



**THE COURT OF APPEAL**

**Sheehan J.  
Mahon J.  
Edwards J.**

**The People at the Suit of the Director of Public Prosecutions**

**V**

**Christopher Coleman**

**185CJA/16**

**Respondent**

**Appellant**

**JUDGMENT of the Court delivered on the 23rd day of February 2017 by Mr. Justice Sheehan**

1. This is an application by the Director of Public Prosecutions pursuant to s. 2 of the Criminal Justice Act 1993, for a review of the sentence of two and half years imprisonment imposed on the respondent at the Dublin Circuit Criminal Court on the 23rd June, 2016, for the offence of dangerous driving causing the death of Eugene Maher on the 30th June, 2015. The appellant was also disqualified from driving for a period of fifteen years.

2. In order to properly consider this application it is necessary to set out the background to the offence, the personal circumstances of the offender and the judgment of the sentencing judge.

**Background**

3. Minutes prior to the accident the Golf motor car being driven by the appellant was observed along the route from Dollymount Strand towards the city centre travelling at speed on the wrong side of the road. Immediately prior to the collision the appellant had moved into the bus lane and had overtaken a line of cars which were stopped at traffic lights. He then proceeded through the red lights at speed and collided with Eugene Maher who was crossing the road with his bicycle. The appellant applied the brakes and the handbrake in an attempt to avoid a collision, but was unable to avoid colliding with the deceased man who struck the windscreen before being propelled to the ground.

4. One person got out of the vehicle which stopped for a few seconds, but then re-entered it as it drove off at speed towards the city centre. Following the collision Eugene Maher was left unconscious and was taken to Beaumont Hospital. He had sustained fatal head injuries and was pronounced dead on the 1st July, 2015.

5. The appellant made contact with the gardai on the 4th July, 2015 and presented at a garda station on the 7th July, 2015, when he was arrested and detained, in the course of which he made admissions.

**Effect on victims**

6. The sentencing judge received victim impact evidence from the deceased man's daughter Lisa on behalf of her mother, brother and herself. Two further statements were made by the deceased man's sisters. As the sentencing judge stated in the course of her judgment:-

"The statements convey in very powerful and moving terms the scale of the loss experienced by each of Eugene Maher's family members and his grandchildren. He was without doubt a man in the prime of his life who was the heart and soul of his family. The statements articulate a range of emotions which reflect the abrupt and brutal manner of Mr. Maher's death."

**The personal circumstances of the appellant**

7. The appellant is a 27 year old man with fifteen previous convictions. Eight are for driving offences which arose out of a single incident on the 8th February, 2012. A further two offences are for road traffic offences in respect of an incident on the 1st January 2012. The appellant has no previous convictions for dangerous driving but as a consequence of his other offences he had been disqualified from driving for six years and was so disqualified when he committed the present offence. He has never held a driving licence and had been disqualified on three separate occasions since 2010.

8. The sentencing judge had before her a number of impressive testimonials and a positive probation report. In the course of her judgment she noted that the appellant was someone who had been raised under very challenging circumstances in Fatima Mansions and went on to state:-

"His father was an alcoholic who left the family home when he was eight and his mother was a drug addict. Against the odds the accused himself did not succumb to a life of drugs or alcoholic abuse and road traffic convictions apart he has not led a life characterised by criminal behaviour. The accused is in a very stable relationship with his partner of twelve years. His partner has submitted a letter in which she expresses a mature understanding of the accused's actions and their consequences. She indicated that nonetheless he retains her support."

9. The sentencing judge went on to refer to the appellant's sense of remorse and to a letter submitted by him to the court and she concluded:-

"His expressions of remorse echo similar expressions made by him following his arrest and also those made to his probation officer and the court does not doubt the sincerity of those expressions."

10. The appellant was in full time employment at the time of sentence.

## The judgment

11. Having considered a number of authorities the sentencing judge stated:-

"In determining the sentence, the court has considered a number of legal authorities . . . . While the authorities are helpful each case must be considered on its own facts and the court must first calculate where on the range of penalties the offence lies. This involves an identification by the court of the fault factors. The fault factor which undoubtedly caused the fatal collision was the speed at which the car was being driven. The speed was determined to be 70km per hour where a speed limit of 50km per hour applied. The speed was compounded by the use by the accused of the bus lane and by driving through red lights. This was not a fleeting episode of dangerous driving and had commenced at least as far back as the Yacht Public House on Clontarf Road. The collision occurred at 6.30 pm on a Thursday evening and consequently there were numerous motorists along the route who were also exposed to danger."

12. The sentencing judge went on to note as aggravating factors the fact that the appellant left the scene and was at the time disqualified from driving.

13. Following on from this review the sentencing judge identified a sentence of four years imprisonment as the appropriate headline sentence and this is essentially what this appeal is about. The question which we have to answer is whether or not the starting point for the offending in this case ought to have been appreciably higher.

## Submissions

14. Ms. Brennan BL on behalf of the Director of Public Prosecutions submits that the sentencing judge fell into significant error in holding that the offence was at the lower end of the medium band of offending and erred having taken the aggravating factors into account when she identified a sentence of four years imprisonment as the appropriate headline sentence. In support of this submission, she relied in part on the judgment of this Court in *DPP v. Sean Casey (No. 2)* [2015] IECA, in which the court identified seven years imprisonment as the appropriate starting point given the particular circumstances of that case. While the appellant left the scene in that case as in this case, he did so having called the emergency services. At the time of the collision in which one person died and another suffered catastrophic injuries the appellant's blood alcohol level was four times the permitted level.

15. Mr. Dwyer S.C. on behalf of the respondent strongly argued that this Court should uphold the sentence that had been imposed. He rightly submitted that the learned trial judge had carefully considered all relevant matters and he concluded his submissions by referring to the judgment of the Court of Criminal Appeal delivered by the late Hardiman J. in *The People (Director of Public Prosecutions) v. Kevin Keegan*, delivered on the 29th April 2003, wherein he stated as follows:-

"The learned trial judge stated with considerable clarity and transparency what he was doing. He drew attention to all of the factors which aggravate the offence and which tend to militate against leniency being extended to the defendant . . . . The judge seemed to be influenced by the youth of the defendant, by the drug problem of which there was some evidence and which he was prepared to accept the Respondent was addressing, and by his prospects of reformation. We cannot say that the judge erred in principle considering these matters. It may very well be that this is a case where this Court and indeed any of the members would have imposed a significant custodial sentence. But we cannot see that the learned trial judge has been demonstrated to have erred in principle in these regards."

16. Later at p. 7 of the judgment he stated:-

"Where we see this remarkably lenient disposition, by a learned trial judge of great familiarity with the circumstances of the criminal law, we do not feel that there is anything urged by the prosecution which convinces us that there has been an error of principle in this case. It is respectfully submitted that in imposing sentence in this case the sentencing judge observed the principle of proportionality and maintained a correct balance both in the interests of the public and those of the offender."

17. Mr. Dwyer S.C. concluded his written submissions saying that in this case the sentencing judge had observed the principle of proportionality and had maintained the correct balance between the interests of the public and those of the offender.

## The principles applicable to s. 2 applications

18. This Court is cognisant of the decision in *The People at the Suit of the Director of Public Prosecutions v Byrne* [1995] 1 ILRM 279 which is the recognised authority in relation to appeals pursuant to s.2 (1) of the Criminal Justice Act 1993 and states at p. 287 that:-

"Finally, it is clear from the wording of the section that, since the finding must be one of undue leniency, nothing but a substantial departure from what would be regarded as the appropriate sentence would justify the intervention of this Court."

19. In *The People at the Suit of the Director of Public Prosecutions v Derrick Stronge* [2011] 5 JIC 2301, the Court of Criminal Appeal further identified the applicable principles in undue leniency appeals pursuant to s.2 of the Criminal Justice Act 1993. The Court stated the following:-

"From the cases cited at the end of this paragraph, the following principles can be said to apply in an application for review under s. 2 of the 1993 Act. These are: -

(i) the onus of proving undue leniency is on the D.P.P.:

(ii) to establish undue leniency it must be proved that the sentence imposed constituted a substantial or gross departure from what would be the appropriate sentence in the circumstances. There must be a clear divergence and discernible difference between the latter and the former:

(iii) in the absence of guidelines or specified tariffs for individual offences, such departure will not be established unless the sentence imposed falls outside the ambit or scope of sentence which is within the judge's discretion to impose: sentencing is not capable of mathematical structuring and the trial judge must have a margin within which to operate:

(iv) this task is not enhanced by the application of principles appropriate to an appeal against severity of sentence. The test under s. 2 is not the converse to the test on such appeal:

(v) the fact that the appellate court disagrees with the sentence imposed is not sufficient to justify intervention. Nor is the fact that if such court was the trial court a more severe sentence would have been imposed. The function of each court is quite different: on a s. 2 application it is truly one of review and not otherwise:

(vi) it is necessary for the divergence between that imposed and that which ought to have been imposed to amount to an error of principle, before intervention is justified: and finally

(vii) due and proper regard must be accorded to the trial judge's reasons for the imposition of sentence, as it is that judge who receives, evaluates and considers at first hand the evidence and submissions so made.

The relevant cases are *The People (D.P.P.) v. Byrne* [1995] 1 ILM 279, *The People (D.P.P.) v. McCormack* [2000] 4 I.R. 356 and *The People (D.P.P.) v. Redmond* [2001] 3 I.R. 390."

20. In considering the application of these principles to the present case, this Court has considered in particular four judgments in dangerous driving causing death cases which are in the joint book of authorities. These are *DPP v Sheedy* [2000] 2 I.R. 184, *DPP v Casey* (No 2) [2015] IECA 278, *DPP v Joseph Shovelin* [2009] IECCA 44 and *DPP v Kelly* [2015] IECA 332. We have also considered a judgment of this Court in *Director of Public Prosecutions v. Finbar O'Rourke*, delivered by Mahon J. on the 24th October, 2016, in the course of which following a review of a number of sentences imposed in dangerous driving causing death cases, he stated as follows:-

"Clearly there has been a progressive increase in sentences imposed in dangerous driving causing death cases over the past fifteen years or so. This probably reflects the increased abhorrence of drink driving by the public generally."

21. To this we might add that there is also an increased abhorrence of the speeding allied to an awareness of how this is frequently a principle cause of road traffic accidents. At para. 16 and 17 of his judgment in the *O'Rourke* case Mahon J. stated:-

"16. It is of course appropriate and desirable that there be a degree of consistency in sentencing for particular offences. That task is often problematical in circumstances where the facts relevant to these offences will almost always be quite different, and often very much so and such difficulty is frequently a feature of dangerous driving causing death cases. The only common denominator in such cases is that a death of one or more people is the tragic consequence of the dangerous driving.

17. That effort on the court's part to establish some degree of consistency in sentencing for what might be described as broadly similar offending may appear somewhat clinical or even callous to the victims of such a terrible event, as this was, but it is necessary in the interest of the administration of justice generally, and specifically for the guidance of judges dealing with such cases at first instance, that this Court, as an appellate court, endeavour to achieve as much consistency as is reasonably possible."

## Conclusion

22. We need to say at the outset that the learned sentencing judge conducted the sentence hearing in exemplary fashion and wisely adjourned her decision for a week following the hearing of the evidence.

23. In our view the judgment is impeccable in every respect bar one, namely the identification of four years imprisonment as the proper starting point. It is difficult to blame the sentencing judge for what we perceive to be the only error in the course of her judgment. Apart from a submission regarding the disqualification to be imposed counsel for the Director of Public Prosecutions did not indicate where in the view of the Director this offence lay on the scale of available penalties. This point takes on added significance in light of the detailed and careful plea in mitigation by Mr. Dwyer S.C. in the course of which he referred the sentencing judge to a number of relevant authorities. We also note that the judgment was structured in a particularly helpful way and assisted us considerably in the performance of our obligations as an appeal court.

24. We have considered carefully the submissions of both parties and we are persuaded by the argument advanced on behalf of the Director of Public Prosecutions that the headline sentence in this case was too low and therefore unduly lenient. Our primary reason for arriving at this conclusion is the aggravating factors in the case which we have already identified in the course of this judgment namely, the speed, the breaking of the red traffic lights, driving whilst disqualified and leaving the scene. We hold that six years imprisonment is the appropriate headline sentence.

25. We endorse what the trial judge stated about the deceased man and the effect his death had on his family as well as on the wider community.

26. We also note the exceptional mitigation in this case which was acknowledged in the course of the hearing before us by counsel for the Director of Public Prosecutions.

27. There are a number of significant mitigating factors. The appellant's remorse and early plea of guilty are important. It is also important that he has no relevant previous convictions in the sense that he has no previous convictions for dangerous driving. There is an excellent probation report. There is a poignant letter from the appellant's mother who reports that he and his partner would not have returned to live in Dublin were it not for her illness. The appellant and his partner had moved to Wexford some years ago believing that they had there a safer environment for both of them.

28. Since his imprisonment the appellant has attended the Mountjoy Psychology Service and has completed a Level 3 Crime awareness Programme in the Mountjoy Education Centre. He has earned a certificate in food safety as well as one for having successfully completed the Pacific Institute Steps to Excellence Programme. Finally and perhaps most significantly there is an excellent report from the Governor of Mountjoy Prison who confirms that the appellant does not present any issues to staff or management and has not been subject to any disciplinary reports. The appellant is on an enhanced regime and works in the prison kitchen.

29. In view of the exceptional mitigation, we propose to suspend the final two years and nine months of the six year sentence that we now impose provided the appellant enters into a bond to keep the peace and be of good behaviour for a period of three years following his release from prison. The 15 year disqualification remains in place.

