

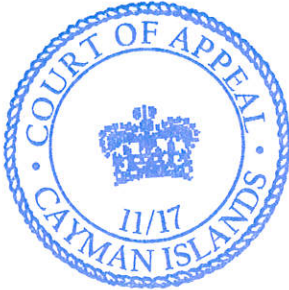
IN THE CAYMAN ISLANDS COURT OF APPEAL

CRIMINAL APPEAL 4/2018

IND.48/2016

SC#02198/2016

BETWEEN:



Anastasia Watson

Appellant

- and -

HER MAJESTY THE QUEEN

Respondent

BEFORE: **The Rt. Hon Sir John Goldring, President**
 The Hon John Martin QC, Justice of Appeal
 The Hon Sir George Newman, Justice of Appeal

Date of Hearing: **Tuesday, 24th April 2018**

Appearances: **Ms. Amelia Fosuhene of Brady Law for the Appellant**
 Mr. Scott Wainwright of DPP for the Respondent

JUDGMENT

Revised from transcript of oral judgment 24th April 2018 and Approved
Released 15 August 2018

NEWMAN, J.A.:

1. On the 15th of April, 2015 shortly before 12:30 a.m. this appellant, who now appeals against the sentence imposed by the Court, was driving a BMW car in an easterly direction along Point Drive in the direction of Frank Sound Road. She was in the vehicle with her friend, Kimberley Bush. At a point on that road, with which she was familiar,

there is a left-hand bend. When the appellant lost control of her vehicle, she left the road, struck a road sign, then a concrete wall and a pillar. Miss Bush died almost immediately on impact.

2. The police arrived and the appellant was seated on the ground near the crashed car. She told police officers that she did not know what had happened and she believed she may have blacked out. She was tested but alcohol was not a factor.
3. The factors in the case are that the speed limit on that road was 50 miles an hour. An expert was able to calculate speed of the vehicle on the point of impact and in round terms it was 80 miles an hour. The car was also in third gear.
4. The prosecution expert indicated that the maximum speed at which the bend could properly be negotiated, again in round terms, was a little less than 70 miles an hour.
5. The learned judge sentenced this appellant to 12 months' imprisonment and disqualified her for a period of three years.
6. The case really turns on whether the learned judge gave the appellant sufficient credit for what can be described as the "*very impressive personal mitigation*" which was placed before the Court. It has been added to by material put before this Court.
7. Ms. Fosuhene recognises that in order to succeed on this appeal she must persuade the Court the sentence was manifestly excessive and that the court will not "*tinker*" with the sentence.
8. The route the judge took to setting the sentence at twelve months can be seen from his sentencing remarks. He took the period of 21 months under the Sentencing Guidelines as the starting point. Since there was a plea of guilty entered at the earliest possible opportunity he gave full discount for that. The mathematics, not precise, but as best as one can do, indicates that having given that discount, one reaches a sentence, if no more

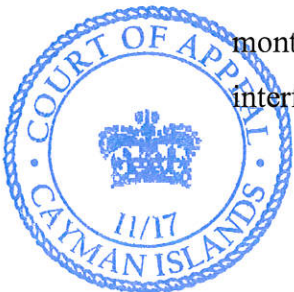


is to be considered, of 14 months. As we have already said, the sentence he imposed was 12 months.

9. The major point which arises is whether the personal mitigation was adequately catered for by a reduction of two months. It has been faintly suggested on behalf of the appellant that this was not a case of driving at a speed which was not far short of a dangerous driving case.
10. This court has no doubt that driving on a stretch of road with a 50-mile an hour speed limit upon it and going round a bend at a speed which leaves you on contact at crash point at a speed of 80 miles an hour, constitutes driving which is not only way above the speed limit but is also highly inappropriate to the conditions of the road and was therefore "*really close to*", as the judge said, "*a dangerous driving case*".
11. The suggestion, again faintly suggested and rejected by the judge, was the black out suggestion. We do not ourselves have difficulty in believing that the appellant might have thought at the scene and said something to that effect but it is inviting the Court to speculate to an unacceptable degree to conclude that she suffered a black out. There was no medical evidence to support it.
12. Thus the two principal grounds urged before the judge, but only faintly urged here, did not find much favour. But what then of the personal mitigation? The personal mitigation can be sourced from a social enquiry report. It disclosed a troubled past but it also made clear that there had been massive progress and commitment not just to her employment which, as it happens, is in a garage, but it also spoke of something which is evidenced by the material we have, namely that she has reached out to help those who have not had much good fortune and who need help from someone like her to rehabilitate them and help them.
13. It is, of course, a sad case, as all these cases are, when a death occurs by reason of bad driving but there can be no doubt that the appellant has shown genuine remorse for what has happened.



14. It seems to the court that the character of the appellant is well borne out by the written note she presented to the sentencing Court. She not only stated that she wished to express deep remorse for the incident and went on to express the pain that she had suffered for someone she was fond of, but she also frankly recognised that the family of the deceased had suffered a great loss and that there must be great pain, as a result, in their lives and having to come to terms with the fact that Miss Bush had died. But more importantly, it seems to us, for today's purposes, she recites in this note to the judge: "*I accept the responsibility that I had for Kimberley whilst she was in my vehicle. I'm ready to take the consequences of this tragic accident*". And she repeats the acceptance that she must take the consequences for what she did. It is significant to us because it bears out the character of the personal mitigation is, namely what she's done in her life since the troubled difficult earlier days by caring for others.
15. Thus, coming back to the point which arises, we must ask whether the period of two months is sufficient recognition on the part of the Court for someone of this character, who has accepted responsibility with such openness and has taken such steps in her life as a young person to make a go of her life?
16. According to the law as it is at the present, the Court has no real amplitude of power to reflect what could be an appropriate result in case such as this. We do not say that it would be appropriate in this case but if it were available, the court could have given consideration to whether justice could be reflected by way of suspension. We are bound to say that there are reasons why this area of sentencing and the legislation which governs it call out for attention, but, given the catastrophic circumstances, a period of imprisonment under the law as at present, is inevitably appropriate and necessary.
17. In our judgment, the judge did not give sufficient credit for this appellant's personality, for her character and for her lifestyle as it was before this tragic accident occurred. Two months was too little. The Court does not tinker and needs to be persuaded that if it is to interfere it can do so in a way which is significant.



18. In our judgment, the appropriate sentence of imprisonment for this offence in all the circumstances of the case is that she should serve nine months in prison. The appeal is successful to that extent.

