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IN THE COURT OF APPEAL OF THE CAYMAN ISLANDS

CRIMINAL APPEAL NO. 1/2008

(Ind.67/06)

(C # 1774/06 [1-2])

BETWEEN

DWAYNE BRUCE CAYASSO,

RESPONDENT

AND

HER MAJESTY THE QUEEN

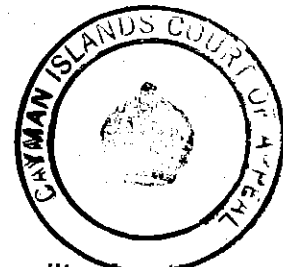
APPELLANT

BEFORE: THE RT. HON. MR. JUSTICE ZACCA PRESIDENT  
THE HON MR. JUSTICE FORTE, J.A.  
THE HON MR. JUSTICE MOTTLEY J.A.

Appearances: Ms. N. Moore for the appellant.  
Mr. D. McGrath (Samson & McGrath) for the respondent.

HEARD: 28<sup>th</sup> March, 2008. Delivered: 14<sup>th</sup> August, 2008.

PRESIDENT



Reasons for Judgment

1. The respondent was convicted on his plea of guilty for the offence of causing death by dangerous driving. He was sentenced on January 14, 2008, to two (2) years

imprisonment which was suspended for three (3) years and disqualified from driving for five (5) years. S. 72(1) of the Traffic Law (2003 Revision) prescribes a maximum of ten (10) years imprisonment and five (5) years disqualification from driving.

2. On September 10, 2005, sometime after 11p.m., the appellant was travelling west along Shamrock Road from Bodden Town towards George Town. He was driving a 1996 Chevrolet 1500 pick-up truck which belonged to his grandfather James Piercey. Prior to this the appellant had been to the Everglow bar along with Gregory Rankine, who was a front seat passenger. They were going to Rankine's home.
3. At a bend in the road the respondent lost control of the truck. The front of his vehicle collided with the rear of a Toyota Tercel Car which was travelling in the same direction. The impact with the Toyota caused the Chevrolet truck to swerve across and off Shamrock Road. The truck then went through some bushes and into the garden and the front of a house, number 2788. The truck sustained major damage

and the house was also damaged. The appellant was wearing his seat belt but his passenger, Rankine, was not. The police arrived on the scene. Both were transported to the George Town Hospital. Rankine died in the early morning of September 11, 2005. The appellant who sustained injuries was treated at the hospital.

4. Blood was taken from the respondent and analyzed to ascertain the alcohol level in his blood. The analysis showed a blood alcohol of 136-143 milligrams per 100 milliliters of blood. The legal limit is 100.
5. The basis for the respondent's guilty plea was that he was driving at an excessive speed having consumed alcohol and that his driving was adversely affected by his intake of alcohol. It was conceded by the appellant that he was driving dangerously, that his blood in alcohol level was as precisely stated and that he was driving too fast.
6. At the outset of the hearing, it was conceded by counsel for the Crown and Mr. McGrath for the respondent, that the Court had no power to suspend a sentence of imprisonment.

The Penal Code (2007 Revision) provides in s. 22 (5) the following:-

“s. 22(5) The power to suspend a sentence conferred by subsection (4) may not be exercised in respect of a sentence for any offence against –

(a) section 180; or

(b) the Traffic Law (2003 Revision) save offences contravening section 78(1) or 110 thereof”.

The offence of causing death by dangerous driving is provided for in section 67(1) of the Traffic Law (2003 Revision).

It is clear therefore that the Grand Court had no power to suspend a sentence of imprisonment on a charge of causing death by dangerous driving.

The Court was informed that this provision of the Penal Code was not brought to the attention of the trial Judge. Both counsel seemed unaware of the provision.

7. In sentencing the respondent, the trial judge took into account his guilty plea, his excellent character references,

his clear record, his age and the fact that it was his friend who was killed.

8. In **Terry v R**, 2002 CILR this Court reduced a sentence of two (2) years imprisonment to twelve (12) months. This was a guilty plea to causing death by dangerous driving. He was found to be driving at an excessive speed. His blood alcohol was 107 milligrams of blood, which is slightly over the legal limit of 100 milligrams. In reducing the sentence this Court held that the reading of the blood alcohol was so minimally over the prescribed limit, that it ought not to have been a relevant factor in considering the aggravating factors to be taken into account in the sentencing process.

9. At page five of the judgment the Court stated:

“At the outset we wish to state that a custodial sentence is the appropriate one for the offence for which the appellant pleaded guilty. There would have to be exceptional circumstances for a non custodial sentence to be imposed.”

It is not being suggested that there are any exceptional circumstances in the case now before the Court.

**R v Mohammed** [2000] CILR 400.

10. **Rivers v R** [1988-89] CILR 77 was a case of causing death by dangerous driving. After a guilty plea and considering his youthful age, his lack of previous convictions, his steady employment and good character, the Grand Court sentenced him to 18 months imprisonment and disqualified him from holding a driver's licence for 6 years. This sentence was upheld by this Court. The Court made reference to the guidelines in **R v Guilfoyle** which were applied in **R v Boswell** [1984] 1 W.L.R. In that case at page 1052 the Court stated:-

"The situation where there are no aggravating features present is that, so far as sentencing is concerned, a non custodial penalty may well be appropriate, but where aggravating features, or an aggravating feature is present then a custodial sentence is generally necessary.

At present, as already indicated, the statistics seem to show that the general maximum term is about 12 to 18 months as imposed by the Courts. It is not easy to see why this should be so."

Georges J.A. having referred to the above quote, stated at page 80.

“Clearly the facts of this case fall within the category of that requiring a custodial sentence.”

At page 81:

“In **R v Boswell** the Court indicated that in “bar cases” where a defendant had driven with reckless disregard for others after taking alcohol he should expect to lose his liberty “for two years” or more.”

At page 82:

“We are understandably concerned that a young man who has been so well recommended should have to undergo a punishment which is clearly severe. But deterrent sentences are necessary if the problem of death on the road is to be effectively addressed.”

This Court reaffirms and adopts the guidelines for sentencing in

**R v Boswell.**

11. In **R v Cooksley** [2003] EWCA Crim. 996, the Court set out guidelines as to sentencing for causing death by dangerous driving. The Court stated that in cases of causing death by dangerous driving a custodial sentence would normally be imposed, no matter what the mitigating circumstances, because of the need to deter other drivers from driving dangerously and because of the gravity of the offence. The

Court then set out sixteen heads generally about sentencing for the offence. The Court then stated:

"For adult offenders, four starting points for sentences for causing death by dangerous driving were set -

- (i) in cases in which no aggravating features were present a short custodial sentence of between 12 and 18 months imprisonment, a custodial sentence only being avoidable if there were exceptional mitigating features in the cases;
- (ii) the offences involving a momentary dangerous error of judgment or short period of bad driving that was aggravated by a habitually unacceptable standard of driving on the part of the defendant namely the presence of, one or more of the aggravating factors listed in heads (10) to (16) above, a custodial sentence of between two and three years, but in certain circumstances five years imprisonment could be appropriate due to the aggravating features listed in heads (10) to (16) above;
- (iii) in cases where the standard of the defendant's driving was more highly dangerous, a custodial sentence of between four and five years imprisonment, indicating the presence of two or more of the aggravating features listed in (i) to (9) above; and (iv) in cases

involving extremely high level of culpability on the defendant's part, indicating three or more of the aggravating features named in (i) to (9) above, a custodial sentence of six years imprisonment. A maximum sentence of ten years could be reserved for the most serious cases."

12. In the present case the learned trial judge considered that a sentence of two years was appropriate. She however, proceeded to suspend the sentence. Having regard to the facts of this case, but for the suspended sentence, the Court would not have interfered with the sentence of two years.

We are of the view that the guidelines in the cases referred to above should be adopted by the Grand Court in Cayman.

13. We are satisfied that a custodial sentence is the appropriate one for the offence for which the respondent pleaded guilty. There would have to be exceptional circumstances for a non custodial sentence to be imposed.

14. Taking into account the issue of double jeopardy where the respondent was told that he would not have to serve a custodial sentence by reason of a suspended sentence and having been released, and now having to be taken into

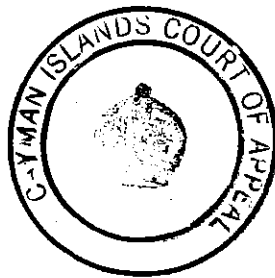
custody, the Court was of the view that a sentence of 12 months imprisonment would be substituted. The Court so ordered in allowing the appeal against the sentence. The disqualification remains.

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Zacca, P.

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Forte, J.A.



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Mottley, J.A.