

*407 R. v. Daniel Christopher Gray
 [2008] EWCA Crim 336

Court of Appeal

CA (Crim Div)

Lord Justice Latham (Vice President, Court of
 Appeal, Criminal
 Division), Mr Justice Field and Sir Peter
 Cresswell :

February 4, 2008

Dangerous driving; Mitigation; Sentence length;
 Young offenders

H1 Dangerous driving--dangerous driving causing
 grave injuries--absence of other aggravating fac-
 tors--length of sentence

H2 Thirteen months' detention in a young offender
 institution imposed for dangerous driving, where
 the offender allowed his car to straddle the central
 white line of a road with the result that he collided
 with a motor cyclist who suffered severe injuries,
 reduced to eight months.

H3 The appellant pleaded guilty to dangerous
 driving. The appellant was driving his car along a
 country road in daylight. He was seen to straddle
 the central white line as he entered a sweeping
 right-hand bend. His car collided with an oncoming
 motorcycle and the motor cyclist suffered severe
 injuries, including the amputation of his leg. Sen-
 tenced to 13 months' detention in a young offender
 institution, and disqualified from driving for two
 years, and until an extended driving test was
 passed.

H4 Held: the sentencing judge observed
 that there had been a delay in the proceedings for
 which the appellant was not responsible, but that
 his plea of guilty was entered only on the morning
 of the trial. The sentencing judge observed that
 although the appellant's driving was dangerous,
 there was no evidence of excessive speed, or per-
 sistent dangerous driving. It was submitted for the
 appellant that the only aggravating feature was the
 serious injuries sustained by the motor cyclist. The
 Court had been referred to [Cooksley \[2004\] 1 Cr.](#)

[App. R. \(S.\) 1](#) (p.1), [Richardson \[2007\] 2 Cr.](#)
[App. R. \(S.\) 36](#) (p.211), [Stokes \[1998\] 1 Cr.](#)
[App. R. \(S.\) 282](#) and [Stevens \[2003\] EWCA](#)
[Crim 2823](#) . The Court recognised the ex-
 tremely severe injuries sustained by the motor cy-
 clist. The criminality of the appellant's driving was
 at the lower end of the scale and what made the
 case particularly grave was the severe injuries suf-
 fered by the motorcyclist. The sentencing judge
 was right to take into account the consequences of
 the dangerous driving. The Court had been per-
 suaded, having regard to the decisions in [Stokes](#)
 and [Stevens](#) , that when the balance
 was struck between the consequences for the motor
 cyclist and the mitigating factors, the sentence of
 13 months' detention was out of line with the au-
 thorities. The Court would substitute a sentence of
 eight months' detention in a young offender institu-
 tion.

***408 H5 Cases cited:**

[Cooksley \[2003\] EWCA Crim 996; \[2003\] 2](#)
[Cr. App. R. 18; \[2004\] 1 Cr. App. R. \(S.\) 1](#)
 (p.1)

[Richardson \[2006\] EWCA Crim 3186; \[2007\]](#)
[2 Cr. App. R. \(S.\) 36 \(p.211\); \[2007\] R.T.R. 29](#)

[Stokes \[1998\] 1 Cr. App. R. \(S.\) 282](#)

[Stevens \[2003\] EWCA Crim 2823](#)

H6 References: dangerous driving, *Current*
Sentencing Practice , B12-1.3A

H7 Representation

O. Jarvis for the appellant.

JUDGMENT

Sir Peter Cresswell:

1 On May 24, 2007, the day of the trial, at Don-
 caster Crown Court, the appellant, who is now aged
 20, pleaded guilty to a single count of dangerous
 driving. On November 30 he was sentenced by
 H.H. Judge Robinson to 13 months' detention, dis-
 qualified from driving for two years and until an
 extended test was passed. He appeals against sen-

tence by leave of the single judge.

2 The facts shortly are as follows. At about 10.30 in the morning of September 27, 2005 the appellant was driving a Mazda along Pastures Road, a country road on the outskirts of Mexborough, into a sweeping right-hand bend towards Mexborough. The speed limit was 60mph. It was a fine day. Visibility was good. An on-coming motorcar noted the appellant's vehicle straddling the white line in the middle of the road, partly in the wrong lane, but managed to pass by without a collision.

3 Behind that vehicle was a motor cyclist, Mr Williams, riding at about 45mph with his headlight illuminated. The vehicle driven by the appellant continued to straddle the white line and collided with the motorcycle about 100yds past the bend. The accident investigation report concluded that Mr Williams had been 0.7 metres inside the white line in the correct lane. The appellant stayed at the scene and waited for the police to arrive. Mr Williams sustained very severe injuries. All three major bones in his right arm were fractured--five fractures in all. They had to be repaired with steel rods and bolts. He sustained three broken ribs and a collapsed lung, suffering pneumonia during his recovery. He sustained complex fractures of the pelvis and right hip which needed reconstructive surgery. The consultant surgeon considered that he was likely to suffer degenerative change in the right hip because of the severity of the damage to his joint and could suffer pain and arthritis in his left leg indefinitely. There was an open right fracture to the femur and the knee joint which was so severe that there had to be amputation above the knee. Mr Williams had to learn to walk again on a false leg and had to use a wheelchair for some time. He was released from hospital on December 24, 2005, but thereafter was wheelchair bound and in need of constant care from his wife. He was never going to recover and his family were concerned about their ability to cope financially.

4 *409 In his sentencing remarks the judge referred to the delay, saying this:

"The delay principally appears to have been on the part of the prosecution. However, you have pleaded guilty only on the morning of trial and you could have pleaded guilty at any time effectively from about the beginning of 2007."

The judge continued:

"The circumstances of this offence represent the worst nightmare of every decent motorcyclist ...

The worst nightmare of every motorcyclist is somebody like you, emerging from the opposite

direction in a motorcar being driven in such a way that the motorcar is occupying precisely that part of the road that the motorcyclist has adopted for his safe manoeuvre. Your driving was aggravated by the fact that you were still on the wrong side of the road, a good hundred yards from the end of what, for you, was no more than a sweeping right-hand bend. ...

The motorcycle driven by Mr Williams was not the only motorist who was put in danger by your actions because Mr Kozlowski, who was driving in front of Mr Williams in a motorcar with his wife as a passenger, saw you and they were both frightened. The consequences of your dangerous driving, described in some of the papers I have before me as a 'lapse of judgment' but which, having regard to your plea, rightly is recognised as you driving in a manner which fell far below the standard to be expected of the ordinary driver such that it was obvious to you that your driving fell far below that standard, can be summarised shortly: It has devastated the life of a decent, honest, hard working man and his family."

The judge went on to recite the devastating injuries that were caused. He continued:

"In mitigation, you have, at albeit virtually the last possible point, pleaded guilty ... It is plain from the outset that you have shown remorse for the consequences of what you have done. I think it right that you are very unlikely to trouble the courts again. You were a young driver at the time but that is all the more reason for younger drivers to be careful ...

I am compelled to take into account the delay, which is no fault of your own, but not the delay that has resulted from your decision to run your case through to trial. ...

... I sentence you for the crime you have committed rather than the consequences of your crime. Nevertheless, this was a grievous piece of dangerous driving. It is right that there were no aggravating features. There was no evidence of excessive speed apart from any excessive speed that may have caused you to go over the white line in the first place. There is no evidence of drink or drugs. This was not dangerous driving in the course of a police *410 chase. This was not a persistent course of driving over a long period of time or distance, and you are not a man who has a poor driving record. Nevertheless, a custodial sentence is inevitable."

5 The appellant had not previously appeared before the courts. He was born in June 1987. We have seen a pre-sentence report dated October 26, 2007. In addition we have read the character references

and other materials that were before the judge below.

6 Mr Jarvis in succinct and well presented submissions contends that the sentence imposed was manifestly excessive. He argues that the only aggravating feature, the injuries sustained by Mr Williams, although important did not justify the imposition of such a lengthy term of imprisonment. He referred by way of comparison to the level of sentencing in the guideline cases of [Cooksley \[2004\] 1 Cr. App. R. \(S.\) 1](#) (p.1) and [Richardson \[2007\] 2 Cr. App. R. \(S.\) 36](#) (p.211) where the offence is causing death by dangerous driving. He referred to the decision in [Stokes \[1998\] 1 Cr. App. R. 282](#). He contends that the judge indicated that he took account of the appellant's guilty plea, remorse, age, driving inexperience, good character and the delay, but did not in all the circumstances give sufficient credit for these mitigating features when arriving at the sentence imposed. Mr Jarvis draws attention to the fact that the appellant's manager at work insisted that the appellant take a company vehicle which the appellant had never driven before, rather than allowing him to drive his own vehicle. Thus, submits Mr Jarvis, the appellant was inexperienced and driving an unfamiliar car.

7 We have carefully considered these submissions. We recognise at the outset the extremely severe injuries sustained by Mr Williams. The consequences for Mr Williams were appalling. His life has been changed forever. This Court has the utmost sympathy for him. A case such as the present constitutes a difficult problem for any sentencing judge. The criminality of the driving itself was at the lower end of the scale, although this was a bad piece of driving. What makes the instant case particularly grave is the fact that as a result of the dangerous driving Mr Williams suffered extremely severe injuries with appalling consequences. We bear in mind the maximum sentence of two years laid down by Parliament. The learned judge was right to take into account the consequences of this dangerous driving. It was for that reason that it was necessary to pass a custodial sentence.

8 We have been persuaded, having regard to the authorities and in particular the decisions of this Court in [Stokes \[1998\] 1 Cr. App. R. \(S.\) 282](#) and [Stevens \[2003\] EWCA Crim 2823](#) that when the difficult balance is struck between the aggravating factor (the appalling consequences for Mr Williams) and the mitigating factors listed above, that the sentence of 13 months

was out of line with the authorities. In all the circumstances of this difficult case, we propose to substitute for the sentence of 13 months' detention a sentence of eight months' detention. To this extent only this appeal is allowed.

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