

1 **IN THE GRAND COURT OF THE CAYMAN ISLANDS**
2 **CRIMINAL SIDE**

3
4 **INDICTMENT NO: 64 of 2020**
5

6
7 **THE QUEEN**

8
9 v.
10



11 **MICHAEL ANTHONY KIRLEW**

12 **Appearances:**

Mr. Greg Walcolm for the Crown

13
14 **Mr. Crister Brady of Brady Attorneys at Law**
15 **for the Defendant**

16
17 **Before:**

Justice Cheryll Richards Q.C.

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20 **Submissions on Sentencing:**

1st March 2021

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23 **Sentence Judgment:**

1st March 2021
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26 **HEADNOTE**

27 *Criminal Law – Careless Driving – Traffic Act - Principles on Sentencing –*
28 *Aggravating and Mitigating Factors.*
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32 **SENTENCE JUDGMENT**

1 1. The defendant, Michael Kirlew, is before the court for sentencing following his guilty
2 plea on indictment 64 of 2020, to the lesser offence of Careless Driving. This plea,
3 which was entered on the 19th of February 2021 is acceptable to the Prosecution. Both
4 defence counsel and prosecuting counsel have advised that the plea is offered and
5 entered on the full facts as set out by the prosecution.

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7 2. The facts are as follows. On the 12th of August, 2019 at the Owen Roberts International
8 Airport in George Town, Grand Cayman, at a time when the airport would have been in
9 its normal and customary state of activity, the defendant was initially seen to park his
10 company motor truck in an unauthorised parking area. This was shortly before 12 noon
11 and thus, in the middle of the day. He was approached and told by a uniformed police
12 officer that he was not to park in that area. Shortly thereafter, he was seen parking in an
13 area reserved for taxi vehicles. He was again approached by a uniformed police officer
14 and told that he did not have documentation which permitted him to park in that area and
15 that he would be ticketed. When spoken to, the defendant attempted to move off. He
16 did so by reversing the motor truck and then turning and driving in the wrong direction
17 on the one-way main airport road. He drove all the way to Andy's Car Rental, in the
18 wrong direction. The Prosecution asserts that in doing so, his driving fell far below the
19 standard of care, to be exercised by a reasonable prudent driver and hence, the charge
20 on the indictment was Dangerous Driving.



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1 3. The Prosecution therefore submits that the plea to careless driving is thus one to Careless
2 Driving at the highest level. It is submitted further that a community service order would
3 be appropriate and the Court is asked to give due regard to the deterrent effect by
4 imposing a period of disqualification.



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6 4. By way of antecedent history, the defendant has no previous traffic convictions recorded
7 against him.

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9 5. Defence counsel on his behalf submitted in response that the full facts are accepted but
10 that there are several mitigating factors which the Court should consider. Firstly, that
11 the defendant has no history of poor driving. Secondly, that he does have a medical
12 history of a stroke which has caused him some medical challenges. Counsel produced
13 documentation which indicated *inter alia*, that on the 4th of February 2019, the defendant
14 was diagnosed, by way of a brain scan, as having a left occipital stroke. He has made a
15 full recovery and is on prescribed medication including blood thinners which are said to
16 keep him stable.

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18 6. Counsel's earnest plea on behalf of the defendant, is that his licence not be suspended
19 for any period. Counsel submits that, should his licence be suspended, he will
20 immediately lose his job, and his health insurance as well, which are much needed, given
21 his health issues.

22
23 Counsel also submitted that, as part of his employment, he is required to drive the
24 company vehicle to transport welding equipment to various sites for various jobs.
25 Counsel was given an opportunity to produce documentation from the defendant's
26 employer in support of this and he has produced a letter dated the 26th of February 2021,
27 from J and R Industrial Services which states as follows:

1 “Mr. Kirlaw's employment commenced with J & R Industrial Services on the 9th day
2 of December 2016 as a welder. I have now been made aware that Michael is before
3 the courts and is at risk of losing his driver's licence. The aim of this letter is to
4 express unequivocally that the loss of his driver's licence would not only place
5 Michael's employment with this firm in serious jeopardy and cause said firm undue
6 hardship, but it would also jeopardize ancillary -- innocent persons whose
7 employment is so closely intertwined. Continuing in an effort to carry out his duties,
8 Michael inter alia is required to drive the company truck to and from multiple
9 locations regularly to effect repairs and collect items. He is in possession of a Group
10 4 drivers licence and is amongst the few that can drive the company vehicle needed
11 for these works. In closing at this time, I am respectfully asking the Court to
12 consider not suspending this licence in consideration, if not for his employment and
13 the benefits he requires due to his existing health issues, then the other employees
14 that it would negatively affect. Should you require any additional information,
15 please do not hesitate to contact the undersigned.”
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17 7. Finally, defence counsel submitted that the defendant is willing to do Community
18 Service despite being employed fulltime, and is also willing to pay a fine, but would
19 need time to pay.

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21 8. Section 77 of the **Traffic Act** provides in ss.1:

22 “A person who drives a vehicle or animal on a road without care and attention, or
23 without reasonable consideration for other persons, commits an offence and is liable
24 on summary conviction to a fine of \$1,000 or to imprisonment for a term of six
25 months or to both.”
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28 9. Sub-section 2 states:

29 “Where a person is convicted of an offence under subsection 1, the court may order
30 that he be disqualified from holding or obtaining a drivers licence for such period
31 not exceeding 12 months as the court may order and the particulars of the conviction
32 shall be endorsed on his driving record.”
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1 10. I have considered all the submissions made in respect of this matter with the greatest
2 care. Having reviewed the facts, it is clear to me that the nature of the driving was
3 appalling. Being and driving on the wrong way on a one-way street. The reasonable
4 inference is that it was deliberately done, rather than being momentary inattention or by
5 accident. There is every indication that it was done to either evade the authorities, that
6 is, the uniformed police officer, or in angry response to being caught by the police and
7 possibly being ticketed.

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9 11. Secondly, what is striking, is the location at which it occurred. This was at the main
10 airport, a place where it might reasonably be expected for there to be vehicular traffic
11 and passengers going to and from the airport building.

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13 12. Thirdly, the timing of the offence. This was in the middle of the day. I take into account
14 the defendant's personal circumstances - all of them as outlined; his health issues, that
15 he has no previous traffic convictions, that he is very contrite and remorseful and that he
16 has pleaded guilty. All of this is significant mitigation which serves to cause me to
17 reduce any sentence initially considered appropriate.

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19 13. Additionally, in considering whether there should be any period of disqualification, I
20 bear in mind the indication of possible hardship, that being, the effect on his
21 employment, the loss of his medical insurance, and, his poor health.

22
23 14. There must however be a balancing of all factors. The elements of sentencing of -
24 punishment and deterrence of such conduct - must both be given some weight in cases
25 such as this.



1 15. In considering the level of hardship likely to result, it is also noted that the letter from
2 his employer does not indicate that the defendant is the only driver available for this task
3 allotted, but that he is one of few.

4
5 16. I had considered starting points of fines \$500.00, Community Service of 120 hours and
6 disqualification in a range of six to eight months. These are reduced in each case to take
7 into account the mitigation detailed, and the personal circumstances of this defendant.

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9 17. Balancing all factors, in my view, the least sentence which would meet the justice of the
10 case and the sentence which is thus imposed is one as follows:

- 11 i. A fine of \$350 or two months imprisonment in default;
- 12 ii. In addition, a sentence of 80 hours of Community Service to be completed
13 in 12 months;
- 14 iii. And he is disqualified from driving or holding a drivers' licence for a period
15 of four months starting from tomorrow, the 2nd of March 2021. His licence
16 is to be endorsed accordingly.
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19 18. That is the sentence of the Court.

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21 19. Mr. Kirlew, I am required by law to advise you in respect of the Community Service
22 Order that if you do not complete the community service as sentenced, you may be
23 brought back before this Court and re-sentenced.
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1 20. Your disqualification starts from tomorrow so that allows you time to drive home today,
2 to complete your preparations to make arrangements for a period of four months, which
3 is the least I can impose on you. So you stop driving from tomorrow.

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5 **Dated this the 1st day of March 2021**

A handwritten signature in blue ink, appearing to be 'Cheryll Richards', written in a cursive style.

6

7 **Honourable Justice Cheryll Richards Q.C.**
8 **Judge of the Grand Court**