



In The Supreme Court of Bermuda

CRIMINAL JURISDICTION

2023 No: 05

BETWEEN:

R

V

CHRISTIAN SOUSA MATIAS

SENTENCE

Date of Sentencing Hearing: Monday 28 August 2023
Date of Ruling on Sentence: Monday 11 September 2023

Counsel for the Crown: Mr. Paul Wilson, Crown Counsel for the DPP
Counsel for the Accused: Ms. Elizabeth Christopher, Christopher's

Causing Death by Careless Driving Section 37A of the Road Traffic Act 1947 / Causing Death while Driving Uninsured Section 3 of the Motor Car Insurance (Third-Party Risks) Act 1943

RULING of Shade Subair Williams, Chief Justice (Acting)

Introduction

1. The Accused appears before this Court for sentence, having been convicted, upon his guilty pleas entered 3 April 2023, to a charge of causing death by careless driving contrary to 37A of the Road Traffic Act 1947 and to a charge of causing death while driving uninsured contrary to section 3 of the Motor Car Insurance (Third-Party Risks) Act 1943.

The Road Traffic Accident

2. On Sunday 19 September 2021, the Accused was riding a motorcycle along South Road, Warwick in the area of Dunscombe Road. Having overtaken multiple vehicles, thereby trespassing into the westbound lane, the Accused collided into the Complainant, Mr. Allen Trott who was riding in a westerly direction heading to visit his father.
3. The collision resulted from the Accused's careless driving and proved fatal to Mr. Trott who succumbed to his death after 11 days of hospitalization for the multiple injuries he sustained.
4. When the accident occurred, the Accused the motorcycle was uninsured¹. More so, his motorcycle bore a false plate concealing the expiry of the correct plate and its lawful owner.
5. It was also made known to this Court on the Prosecutor's oral submissions that the Accused had consumed cannabis moments before he took to his bike and rode at an estimated speed of nearly 63 KPH. (For the avoidance of doubt, I do not take this into consideration as it was not part of the Summary of Evidence before the Court and can only be relevant to a more serious offence involving an element of impairment.)

The Role of this Court

6. As the presiding judge over these proceedings, it is not open to me to enact an emotionally driven sentence. This is a Court of law and I am duty bound to act dispassionately when administering the law and in doing so I am constitutionally bound to do right to all manner of people without fear or favour, affection or ill will.
7. So, the sentence of this Court must be one which is passed in accordance with the law as I see it. This requires me to take numerous factors under consideration.

¹ This is corrected from the oral reading of the judgment in which reference was erroneously made to the Accused's operation of a vehicle without a "valid licence". This Court is instead concerned with the offence of causing death while operating an uninsured motor vehicle. The Crown did not proceed with the offence involving no valid driver's licence.

Victim Impact

8. This Court has received Victim Impact Statements from multiple affected persons to whom the Deceased was either a father, son, brother and/or close friend. Mr. Trott also had a fiancée, Ms. Lena La-Donna Goddard, who described him as her “world”. Unsurprisingly, she feels as though her future has been stolen from her as she and the Deceased were very much in love and were planning to build a happily-ever-after together. All of that to say, the Accused is not only responsible for ending Mr. Trott’s life but he is also responsible for the devastation caused to the lives of Mr. Trott’s numerous loved ones.

Previous Cases on Sentence

9. This Court was referred to the Court of Appeal’s judgment in *Terrence Walker v R* (Case No. Crim/2022/005), a case in which the Accused was said to have been sentenced to 3 years’ imprisonment, 5 years disqualification from all vehicles and 12 demerit points following a trial conviction by jury. In that case, it was the victim who was riding without a valid driver’s licence, having previously failed “project ride” on numerous occasions. Also of note, in that case the victim had consumed an excessive amount of alcohol while at a party on the night or early morning hours of the fatal accident.
10. The Court of Appeal, in reviewing the starting point ranges used by Mr. Justice Juan Wolffe at the sentence hearing, adjusted the starting range for the lowest category of culpability to 18 months to 2 years. Notably, Ms. Christopher argued that even this lowered range was flawed as the ranges were originally influenced by the categories fixed by the English Court of Appeal in *R v Cooksley* 2002/05798/X5 where the Court was concerned with causing death by dangerous driving as opposed to careless driving. She also pointed out that these starting ranges were all based on the assumption of a trial.
11. I would only say that it is evidence that the Court of Appeal in *Terrence Walker v R* were live to the facts and nature of the offence in *R v Cooksley* when the adjusted the starting point ranges declared by Wolffe J. For that reason, I decline to go behind the starting point ranges of the Court of Appeal whose superior jurisdiction is binding on this Court.

The Sentence

Causing Death by Careless Driving

12. Originally, as may be seen from the written submissions filed by Crown Counsel Mr. Wilson, the Crown sought a sentence tariff of 3-4 years imprisonment for the offence of causing death by careless driving. However, during his oral submission, Mr. Wilson accepted that the appropriate range of sentence for this offence attracts a lower range in light of his position that the facts underlying *Terrence Walker v R* were graver than the case presently before this Court. Mr. Wilson accordingly shifted the recommendation to a range of 18 months - 2 years imprisonment.
13. Ms. Christopher on the other hand pressed for the Court to prefer a 12 month custodial sentence in combination with a period of 12 months' probation.
14. No dispute arose from the Crown's call for the imposition of the 5 year obligatory disqualification period in respect of all vehicles as required by Head 6 of the Traffic Offences (Penalties) Act 1976. However, the question of demerit points proved to be a legal quagmire. Head 7 provides for a penalty of 12 points for offences contrary to section 37A.
15. Section 4A(1)(a) of the 1976 Act states:

“(1) Where a person is convicted of a traffic offence, the court shall direct that the following number of demerit points be recorded in respect of the person—

(a) the number of demerit points shown in head 7 of Schedule 1...”

16. When read with section 4A(1)(a), the 12-point penalty under Head 7 was intended to be mandatory. However, Head 7 appears to be in direct conflict with section 4B of the 1976 Act which provides:

“Notwithstanding section 4A, where a person is convicted of a traffic offence and the court, under section 4, orders the person to be disqualified in respect of that offence, the court shall not direct any demerit points to be recorded in respect of that person as a result of that offence.”

17. Having been queried by this Court on the apparent conflict between these provisions, Mr. Wilson conceded that section 4B of the Traffic Offences (Penalties) Act 1976 would bar me from lawfully imposing demerit point in circumstances where the offender has been made the subject of an order of disqualification. Ms. Christopher agreed.

18. On my analysis, had this Court disregarded section 4B and acceded to the prosecutor's original pursuit for 12 points to be recorded against the Accused, in addition to a 5 year disqualification period, the disqualification period would have increased to 6 years, by operation of section 4E(1)-(2) of the 1976 Act. A 6 year disqualification period would not have only offended section 4B but it would have operated against the requirement of Head 6 which provides for an obligatory disqualification period of 5 years. Section 2 of the 1976 Act offers guidance on the proper approach to disqualification periods under Head 6. Section 2(2) (d) reads as follows:

“head 6 of the Schedule shows the type and length of disqualification in relation to which offences the court is required or empowered to order the person convicted to be disqualified from holding or obtaining a driver's licence, any reference in head 6 to obligatory disqualification importing such a requirement and any reference therein to discretionary disqualification importing such a power;

19. On my reading of the above provision, the Court is neither required nor empowered to impose a disqualification period higher than the length of time shown under Head 6. For that reason, I decline to impose any demerit points in addition to the disqualification period sought without controversy between Counsel.

20. The Accused is young in age, a first offender in respect of this type of offence and is entitled for full credit for his early guilty plea and his expressions of remorse. In my view, having taken into consideration all of these the mitigating factors as well as the starting point ranges fixed by the previous and relevant case law, I find that a custodial sentence of 18 months imprisonment is the correct sentence. I say that having carefully considered the purposes and principles of sentencing as prescribed by Part IV of the Criminal Code. I am particularly aware that this Court must consider all sentence alternatives before passing a custodial sentence. Having also considered the factors raised by the Social Inquiry Report before this Court and the likelihood of a need for therapeutic attention to the Accused's social and substance-related issues, I find that a period of probation is necessary for the rehabilitative needs of this Offender.

21. I also impose a period of 5 years disqualification from all vehicles.

Causing Death while Driving Uninsured

22. Mr. Wilson argued that on the Count relating to the causing of death while using an uninsured vehicle, the Accused should receive a sentence in the range of 12-18 months imprisonment and 5 years disqualification from all vehicles.

23. I find as an aggravating factor that the Accused was operating a vehicle which bore a false plate. By implication, he was operating a vehicle in circumstances in which an attempt was made to conceal the fact that the vehicle was uninsured. This means that the successors of the Victim's estate will not likely receive the fullness of the damages which would have otherwise been covered by a regulated and solvent insurance entity.
24. In my judgment, having considered all of the mitigation available to the Accused and the sentencing factors identified in this ruling, the correct sentence for this Count is one of 14 months imprisonment and 5 years disqualification from all vehicles.

Conclusion

25. In all of these circumstances, I impose the following sentences

Count 3: Causing Death while Driving Uninsured: 14 months imprisonment and 5 years disqualification from all vehicles

Count 6: Causing Death by Careless Driving: 18 months imprisonment and 5 years disqualification from all vehicles and 18 months of probation under section 70A of the Criminal Code.

26. These sentences are to run concurrently and time spent in custody is to be taken into consideration.

Dated this 11th day of September 2023

**THE HON. MRS. JUSTICE SHADE SUBAIR WILLIAMS
CHIEF JUSTICE (ACTING)**