[2022 Gib LR 257]

ELLUL v. R.

COURT OF APPEAL (Kay, P., Rimer and Davis, JJ.A.): October 14th, 2022

2022/GCA/10

Road Traffic—causing death by dangerous or reckless driving—dangerous driving—appropriate test under Traffic Act 1988, s.45(1)—court to consider whether manner of driving fell far below that expected of competent and careful driver, and would be obvious to competent and careful driver that such driving would be dangerous—judge correct to leave to jury question whether inherently hazardous but not illegal crossing of busy road with minimal care was dangerous

Road Traffic—causing death by dangerous or reckless driving—sentence —4 years' imprisonment for causing death by dangerous driving reduced on appeal to 3 years—dangerous driving at lower end of scale, i.e. inherently hazardous but not illegal crossing of busy road with minimal care

The appellant was convicted of causing death by dangerous driving.

The appellant was convicted by a jury of causing death by dangerous driving. He had turned across the path of oncoming traffic and failed to see an approaching motorcycle. The motorcyclist later died in hospital. The appellant pleaded guilty to causing death by careless driving. The evidence at trial included eye witness and CCTV evidence. The appellant did not give evidence. His case was that he had attempted to effect a lawful and common manoeuvre and that, although he did so carelessly, it would not have been obvious to a competent and careful driver that driving as he did would be dangerous.

The Chief Justice sentenced the appellant to 4 years' imprisonment. The Chief Justice referred to the Sentencing Council Guidelines and considered that the offence fell to be treated as a level 3 offence for which the starting point for a first time offender pleading not guilty was 3 years' imprisonment. This was increased, to take account of the appellant's bad driving record, which included convictions for dangerous driving, to 5 years, and then reduced to 4 years. The appellant was disqualified from driving for 6 years.

The appellant appealed against his conviction on the grounds that the Chief Justice erred in rejecting a submission of no case to answer, alternatively, the Chief Justice misdirected the jury by (i) failing to direct

them on the relationship between causing death by careless driving and causing death by dangerous driving; (ii) failing adequately to put the appellant's case to the jury; and (iii) failing to give the jury any directions as to how to approach the CCTV evidence and then replaying it to the jury at the conclusion of his summing up, coupled with an offer to play it again should they so request (which they did not). The appellant also appealed against his sentence.

Held, allowing the appeal in part:

(1) The appellant's appeal against conviction would be dismissed. The Chief Justice did not err in rejecting the submission of no case to answer. When considering the appropriate test under s.45 of the Traffic Act for dangerous driving, the Chief Justice was correct to read into s.45 a requirement that the driving fell "far below" what would be expected of a careful and competent driver. Applying the "far below" and "obvious" tests, the Chief Justice was correct to reject the submission of no case to answer. Although the case did not contain elements often found in dangerous driving cases, *e.g.* excessive speed, racing, ignoring mandatory requirements such as red lights, or impairment through drink or drugs, the Chief Justice considered that it would be open to a reasonable jury properly directed to conclude that the appellant's driving fell far below what would be expected of a competent and careful driver and that it would be obvious to a competent and careful driver that driving in that way would be dangerous. The appellant's maneouvre was inherently hazardous, although not illegal. The road was busy, the markings on the road amply warned drivers of a heightened need for caution and the witness evidence pointed to minimal care on the part of the appellant. The Chief Justice was correct to conclude that there was sufficient evidence to leave to the jury the question as to which side of the careless/dangerous line this case fell (paras. 8–11).

(2) The Chief Justice did not misdirect the jury. First, the Chief Justice did not fail to direct the jury on the relationship between causing death by careless driving and causing death by dangerous driving. It was made perfectly clear to the jury what the Crown had to prove to secure a conviction for causing death by dangerous driving and that that was significantly more than was sufficient to prove the lesser offence. Secondly, the Chief Justice did not fail adequately to put the appellant's case to the jury. The appellant chose not to give evidence. In essence his case was that he was guilty of the lesser offence of causing death by careless driving but no more. He was putting the Crown to proof that the essentials of dangerous as opposed to careless driving had been established. The Chief Justice clearly explained that to the jury and referred to the parts of the evidence upon which the appellant had placed specific reliance. It was a short trial with very little disputed evidence. The court was in no doubt that the jury understood the case for the defence. Thirdly, no question arose as to the admissibility of the CCTV evidence. It was brief in duration, visually clear and plainly important evidence. It was not wrong for the Chief Justice to have reminded the jury of the CCTV evidence at the end

of his summing up. The Chief Justice did not comment on the contents of the recording. It was a matter for the jury to interpret the recording and to use it in their task as they saw fit (paras. 14–21).

(3) The appellant's appeal against his sentence would be allowed in part. The dangerous driving in this case, while lamentable, was not as egregious as that in most examples of causing death by dangerous driving. As regarded the Sentencing Council Guidelines for a level 3 offence (which the Chief Justice correctly found this to be) it was sometimes appropriate to refer to the starting point and range for the most serious levels of causing death by careless driving, namely a starting point of 15 months' imprisonment and a range of 9 months to 3 years. Although the appellant fell to be sentenced for the more serious offence and by reference to the Guidelines relating to it, it could not be disputed that the facts of this case, while exceeding those for careless driving, were at the lower end of a level 3 dangerous driving case. Therefore the Chief Justice should have made a downward adjustment to the starting point of 3 years. The Chief Justice was correct to increase the sentence because of the appellant's record but it was noticeable that his previous convictions for dangerous driving had not attracted sentences more onerous than fines and disqualifications. A notional increase of two-thirds on the starting point of 3 years by reference to the previous convictions was excessive. It was important that each case was judged in the context of the Guidelines and its own unique features. In the present case, the sentence of 4 years was sufficiently excessive to require reduction by this court. It would be quashed and a sentence of 3 years' imprisonment substituted (paras. 27–29).

(4) The Chief Justice arrived at the period of disqualification of 6 years by explaining that, but for the sentence of 4 years' imprisonment, the period of disqualification would have been 4 years. Consistent with the Chief Justice's methodology, as the sentence of imprisonment had been reduced to 3 years, it was appropriate to reduce the period of disqualification to 5½ years. However, although the Chief Justice mentioned the 15 months during which the appellant had been unable to drive because of his bail conditions, he did not seem to have factored that in to the final computation of the disqualification period. Having regard to this and to all the other circumstances of this case, a substituted sentence of 3 years' imprisonment should be accompanied by a disqualification period of 4 years 3 months from July 12th, 2022 (para. 30).

Cases cited:

(1) *R.* v. *Chapman*, [2014] EWCA Crim 1543, referred to.
(2) *R.* v. *Duarte*, February 12th, 2015, unreported, referred to.
(3) *R.* v. *Needham*, [2016] EWCA Crim 455; [2016] 1 W.L.R. 4449; [2016] Crim. L.R. 585; [2016] RTR 23, referred to.

Legislation construed:
Traffic Act 2005, s.45(1): The relevant terms of this subsection are set out at para. 6.
s.45A: The relevant terms of this section are set out at para. 7.

Road Traffic Act 1988 (c.52), s.2A(1): The relevant terms of this subsection are set out at para. 5.

C. Finch (instructed by Verralls Barristers and Solicitors) for the appellant;
C. Rocca, *K.C.* (instructed by the Office of Criminal Prosecution & Litigation) for the respondent.

1 **JUDGMENT OF THE COURT:** On June 7th, 2022 the appellant was convicted by a majority verdict of the jury of an offence of causing death by dangerous driving. On July 12th, 2022 the trial judge, the learned Chief Justice, sentenced him to 4 years' imprisonment and disqualified him from driving for a period of 6 years from that date. The appellant now appeals against conviction and sentence.

2 Shortly after 4 p.m. on April 5th, 2021, the appellant was travelling north along Queensway Road, when he made a left turn intending to enter the Petroil petrol station on the opposite side of the road. In so doing, he turned across the path of any traffic coming from the opposite direction. He failed to see an approaching motorcycle ridden by Mr. Richard Garcia, who was unable to avoid the inevitable accident, and who sadly died in hospital two days later. His pillion passenger was fortunate not to be seriously injured.

3 The appellant did not dispute that he was at fault. Indeed before the trial commenced he had pleaded guilty to the lesser offence of causing death by careless driving. The sole issue at the trial therefore was whether his driving amounted to the more serious offence of causing death by dangerous driving. The evidence at trial also established the following:

(1) The appellant had slowed down and indicated his intention to turn left. Almost immediately after so indicating and without further hesitation he started his turn.

(2) Ms. Denise Gingell who was driving immediately behind the appellant, "first noticed the motorcycle travelling towards us before the traffic lights next to the petrol station. So the motorcyclist had just come over the roundabout when it was in my line of sight." Her undisputed evidence was read to the jury.

(3) Ms. Najade Vinet, whose undisputed evidence was also read to the jury, was travelling south behind Mr. Garcia's motorcycle. She saw the appellant's car turn towards the petrol station. She estimated that the car was about one metre in front of the motorcycle when it pulled in front and added, "I do not believe the rider had any time to react."

(4) At the point where the appellant chose to turn left there is a single unbroken white line down the middle of the road. To cross it is not illegal *per se*, but it is a warning of the need for extra care before executing such a manoeuvre.

(5) Drivers at that point quite often effect the manoeuvre attempted by the appellant.

(6) The unchallenged evidence of Police Sergeant Ignacio was that the motorcycle was travelling at a speed of 43–47 kmh. He opined that Mr. Garcia would only just have had time to react to the vehicle in front of him in order to start breaking or swerving. On the ability of the appellant to see the approaching motorcycle, he referred to the unchallenged evidence of Ms. Gingell and produced photograph exhibit 3G04, which shows an unobstructed line of sight of approximately 55 metres.

(7) Another photograph, exhibit 1 number 62, shows a bush on the left hand side of the road. It was put to Police Sergeant Philbin in cross-examination that the bush would have obstructed the appellant's view of traffic coming from the roundabout, to which he replied that, if visibility was impaired, that was a good reason not to effect the manoeuvre.

(8) It was an agreed fact that serious shortfalls in the quality of medical care afforded to Mr. Garcia whilst in hospital played a significant role in his death. However, there was no issue at trial as to causation. As we have related, the appellant had pleaded guilty to causing death by careless driving, a fact strongly relied upon by his counsel during trial.

(9) The appellant did not give evidence. His case was that he had sought to effect a lawful and common manoeuvre and that, although he did it carelessly, it would not have been obvious to a competent and careful driver that driving as he did would be dangerous.

(10) The collision was clearly captured on CCTV and the recording was viewed by the jury. We too have seen it.

Appeal against conviction

4 The appeal against conviction is based on grounds of appeal that relate to two stages of the trial. *First*, it is submitted that the Chief Justice erred when rejecting a submission of no case to answer. *Secondly*, and alternatively, complaints are made about his directions to the jury in the course of his summing up. These complaints relate more to what he did not say, than to his express directions.

1. *The submission of no case to answer*

5 At the time of the submission of no case to answer there was an issue between the Crown and the defence as to the test for dangerous driving. It

arose because of a difference between the drafting of the legislation in England and Wales and in Gibraltar. In both jurisdictions the offence is partly defined by reference to driving "dangerously." However, in England and Wales the statute goes on to prescribe the criteria of dangerousness, whereas the Gibraltar statute does not. Section 2A(1) of the Road Traffic Act 1988 (as amended by s.1 of the Road Traffic Act 1991) provides that a person is regarded as driving dangerously if:

> "(a) the way he drives falls *far below* what would be expected of a competent and careful driver, and
>
> (b) it would be obvious to a competent and careful driver that driving in that way would be dangerous." [Emphasis added.]

6 There is no similar provision in the Gibraltar Traffic Act 2005, s.45(1) of which refers to "the driving of a motor vehicle on a road recklessly, or at a speed or in a manner which is dangerous to the public, having regard to all the circumstances of the case . . ." Although it goes on to identify non-exhaustively what such circumstances may include "the nature, condition and use of the road, and the amount of traffic which is actually at the time, or which might reasonably be expected to be, on the road," it does not adopt the "far below" and "obvious" tests.

7 In the case of *R.* v. *Duarte* (2), Mrs. Justice Ramagge Prescott ruled that "a person is to be regarded as driving dangerously if the way he drives *falls below* what would be expected of a careful and competent driver." The difficulty with that approach is that on a practical level the test is close to that posited in relation to the offence of causing death by careless driving, *viz.* driving "without due care and attention, or without reasonable consideration for other persons using the road" (s.45A of the 2005 Act). However, the maximum sentences for the two offences are very different. 14 years' imprisonment under s.45, but only 5 years under s.45A.

8 When considering the appropriate test under s.45, the Chief Justice declined to follow the approach of Ramagge Prescott, J. in *Duarte* and ruled that, because of the vast difference in sentencing powers, it is necessary to read into s.45 of the Gibraltar Act a requirement that the driving falls "*far below*" what would expected careful and competent driver. We have no doubt that he was correct about that.

9 The question then becomes whether applying the "far below" and "obvious" tests, the Chief Justice was correct to reject the submission of no case to answer. Although the case did not contain elements often found in dangerous driving cases, for example, excessive speed, racing, ignoring mandatory requirements such as red lights or impairment through drink or drugs. He considered that it would be open to a reasonable jury properly directed to conclude that this was a "far below" and "obvious" case. It seems to us that he was influenced primarily by the nature of the road at

the point of the collision, in particular the presence of the unbroken white line which, although it could be crossed legally, "clearly gives guidance to drivers to not cross unless you are very sure that it is safe to cross."

10 It seems to us that the manoeuvre that the appellant chose to undertake at that particular place was inherently hazardous, even though not illegal *per se*. The road is a busy one. The distance between the roundabout and the point of impact is short and includes a pedestrian crossing. The markings on the road amply warn drivers of a heightened need for caution. The evidence of the eye witnesses pointed to minimal care on the part of the appellant. The evidence of Police Sergeant Ignacio was to the effect that the appellant had ample opportunity to see the oncoming motorcycle.

11 If, as the appellant maintains, visibility was reduced by the presence of a bush (which Police Sergeant Ignacio's evidence essentially refuted) that would have served to increase the need for particular care rather than to excuse a lack of it. The CCTV footage could be interpreted by a reasonable jury as evidence that the appellant gave complete lack of circumspection after the initial deceleration and signalling. In our judgment the Chief Justice was correct to conclude that there was sufficient evidence to leave to the jury the question as to which side of the careless/dangerous line this case fell. He was correct to reject the submission of no case to answer.

2. *Misdirection*

12 The grounds of appeal assert misdirection under three subheadings:

(i) Failing to direct the jury on the relationship between causing death by careless driving and causing death by dangerous driving.

(ii) Failing adequately to put the appellant's case to the jury, as relied upon during the trial.

(iii) Failing to give the jury any directions at all on how to approach the CCTV evidence, and then replaying it to the jury at the conclusion of his summing up, coupled with an offer to play it again should the jury so request (in the event they did not).

(i) *The relationship between causing death by careless driving and by dangerous driving*

13 In the course of a succinct summing up the Chief Justice said:

> "Although there are 2 counts on the indictment which are based on the same facts, the Defendant pleaded guilty to the count of causing death by careless driving, which is the less serious offence. What you will have to consider is whether the Defendant is guilty or not guilty of the more serious offence of causing death by dangerous driving."

He later said:

> "there is only one question that you need to consider, and that question is that, at the time of the collision, was the Defendant driving dangerously. So what as a matter of law is dangerous driving? So for the purposes of this case the Defendant is regarded as driving dangerously if, having regard to all the circumstances of the case, including the nature, condition and use of the road and the amount of traffic which was actually at the time or which might reasonably be expected to be on the road:
>
> (a) the way in which he drove fell far below what would be expected of a competent and careful driver, and
>
> (b) it would be obvious to a competent and careful driver that driving in that way would be dangerous."

Later when summing up the appellant's case he added:

> "Although the Defendant drove without due care and attention, the driving was not dangerous and it could not be obvious to a competent and careful driver that driving the way the Defendant did was dangerous."

14 There is no legal error in those passages. It was made perfectly clear to the jury what the Crown had to prove to secure a conviction for causing death by dangerous driving and that that was significantly more than is sufficient to prove the lesser offence. Accordingly there was no express misdirection. Mr. Finch's complaint seems to be that the Chief Justice should have gone further and provided a more detailed explanation of the different ingredients of the offence the appellant admitted and the offence for which he was being tried. Such an addition may have been helpful, but it cannot be said that its absence amounted to a misdirection.

(ii) *Failing adequately to put the appellant's case to the jury*

15 When the Chief Justice came to summarize the case for the defence he said:

> "The defence case is essentially that the left turn into the petrol station undertaken by the Defendant is not in itself illegal but that the Defendant slowed down and signalled, and that that is what a careful driver would do. That turning left into the petrol station is a common manoeuvre. The fact that it is a common manoeuvre was identified by Police Sergeant Ignacio in his expert report and supported in some measure by the evidence of Police Sergeant Philbin. That at the point of turning the Defendant's view was restricted by a bush and that he could not have seen the motorcycle until it came out of the roundabout; and that, even if he was driving at 45 kph, there was simply no time

> for either the Defendant or Mr. Garcia to react. That it is in a section of the road that is inherently dangerous and that no measures have been taken by the authorities to make it safe. That although the Defendant drove without due care and attention, the driving was not dangerous and it would not be obvious to a competent and careful driver that driving the way the Defendant did was dangerous."

16 The appellant had chosen not to give evidence. In essence his case was that he was guilty of the lesser offence but no more. He was putting the Crown to proof that the essentials of dangerous as opposed to careless driving had been established. The Chief Justice clearly explained that to the jury and referred to the parts of the evidence upon which the appellant had placed specific reliance. This had been a short trial with very little disputed evidence. We have no doubt that the jury fully understood the case for the defence.

(iii) *The CCTV evidence*

17 No question arose as to the admissibility of the CCTV evidence. It was plainly admissible. It was brief in duration and, in comparison with other such evidence which sometimes come before the courts, visually clear. Plainly it was important evidence. Mr. Finch's central submission is expressed in this way in his skeleton argument:

> "[W]here there is CCTV footage, it is incumbent upon the court to give a careful direction upon the same, particularly as most traffic accidents will involve horrendous and distressing images regardless of who is to blame, be it one, the other or both. There is a real danger that such images, albeit consistent with and evidence of an accident, regardless of whether careless or dangerous driving is in issue, will be emotionally charged and deflect the jury from making an objective judgment. The Defendant cannot prevent such images from being played in a limited way, but persistent and repeated playing of the footage without any direction or help at all was clearly capable of being highly prejudicial."

18 There had been some difference between Mr. Finch and the Director as to how many times the jury saw the CCTV footage, but the agreed position now seems to be that it was properly adduced by the Crown in evidence and played to the jury at that stage at normal and slowed down speeds. At the end of his summing up the Chief Justice said this:

> "I'm going to anticipate that you may want to watch the CCTV footage again so I'm going to ask that they play it back to you, first of all the normal speed and then frame by frame. If after you have retired you want to see it again, send me a note, bring it here and we'll see it again. Would you like to see it again in normal speed?"

19 The video was thereupon shown to the jury at normal speed and then frame by frame. Although the Chief Justice had told the jury that they could request a further showing in the course of their retirement, that did not eventuate.

20 The footage depicts the collision as seen from petrol station but not from the direction of approach of either vehicle. It clearly shows the appellant driving without hesitation across the line of Mr. Garcia's motorcycle. We do not consider that it was wrong of the Chief Justice to remind the jury of this properly admitted evidence at the point where he did. He had forewarned counsel before commencing the summing up that that was what he proposed to do but Mr. Finch did not articulate a reasoned objection to that course. His reticence was appropriate. There could have been no such objection.

21 The Chief Justice did not comment on the contents of the recording. Mr. Finch submits that the jury was left with the impression that this was the most important evidence in the case, whereas they should have been told that it was just one item of evidence and that they should consider it in the light of all the evidence. A similar submission was made by counsel in *R.* v. *Chapman* (1), but it was rejected by the Court of Appeal in the circumstances of that case, see Aikens, L.J. ([2014] EWCA Crim 1543, at para. 34). Likewise in the present case we do not think Mr. Finch's submission is sustainable. It was a matter for the jury to interpret the video and to use it in their task as they saw fit.

22 It follows from what we have said about the rejection of the submission of no case to answer and about the criticism of the summing up, that we are unpersuaded by the grounds of appeal against conviction and it is therefore dismissed.

Appeal against sentence

23 The Chief Justice imposed the sentence of 4 years' imprisonment on July 12th, 2022. He also ordered that the appellant be disqualified from driving for 6 years from that date. The appellant now appeals against both the sentence of 4 years' imprisonment and the length of the period of disqualification.

1. ***The sentence of imprisonment***

24 The Chief Justice permissibly, indeed correctly, referred to the Guidelines published by the Sentencing Council. He said:

> "Given that this was a single dangerous manoeuvre, the offending falls to be treated as a level 3 offence for which a first time offender pleading not guilty indicates a starting point of 3 years' custody with a sentencing range of 2 to 5 years' custody."

25 He identified one aggravating feature, namely the appellant's bad driving record. At the age of 27 he had attracted convictions for 36 traffic offences including three for dangerous driving (2012, 2015 and 2016) and two for careless driving (2013 and 2019). The Chief Justice said:

> "In my judgment these show that the Defendant has shown a very significant disregard for the safety of other road users. These are not merely historic offences, committed when the Defendant was younger. The most recent was in 2019, less than 2 years before the collision with Mr. Garcia. They are a behaviour pattern, with that attitude to driving it was probably only a matter of time before someone suffered serious injuries or, as in this case, died."

26 As regards mitigating features, reference was made to the appellant's mental health as set out in a report from a psychologist who diagnosed a major depressive disorder. It referred to remorse but the Chief Justice was sceptical about that on the ground that, two months after the offence, the appellant had applied to remove a bail condition which prevented him from driving. A pre-sentence report provided relevant information about the appellant's personal circumstances. At the time of sentencing, he had been in a relationship with his partner (who was pregnant) for two years. We have later material to the effect that she gave birth to a baby boy in August, and that she now has worsening anxiety and depression. She has written a moving letter and there is a supportive reference signed by four of the appellant's workmates.

27 The Chief Justice concluded:

> "In my judgment the very extensive previous convictions for motoring offences, particularly those that I have specifically identified, would indicate a very significant uplift to the sentence from the 3 years' entry point to one of 5 years' custody. That increase must be tempered by the shortcomings in the treatment that Mr. Garcia received at St Bernard's Hospital and by the personal mitigation, including the fact that by entering a plea to the lesser charge the Defendant has acknowledged an element of responsibility. In all the circumstances of this case I impose a sentence of 4 years' custody. No plea having been entered to the count of causing death by dangerous driving, the Defendant is not entitled to a discount."

28 The question for us is: was that sentence manifestly excessive? It is plain that notwithstanding the tragic consequences, the dangerous driving in this case, while lamentable, was not as egregious as that in most examples of this offence. As regards to the Guidelines for a level 3 offence (which the Chief Justice correctly assumed this to be), it is sometimes appropriate to refer to the starting point and range for the most serious levels of causing death by careless driving, namely, a starting point of 15 months and a range of 9 months up to 3 years. Although the appellant fell

to be sentenced for the more serious offence, and by reference to the Guidelines relating to it, it cannot be disputed that the facts of this case, while exceeding those for a careless driving case, were at the lower end of a level 3 dangerous driving case. For this reason it seems to us that the Chief Justice ought to have made a downward adjustment to the starting point of 3 years.

29 The imposed sentence of 4 years was arrived at after adding 2 years by reference to the appellant's bad record for dangerous and careless driving, then deducting a year for mitigating factors. The Chief Justice was correct to increase the sentence because of the appellant's record. However, it is noticeable that his previous convictions for dangerous driving had not attracted sentences more onerous than fines and disqualifications. We consider that a notional increase of two thirds on the starting point of 3 years by reference to the previous convictions was excessive.

30 Sentencing in cases of this sort is always difficult, and we appreciate that, for the family and friends of the person who has died, the sentence will often seem insufficient. Nevertheless it is important that each case is judged in the context of the Guidelines and its own unique features. We have come to the conclusion that, when that is done, the sentence of 4 years was sufficiently excessive to require reduction by this court. We quash it and substitute a sentence of 3 years imprisonment.

2. *Disqualification*

31 The Chief Justice arrived at the disqualification of 6 years by explaining that, but for the sentence of 4 years of imprisonment, the period of disqualification would have been one of 4 years. However, because the appellant would be in custody for the next 2 years, during which disqualification "will not serve its purpose," he arrived at the period of 6 years. He also mentioned that the appellant had already spent some 15 months unable to drive because of his bail conditions. It seems to us that, consistent with the Chief Justice's methodology, now that we have reduced the sentence of imprisonment to 3 years it is appropriate to reduce the period of disqualification to 5½ years. However, there is a further concern. Although the Chief Justice mentioned the 15 months before sentence during which the appellant had been prohibited from driving by his bail conditions, he does not seem to have factored that in to the final computation of the disqualification period, as envisaged in analogous circumstances by *R.* v. *Needham* (3). If he had he would have prescribed a period shorter than 6 years. Having regard to this and all the other circumstances of this case we consider that a substituted sentence of 3 years' imprisonment should be accompanied by a disqualification of 4 years 3 months from July 12th, 2022. In these circumstances, we allow the appeal against sentence to that extent.

Appeal allowed in part.