

1 IN THE GRAND COURT OF THE CAYMAN ISLANDS  
2 CRIMINAL SIDE  
3

4 INDICTMENT NO: 0059/2017  
5

6 THE QUEEN  
7

8 v.  
9

10 ANTHONY WESLEY SCOTT JR.  
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14 **Appearances:**

Mr. Greg Walcolm for the Crown

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16 Mr. Crister Brady of BRADY for the  
17 Defendant

18 **Before:**

Justice Marlene Carter (Actg.)

19 **Sentence Hearing:**

14<sup>TH</sup> December 2017

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21 **Delivery of Decision:**

11<sup>th</sup> January 2018  
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24 **HEADNOTE**

25 *Criminal Law – Death by Careless Diving – Sentence – Careless and*  
26 *inconsiderate driving arising from momentary inattention with no aggravating*  
27 *factors - Starting point –Mitigating Factors.*  
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31 **SENTENCE JUDGMENT**  
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- 1        1.        The defendant has pleaded guilty to the offence of Causing Death by Careless Driving  
2                contrary to s.79 of the *Traffic Law* 2011.
  
- 3        2.        The facts related to this plea arise out of a single motor vehicle collision which  
4                occurred on the 30<sup>th</sup> June 2016 at approximately 4:50 p.m. along Shamrock Road in the  
5                vicinity of the Spotts Dock. The Defendant was the driver of a white 1997 Toyota  
6                Tercel motor vehicle – registration number 65504 – registered to Allisson Smith but  
7                owned by the deceased, Thomas Hubbell. The deceased was seated in the front  
8                passenger seat. The deceased and the defendant were co-workers and were travelling  
9                from work towards George Town at an average speed of 40 mph. The vehicle was  
10               being driven in the lane further to the right, and was behind another vehicle. The  
11               vehicle ahead of the defendant slowed down whilst indicating to turn right, at which  
12               point the defendant swerved to the left to avoid colliding with the rear of that vehicle  
13               and, in doing so, veered off the road and collided with a utility pole on the left soft  
14               shoulder of the road.
  
- 15       3.        The Defendant was driving too close to the vehicle ahead of him (tail-gating) or was  
16               not paying sufficient attention to allow for the execution of the appropriate  
17               manoeuvre(s) in the circumstances which presented themselves, and, thereby, caused  
18               the collision.
  
- 19       4.        The Defendant and the deceased were trapped in the Toyota Tercel. They were  
20               eventually freed from the vehicle with the assistance of the emergency services. The  
21               deceased suffered severe head injuries and was in a vegetative state from the time he  
22               was admitted into the hospital shortly after the accident up until the time of his death  
23               on the 12<sup>th</sup> June 2017.

1 5. The defendant also sustained serious injuries as a result of the accident, including  
2 broken ribs, a collapsed lung and a fractured pelvic bone.

3 ***Reports and Mitigation***

4 6. The Social Inquiry Report (SIR) notes that the defendant had a somewhat difficult  
5 childhood and, especially during his teenage years, he became known to the  
6 Department of Children and Family Services (DCFS). The report details that it was  
7 during one of the periods where he had been placed at Eagle House, and, soon after the  
8 death of his mother, that the defendant determined to change his lifestyle. During the  
9 period 2010 to present, it appears that the Defendant has not had any adverse  
10 interactions with the law and has maintained employment and begun a family.

11 7. With regard to the Defendant's attitude to this offence, the Social Worker notes that the  
12 defendant still finds it difficult to speak about topics concerning the deceased. His  
13 counsel notes that:

14 *"It is with some force that it is submitted that the defendant has truly been affected*  
15 *by the death of Mr. Hubbell who was his co-worker and close friend, and upon*  
16 *whose permission the vehicle was being driven by the defendant. The memories of*  
17 *the accident, the sense of personal responsibility and guilt has worn heavily on the*  
18 *defendant's young shoulders. The SIR speaks to his crying when the incident and*  
19 *the victim's name is mentioned. It appears that he is in need of counselling to*  
20 *process his grief and pain at his involvement in the death of one who was*  
21 *described as being very close to him. Even while taking instructions, this counsel*  
22 *couldn't help but observe the emotional upset and tearfulness that accommodated*  
23 *the interactions. It is indeed difficult not to conclude that the defendant is truly*  
24 *remorseful."*



1 8. The Social Worker recommends that the defendant could benefit from rehabilitative  
2 services. His counsel has urged this court to have in mind the defendant's present  
3 stable family and work circumstances and especially his responsibilities to his young  
4 daughter.

5 *The Law*

6 9. Section 76(3) of the *Traffic Law* provides that the maximum sentence for Causing  
7 Death by Careless Driving is a fine of 10,000 dollars or 7 years' imprisonment or both,  
8 and an automatic disqualification from holding or obtaining a drivers' licence for at  
9 least three years, to run from the expiration of the prison sentence, and also an  
10 endorsement on the defendant's driving record.

11 10. The Court has been referred to the *Definitive Guidelines - UK Sentencing Guidelines*  
12 *Counsel* – Causing Death by Driving. In the UK the maximum sentence is 5 years'  
13 imprisonment. These guidelines have been utilized by the Courts in the Cayman  
14 Islands as useful guidance in assessing the appropriate sentence to be imposed. I note  
15 that the Guidelines are in respect of a “first-time offender who has been convicted after  
16 trial.”

17 *The Aggravating Factors*

18 11. The Crown identified two aggravating factors in this case:

- 19 i. the defendant's previous conviction for motoring offences;
- 20 ii. the defendant was driving the vehicle whilst its registration had been expired.
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*Mitigating Factors*

- 12. The mitigating factors are:
  - i. The deceased was a close friend of the defendant;
  - ii. The defendant’s early guilty plea;
  - iii. Personal mitigation of the defendant;
  - iv. Offender was seriously injured in the collision.



*Sentence*

13. The difficulty in arriving at an appropriate sentence in circumstances such as this case where a moment of inattention can cause such catastrophic damage – not only due to the loss of life of the deceased, but also the grief for families and relatives of deceased and also the defendant’s grief – has been recognized by Jurists everywhere.

14. In *R v Wen Zhou*<sup>1</sup> Justice Inman expressed it thus:

*“Sentencing for an offence such as this provides a very difficult task. The difficulty arises from the fact that whilst in many offences the culpability of the offender and the harm he causes bear some degree of proportion, in this offence the degree of culpability may have no such correlation to the harm actually caused...it was an error for which the appellant will carry the responsibility for the rest of his life. It was an error committed in a matter of a second...”*



<sup>1</sup> [2013] EWCA Crim. 1060 – paragraphs 5 and 8

1 15. Counsel for the Crown and for the Defendant have also referred me to various other  
2 UK and local authorities especially *R v Prakash Odedara*<sup>2</sup>; *R v Larke*<sup>3</sup>; *R v Fitzroy*  
3 *Marvin Roache*<sup>4</sup> and *R v Tibbetts*<sup>5</sup>. These have been useful and I am grateful to  
4 counsel.

5 16. The Crown submits that this case falls within the second category for this offence  
6 under the *UK Sentencing Guidelines Council* – Causing Death by Driving –  
7 Definitive Guidelines (“the Guidelines”) of, “other cases of careless and inconsiderate  
8 driving” with a starting point of 36 weeks’ imprisonment and a sentencing range of  
9 High Community Order to 2 years’ imprisonment. This assessment is based on the  
10 two aggravating factors identified above.

11 17. Crown counsel conceded that since the previous conviction to which he referred had  
12 taken place in 2009 when the defendant was 15 years old, it would now be considered  
13 spent. I do not take that conviction into account.

14 18. Additionally, with regard to the driving with expired registration, it is not disputed that  
15 the vehicle involved in the collision was not the defendant’s vehicle and that he was  
16 driving with the permission of the deceased. Even if one were to consider this an  
17 aggravating factor, it would not have the greatest sway in the circumstances of this  
18 case.

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<sup>2</sup> [2009] EWCA Crim. 2828

<sup>3</sup> [2009] EWCA Crim. 870

<sup>4</sup> Ind. 20/2013. Sentence Judgment of Malcolm J (Actg.) delivered 15<sup>th</sup> March 2016

<sup>5</sup> Ind. 71/2015. Sentence Judgment of Dobbs J (Actg.) delivered on the 16<sup>th</sup> December 2016



1       19.     Having also considered the mitigating factors identified above, I will treat the offence  
2             as falling within that third category under the Guidelines of “careless and inconsiderate  
3             driving arising from momentary inattention with no aggravating factors.” The starting  
4             point is of a Medium Community Order with a sentencing range of a Low Community  
5             Order to a High Community Order.

6       20.     I bear in mind the difference in maximum sentences between the Cayman Islands and  
7             the UK and that a necessary upward adjustment may be required. I note here too that  
8             the Guidelines recognize that:

9                             *“Where the level of carelessness is low and there are no aggravating factors, even*  
10                            *the fact that death was caused, is not sufficient to justify a prison sentence.”*

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12       21.     The defendant has entered a guilty plea at the earliest opportunity and I will give the  
13             maximum discount for that guilty plea.

14       22.     I do have some concerns arising from the SIR as to the defendant’s compliance with a  
15             community-based order. It is accepted that the defendant has breached a previous  
16             Probation Order due to non-attendance. However, I will accept the explanation of  
17             counsel for the defendant that that was, in large measure, due to his attendance at work.

18       23.     The sentence of this court, having taken all of the matters above into account, is as  
19             follows:

20             i.    The Defendant will be placed on a Probation Order. This order will be for two  
21             years’ duration.



1           ii. For the two years on Probation the defendant will be required to attend at and  
2           complete all courses as deemed necessary by the Department of Community  
3           Rehabilitation (DCR).

4           iii. Pursuant to s.79(3) of the *Traffic Law* the defendant is disqualified from holding a  
5           drivers' licence for three years from today's date.

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**Dated this the 11<sup>th</sup> day of January 2018**



A handwritten signature in blue ink, appearing to read "Carter J.", with a horizontal line underneath.

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**Carter J (Actg.)  
Acting Judge of the Grand Court**