



THE COURT OF APPEAL

Record No. 83/2016

**Birmingham J.
Mahon J.
Hedigan J.**

BETWEEN/

THE DIRECTOR OF PUBLIC PROSECUTIONS

RESPONDENT

- AND -

SHARON HEALY

APPELLANT

JUDGMENT (ex tempore) of the Court delivered on the 27th day of June 2017 by Mr. Justice Mahon

1. The appellant pleaded guilty on the 12th November 2015 at Cork Circuit Criminal Court to one count of careless driving causing death contrary to s. 52 of the Road Traffic Act 1961, as inserted by s. 50 of the Road Traffic Act 1968 and amended by s. 23 of the Road Traffic Act 2002 and s. 4 of the Road Traffic (No. 2) Act 2011. She was sentenced on the 25th February 2016 to twelve months imprisonment, with the entire sentence suspended for a period of twelve months on certain conditions. She was also disqualified from driving for a period of ten years from the 1st March 2016.

2. The appellant has not appealed against her suspended prison sentence, and limits her appeal to the imposition of the ten year disqualification order.

3. On the 21st December 2014 the appellant was driving her Renault Megane motor car on the Watergrasshill to Rathcormac Road in County Cork when she collided with a motorcyclist, Sean Coleman, as a consequence whereof Mr. Coleman was fatally injured.

4. The day in question was wet. The appellant emerged from a minor road onto a major carriageway on which the deceased was travelling, and into the path of the deceased's motorcycle. At the time, the deceased was travelling under the permitted speed limit and on his correct side of the road. He braked in an attempt to avoid the collision, but came off his motor cycle in so doing. Both vehicles were found to be in good working condition. It is quite clear that the deceased was entirely innocent and in no way contributed to this dreadful accident.

5. The appellant is a thirty eight year old mother of two children aged fourteen and eighteen. On the date in question, she was driving her car with one of her children as a front seat passenger. She said she did not see the deceased prior to emerging onto the major carriageway. The appellant had no previous convictions.

6. The appellant contends that the learned sentencing judge, in imposing the ten year disqualification erred as follows:-

(i) The disqualification imposed was out of line with those imposed by the courts for comparable offences of careless driving causing death under s. 52 of the 1961 Act and is, in fact, more in line with disqualifications imposed for the more serious offence of dangerous driving causing death under s. 53 of that Act.

(ii) The learned trial judge erred in regarding the appellant's carelessness at the upper end of the scale in terms of its seriousness. This was despite the fact that the appellant had not engaged in a persistent course of grossly careless driving, rather she committed a momentary careless act, and that there were a lack of aggravating factors present in the case.

(iii) The learned sentencing judge failed to have due regard to the mitigating factors present in the case. While it is accepted that the learned sentencing judge did acknowledge certain of the mitigating factors it is submitted that taking the mitigating factors as a whole, insufficient weight was attached to them, which reduced the amount of credit the appellant received.

(iv) The learned sentencing judge failed to have due regard to the appellant's personal circumstances and to the principle that the sentence imposed should be appropriate both to the offence itself and to the offending party.

(v) The learned sentencing judge failed to have regard to the appellant's fitness or unfitness to drive in determining the length of the disqualification order, and instead imposed the disqualification order primarily as a punishment.

7. On behalf of his client, counsel for the appellant identified a number of mitigating factors, including the guilty plea, remorse, the significant impact on the appellant's employment in that she lost her job because of her inability to drive to and from work, the clinical depression from which the appellant suffered as a direct consequence of the accident, the likely future psychological consequences on the appellant, the lack of support from the appellant's husband because of his necessary long absences from home for work reasons and the practical difficulties in rearing two teenage children without access to her own transport.

8. In the course of his sentencing judgment, the learned sentencing judge severely criticised the appellant's driving on the date in question. He measured her carelessness at the higher end of the scale applicable to the charge of careless driving. He acknowledged the absence of aggravating factors such as speed, drink, driving a defective vehicle or previous convictions. He went on to say:-

"...But it is the type of case that her breach, her carelessness, is so significant that, I think, even though she has no previous conviction and even though I admit she is remorseful and has suffered herself as a result of the accident, including the loss of job, I do think that a suspended sentence is warranted. I also think that because of her behaviour a substantial period of disqualification from driving is merited."

9. Section 26(4)(a) of the Road Traffic Act 1961, as amended, provides for a mandatory disqualification order of at least four years in the case of a conviction under s. 52 or s. 53 on indictment, and if tried summarily, a mandatory disqualification period of a minimum of two years.

10. While the appellant has not appealed against the suspended twelve months sentence, that sentence is nevertheless a significant punishment in itself. The suspended sentence was operative for a period of twelve months, which has now lapsed. However, during that period she was at risk of losing her liberty in the event of her committing another criminal offence.

11. In *Sentencing law and practice*, 3rd edition, Prof. O'Malley aptly sums up the significant effect of a suspended prison sentence in the following terms:-

"The offender has been sentenced to imprisonment with all of the stigma attaching to that form of punishment, even if the execution of the sentence is conditionally suspended. For any offender, having a record of this nature can be a sufficient punishment in itself."

12. Although it is the ten year disqualification which is the focus of the appeal, that particular punishment cannot be considered in isolation to the suspended prison sentence. The learned sentencing judge imposed both sanctions as part of what might be described as a combined punishment, and this court must approach its review of the disqualification period in that context. It is not appropriate to consider the disqualification order entirely separately to the suspended sentence for the purposes of this appeal.

13. The punitive aspect of a disqualification order varies enormously depending on the circumstances of the person concerned. For some it is a mere nuisance, but for others it can spell the loss of livelihood or immense practical difficulty for a family, both factors being present in this case. The scale of that adverse effect can range from simply inconvenience to catastrophic. The effect of disqualification on a city dweller with good access to public transport will in many cases be far less painful compared to the rural dweller. For a professional driver, such as a lorry or taxi driver, it can mean the loss of employment with all the negative consequences that follow. For a carer of an incapacitated child or adult relative living miles from a school, shop or hospital the effect is likewise very serious.

14. In this case the consequences of any driving ban on the appeal, let alone a lengthy one, are very onerous. She is hugely car dependant given that she resides in a rural setting, has two teenage children and her husband works away from home frequently for weeks at a time. Essentially, she is the only driver in the family for most of the time.

15. When imposing a disqualification order a sentencing court is required to carefully consider the effect of the disqualification on the convicted person, and to adjust its length accordingly, not with a view towards alleviating the negative consequences of the driving ban completely but, rather for the purposes of ensuring that in the interests of proportionality it is not unnecessarily harsh. Equally important considerations are of course the seriousness of the offence, the effect on victims, public safety and whether or not it is a first offence. All of these factors have to be weighed and balanced in order to arrive at an appropriate sentence.

16. In his often quoted judgment in *DPP v. McCormack* [2000] 4 I.R. 356, Barron J. said (at p. 359):-

"Each case must depend upon its special circumstances. The appropriate sentence depends not only upon its own facts but also upon the personal circumstances of the accused. The sentence to be imposed is not the appropriate sentence for the crime, but the appropriate sentence for the crime because it has been committed by that accused."

17. It is, of course, the case that there were particularly tragic consequences of the appellant's careless driving in this case. This was fully recognised by the sentencing court as it is by this court.

18. The legislature, by virtue of s. 65 of the Road Traffic Act 2010 has identified four years as the minimum disqualification period for the offence of careless driving causing death. In so doing, it clearly contemplated that there would be cases where a disqualification for the minimum period would be appropriate. Likewise, it will happen that because of a variety of factors, including, possibly, excessive speed, alcohol consumption or repeat offending, disqualification for a prolonged period may be appropriate. Very lengthy disqualification periods are more likely to arise in cases of dangerous driving causing death or serious injury, and indeed, almost all of the so called comparators referred to in the course of submissions in this appeal relate to dangerous driving cases.

19. The court is satisfied that the learned sentencing judge erred in the imposition of a ten year disqualification period having regard to, firstly, the lack of aggravating factors such as excessive speed, alcohol consumption, of previous convictions for similar offending and secondly, the particular personal circumstances of the appellant and the extreme hardship that arises for her and her family from a prolonged period of disqualification.

20. In the court's view, the appropriate disqualification period is one of five years, to date from the 1st March 2016 and it will allow the appeal on that basis. In so doing, the court has taken into account the fact that the appellant has also received a one year suspended sentence, and the fact that the conditions attached to this suspension have been honoured in full by her for the relevant twelve month period.