

Judicial Communications Office

Friday 16 September 2011

COURT OF APPEAL INCREASES CUSTODIAL SENTENCE

Summary of Judgment

The Court of Appeal, on Friday 16 September 2011, increased the custodial sentence imposed on Stephen Gordon Warnock.

The case was referred to the Court of Appeal by the Director of Public Prosecutions ('DPP') who submitted that the sentence was unduly lenient.

Warnock was originally sentenced to a total of 16 months' imprisonment consisting of 8 months imprisonment and 8 months on licence and disqualified from driving for 5 years on 2 June 2011 at Downpatrick Crown Court for causing the death of John Cully by dangerous driving and causing grievous bodily injury to Gareth Keenan by dangerous driving.

The offences occurred in the early hours of Saturday 11 April 2009 on the Bog Road, Portavogie, which is a minor country road. Warnock, who was 23 at the time, was driving a Honda Civic and Gareth Keenan was the front seat passenger. The deceased, Mr Cully, was driving a Volkswagen Golf travelling in the opposite direction. Keenan states that Warnock's vehicle had reached a speed of 60mph when it collided with Mr Cully's vehicle. The collision took place approximately 300 yards from the junction at which Warnock's vehicle had turned onto the road. The engineer retained by Warnock was of the opinion that the speed of his vehicle as it negotiated the undulation of the road caused the vehicle to move onto the other side of the road indicating either a loss of control by Warnock or that he was travelling by design on the wrong side of the road. The collision with the deceased's vehicle which was on its own side of the road was almost directly head on.

The Court of Appeal in *R v. McCartney* [2007] NICA 41 set out the starting points for the offence of causing death by dangerous driving:

- (a) Cases with no aggravating circumstances, where the starting point should be a short custodial sentence of perhaps 12 months to 2 years with some reduction for a plea of guilty.
- (b) Cases of intermediate culpability, which may involve an aggravating factor such as a habitually unacceptable standard of driving or the death of more than one victim. The starting point in a contested case in this category is two years progressing up to four and a half years as the level of culpability increases.

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- (c) Cases of higher culpability, where the standard of the offender's driving is more highly dangerous, as shown by such features as the presence of two or more of the aggravating factors. A starting point of four and a half years to 7 years will be appropriate in cases of this type.
- (d) Cases of most serious culpability, which might be marked by the presence of three or more aggravating factors (though an exceptionally bad example of a single factor could be sufficient to place an offence in this category). A starting point of seven years to 14 years was propounded for this category.

The Lord Chief Justice, delivering the judgment of the Court, said that in this case the learned trial judge concluded that the only aggravating factor which assisted with culpability was the injury to the passenger. On that basis the trial judge assessed this as being a case at the lower end of the intermediate category. The Lord Chief Justice said that the Court of Appeal did not agree. It considered that the speed at which the vehicle was being driven on a road of this sort was grossly excessive and the applicant was aware of road conditions and the 30 MPH limit. The Lord Chief Justice said that these factors were elements of the dangerous driving alleged but that should not prevent the court assessing their relevance to the issue of culpability. The Court of Appeal also took into account an earlier conviction for speeding which arose out of an incident in 2003 when the respondent was seventeen as well as a statement from the deceased's mother which set out the effect his death had on her and their family.

The Lord Chief Justice stated "In our view the culpability of the offender was at the top of the intermediate category or the bottom of the next category." He noted, however, that the respondent sustained significant injuries as a result of the collision and he was entitled to have this taken into account in mitigation. He was also entitled to considerable discount for his guilty plea.

The Lord Chief Justice said "It follows that we consider that the sentence imposed by the learned trial judge was unduly lenient." He said that the Court of Appeal concluded that it should interfere with the sentence: "In all the circumstances we consider that we should interfere and impose a sentence of 2 years and 3 months imprisonment of which half will be spent in custody and half on licence. His disqualification for 5 years will remain and the period already spent in custody should be counted as part of his custodial term."

NOTES TO EDITORS

1. This summary should be read together with the judgment and should not be read in isolation. Nothing said in this summary adds to or amends the judgment. The full judgment will be available on the Court Service website (www.courtsni.gov.uk).

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