (so far as this appeal is concerned) she observed "the offence was aggravated, so made worse than the starting point, by the severity and the complexity of the injury". 9. The Appellant was fined £2,000 and ordered to be disqualified from driving for a period of 6 months. The Magistrate reminded the Appellant that after the period of disqualification came to an end she would need to retake her driving test, which is not a matter of discretion but a function of the words of the statute. 10. The appeal is against the period of disqualification only, although all or any part of a sentence may be altered by this Court on appeal as a matter of law. 11. Although they are not binding on this Court, as this Court has repeatedly said, we note that the Magistrate's Court Guidelines for this offence in force at the time, based on a first time offender pleading guilty in the lowest category, Category A for a "momentary lapse of concentration or misjudgement at low speed" suggest a starting point of a fine of £2,000 with a range of £1,000 to £3,000 and a period of disqualification of between 1 and 6 months. 12. Category B offences involving "loss of control due to speed, mishandling or insufficient attention to road conditions, or carelessly turning right across oncoming traffic" suggest a starting point of 3 months' imprisonment with a range of 2 to 4 months' imprisonment and disqualification of 6 to 12 months. Category C, the most serious cases involving "overtaking manoeuvre at speed resulting in collision of vehicles or driving bordering on the dangerous" suggests a starting point of 6 months' imprisonment, a range of 4 to 12 months' imprisonment, and disqualification of 12 to 24 months. 13. The guidelines also go on to set out a number of factors which may be relevant to sentence in terms of the culpability of the offender and the harm caused which we do not propose to list, although one of the identified harm factors said to indicate a greater degree of harm is said to be "injury to other persons". In that regard, injury to another is one of the elements of this offence. 14. The maximum sentence for this offence is 2 years' imprisonment and there will be and have been cases where the case will be sent to this Court for sentence owing to the Magistrate holding that her powers are insufficient. 15. We note that since this case was determined the Magistrate's Court Guidelines in respect of this offence have changed quite significantly in respect of sentencing for this case. New guidelines were apparently issued on 1 October. Again they are not binding on this Court but they are as follows. A. Identify the appropriate starting point Starting points based on first time offender pleading guilty Examples of nature of activity Starting point Range Disqualify/ Endorse A Driving at low speed, with loss of concentration or misjudgment £4,000 £2,000 - 2 months 6 - 12 months B Loss of control due to speed, mishandling or insufficient attention to road conditions, or carelessly turning across on-coming traffic 4 months 3 - 6 months 12 - 24 months C Driving at speed / maneuvering causing a collision. Any driving bordering on the dangerous 9 months 6 - 12 months 24 - 36+ months B. Offence seriousness (culpability and harm) Consider the effect of aggravating and mitigating factors (other than those within examples above) The following may be particularly relevant, but these lists are not exhaustive Factor indicating higher culpability 1.

Excessive speed 2. Carrying out other tasks while driving 3. Carrying passengers or heavy load 4. Tiredness 5. Adverse weather 6. Poor road conditions 7. Defective vehicle 8. LGV/HGV/PSV Factor indicating lower culpability 1. Minor risk 2. Sudden change in road or weather conditions Factor indicating greater degree of harm 1. Seriousness/permanence of principal injury 2. Injury to other persons 3. Damage to other vehicles or property 4. High level of traffic or pedestrians in vicinity 5. Location, e.g. near school when children are likely to be present Factor indicating lesser degree of harm 1. Gave assistance to injured person 16. We note in relation to the assessment of harm pursuant to the new guidelines an additional factor is identified, namely the "Seriousness/permanence of principal injury" which is a factor indicating a greater degree of harm. Although that harm factor was missing from the guidelines in force at the time that this Appellant was sentenced, plainly the seriousness and permanence of injury is something the Court was nonetheless entitled to take into account. 17. We note that the Magistrate's Court Guidelines cover a wide variety of offending, encompassing most cases which come before that Court and one can understand why the Magistrate feels it appropriate to issue such guidelines. Far more cases come before the Magistrate's Court than this Court and accordingly there is a greater risk of inconsistency between judicial decisions. This may be addressed by comprehensive guidelines. 18. Secondly the Jurats of the Royal Court are assisted by the Crown offering conclusions as to sentence in every case. This, for practical reasons, does not occur in the Magistrate's Court where the legally qualified prosecutor or Centenier simply presents the facts to the Magistrate. 19. Thirdly, it is helpful for counsel and unrepresented defendants to know in advance the likely sentence so they can make submissions having regard to the relevant guidelines. 20. We were not invited in this case to express any opinions about the guidelines and we do not do so. If it was submitted that a particular guideline was unduly harsh or unduly lenient then we would be prepared to express a view on that issue. No such submissions have been made in that regard today. 21. In terms of the relevant legal principles, those have been helpfully set out by counsel for the Appellant in his skeleton

submissions.

We have had regard to two decisions: firstly the case of *Bhojwani v AG*

[2011] JLR 249 which, although dealing with appeals from the Royal Court to the Court of Appeal, notes that in broad terms a court may interfere where: "(a) [a sentence] was not justified by law; (b) it was passed on the wrong factual basis; (c) some matter had been improperly taken into account or some fresh matter needed consideration; or (d) the sentence was wrong in principle or manifestly excessive" 22. In the case of *Ahmed v AG*

[2006] JRC 196, dealing with an appeal from the Magistrate's Court to this Court, the Royal Court noted that the test the Court has to apply is "whether or not the sentence imposed by the Magistrate was wrong in principle or manifestly excessive. It is not for us to substitute our own view of what was the appropriate sentence. We have to ask ourselves whether the Magistrate has in effect acted unreasonably in imposing the sentence that was imposed." 23. In this case what the Appellant says is that the Magistrate has taken a matter

improperly into account and for that reason this Court is entitled to consider the sentence she imposed afresh, and in that regard the focus is on the extract from the sentencing remarks to which we have referred already, namely the Magistrate saying the " the offence was aggravated, so made worse than the starting point, by the severity and the complexity of the injury ". 24. In making this observation it is said that the Magistrate erred. The Appellant says there was nothing particularly serious in the injury sustained by the motorcyclist, they were not life threatening or life changing. He had suffered injuries to four metacarpal bones in his right hand which were broken or dislocated. He had been operated on requiring a stay in hospital and required outpatient physiotherapy in order to regain strength and movement in his hand. Of course we also need to bear in mind that he has had inserted into his hand a metal plate and screws which are permanent. 25. The Appellant says that serious injuries are part of the definition of this offence. Such injuries may encompass the most serious injuries short of death. Taken in that context the injuries sustained by the motorcyclist were at the lower end of the scale of potential seriousness of injuries. So what in essence is being said by the Appellant is that when the Magistrate said that the offence was aggravated by the severity of the injury she was in the context of this case doing no more than referring to the fact that this was a serious injury, and the fact of this being a serious injury was merely an element of the offence which could not of itself be an aggravating feature of it. 26. Although we understand the Appellant's submission in this regard and accept that there are more severe and more complex injuries which would be captured by this offence, in our judgment the Magistrate was entitled to say what she did, namely that this offence was aggravated by the degree of severity and complexity of the injuries suffered by the motorcyclist. 27. In those circumstances, it being well established as we have said that the Court can only interfere with the sentence imposed by the Magistrate's Court if we are satisfied that the sentence was manifestly excessive, we are satisfied that the sentence imposed in this case was within the range of the sentences open for the Magistrate on the facts of this case and accordingly the appeal against sentence is dismissed. Authorities Magistrate's Court Sentencing Guidelines. Bhojwani v AG

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