



THE COURT OF APPEAL

Record No. 57/2016

**Birmingham J.
Sheehan J.
Mahon J.
Between/**

The Director of Public Prosecutions

Respondent

- and -

Blake Tobin

Appellant

JUDGMENT (ex tempore) of the Court delivered on the 23rd Day of January 2017 by Mr. Justice Mahon

1. The appellant was found guilty by a jury at the Circuit Criminal Court in Dublin and was convicted on 1st February 2016 of a number of offences namely:-

- Multiple counts of dangerous driving contrary to s. 53(1) of the Road Traffic Act 1961 as substituted by s. 4 of the Road Traffic (No. 2) Act 2011.
- Driving under the influence of alcohol contrary to s. 4(3)(a) and (5) of the Road Traffic Act 2010.
- Driving without a driving licence contrary to s. 38 of the Road Traffic Act 1961 (as substituted by s. 12 of the Road Traffic Act 2006) and s. 102 of the Road Traffic Act 1961 (as substituted by s. 12(a) of the Road Traffic Act 2006).
- Driving without insurance contrary to s. 56(1) and (3) of the Road Traffic Act 1961 as amended by s. 18 of the Road Traffic Act 2006.
- Failure to produce a driving licence contrary to s. 40(4)(a)(iii) of the Road Traffic Act 1961 as amended.
- Failure to produce a certificate of insurance contrary to s. 69(1) of the Road Traffic Act 1961 as amended.

2. Sentencing took place on 10th February 2016. Sentences of six months were imposed in respect of a number of counts of dangerous driving. Four of the six month terms were directed to be served consecutively, so that the overall prison term amounted to two years. In addition, the appellant was disqualified from driving for his lifetime.

3. The offences all occurred on 17th June 2012 in Clonee and Blanchardstown in Co. Dublin. Gardaí observed an Audi A3 motor car overtaking them on the R156 road at high speed. They pursued the vehicle, but it failed to stop. The vehicle being pursued drove on country roads at speeds of up to 160 kph and was stopped in Finglas whereupon it reversed into a gardaí patrol car, and again took off at speed. The car again drove at high speed and on the wrong side of the road. It mounted footpaths and drove dangerously within housing estates. Following his arrest the appellant was found to have a concentration of 243 mg. of alcohol for 100 ml. of urine.

4. The appellant has fifty four previous convictions, including a significant number of road traffic offences, which in turn include dangerous driving, careless driving, driving while disqualified and the unauthorised taking of vehicles. Other previous convictions relate to the possession of knives, possession of drugs and assault. All the previous convictions are from the District Court. The appellant has a personal history of abusing alcohol and drugs and was receiving therapy in relation thereto at the time of the commission of these offences.

5. The appellant relies on three grounds of appeal, namely:-

- (i) the learned sentencing judge erred in imposing the maximum sentence and explicitly declining to give credit for the appellant's efforts to rehabilitate,
- (ii) the learned sentencing judge erred in his failure to structure the sentence in a way to incentivise the appellant to make further efforts to rehabilitate,
- (iii) the imposition of consecutive sentences in the circumstances was contrary to principle and ignored the statutory limit, and
- (iv) the imposition of a lifetime disqualification from driving was disproportionate and contrary to law.

6. In the course of his sentencing judgment, the learned sentencing judge stated the following:-

"This was an appalling case in which the accused drove at extraordinary dangerous speeds and conditions, often turning his light off to avoid detection as he went around bends and corners, going through junctions without stopping, barging at the garda car, ramming into it, and causing serious danger throughout the neighbourhood in which he travelled. And in addition to that, he has an appalling record. I don't think I have ever heard of a man coming before me with two disqualifications, one for twenty years and another one for forty. I disqualify him from life today because he should never, ever, be allowed behind the wheel of a motor car. He has been convicted on five separate occasions for driving in this manner, and here he is again."

And

"... I can find absolutely nothing whatsoever to offer Mr. Tobin by way of mitigation. He is deserving of nothing. I am sorry to say that. I note from the report handed in dated 9th February 2016 that he is making some progress and I hope that at some stage soon he realises that there is no future for this kind of conduct, that he can expect to go back time and time again to prison if he persists in this kind of behaviour."

7. The report dated 9th February 2016 referred to by the learned sentencing judge is that of Maureen Penrose, Project Worker with ADAPT, an organisation concerned with assisting drug and alcohol addicts. In her report, Ms. Penrose outlined the steps been taken by the appellant to address his difficulties and she stated *"I feel Blake is doing all in his power to improve his lifestyle and his future prospects.."*

8. A particular focus of the appellant in his appeal relates to the imposition of consecutive sentences. In that respect he relies on the extract from a judgment of Keane J. (as he then was) in *DPP v. TB* [1996] 3 I.R. 294 when he stated:-

"The jurisdiction of the courts to impose concurrent or consecutive sentences where a person has been convicted of more than one offence at the trial is, in general, a non-statutory one, although it has been regulated by statute in particular contexts. While we were not referred to any authorities, it seems clear that the general principle is that concurrent sentences should be imposed for offences arising out of one incident or transaction, although there are exceptional cases where the sentencing tribunal may depart from the usual practice."

And

"It would thus be inappropriate, for example, to impose a series of prison sentences in respect of a number of motoring offences to run consecutively which would have the consequence of subjecting the offender to a disproportionately severe sentence and one that might be more severe than the court would impose for manslaughter or rape. In such a case, it has been suggested that the sentencing tribunal should step back, so to speak, and consider the totality of the sentences and whether any reduction is called for in the circumstances."

9. It is submitted on behalf of the respondent that a sentencing judge has a discretion to impose consecutive sentences where it is appropriate to so do, and that his reasons for doing so in this case were sufficiently explained by him.

10. The account of the appellant's driving on this occasion clearly point to extremely serious dangerous driving over a fairly prolonged period of time, and covering a large built up area of the city suburbs. The fact that no-one was seriously injured or killed is simply down to good fortune. The risk to other road users, pedestrians and the gardaí was significant. The attempt to ram a gardaí car is evidence of the complete disregard on the appellant's part for the law. The fact that the appellant was driving in an intentionally dangerous manner while intoxicating makes his offending even more serious.

11. The nature of these offences coupled with the appellant's lengthy number of previous convictions, made the imposition of custodial sentences absolutely inevitable.

12. Insofar as any issue exists in relation to this appeal it is the combination of the imposition of maximum and consecutive sentences in relation to the offences.

13. The maximum sentence for the offence in question is six months imprisonment. Such a maximum for what is such a serious offence will undoubtedly appear to many to be very low having regard to the circumstances of that offending, and the appellant is fortunate that even more serious charges (such as, for example, endangerment) were not preferred. The gravity of the offences place them at the highest point of the scale in terms of their seriousness. Given that the maximum sentence for each offence is just six months, the imposition of the maximum in each case was well within the discretion available to the learned sentencing judge, and is not an error of principle.

14. The imposition of consecutive sentencing is, in general terms, an option open to a sentencing judge, subject to the principles of totality and to proportionality, so as to ensure that the total effective period of imprisonment is not excessive. While it will frequently be the case that two or more offences arising out of one incident will not result in the imposition of consecutive sentences, there is no rule that such should always be the case, as is clear from the passage in *DPP v. T.P.*

15. In the Court's view, there are factors evident in this case such as justify the imposition of consecutive sentences. They are:-

- (i) the exceptionally dangerous driving involved,
- (ii) the prolonged nature of the dangerous driving and the fact that it continued and extended into a large area of the city, including residential suburbs,
- (iii) the low maximum sentence for each offence, and
- (iv) the numerous and relevant previous convictions and driving disqualifications.

16. This is not a case of a person driving dangerously over a distance of a few miles while being followed by a gardaí car (or indeed a civilian), and unaware that his driving is being closely monitored. In such a case, a strong argument could certainly be made that the separate instances of dangerous driving identified in the course of that journey ought not to be the subject of consecutive sentencing.

17. The Court is therefore satisfied that the imposition of consecutive sentences is not an error of principle.

18. Finally, there is the issue of the long driving ban imposed. This, it is argued, is unduly harsh and makes no provision for the appellant driving ever again, even when in his sixties or seventies.

19. While being very much of the view that a lengthy driving ban is appropriate, the Court believes that a life long ban (in the absence of anyone been seriously injured or killed), irrespective of rehabilitation and / or what the appellant's personal circumstances will be in thirty or forty years hence is unnecessarily severe, and to this extent is of the view that the learned sentencing judge was in error. The Court will therefore replace the lifelong driving disqualification with a forty year driving disqualification, dating from 10th February 2016.

