Neutral Citation no. [2007] NICA 41 | *Ref:* **KERF5960**

Judgment: approved by the Court for handing down | *Delivered:* **26/10/07**
*(subject to editorial corrections)**

IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

THE QUEEN

v

THOMAS ANTHONY McCARTNEY

Before Kerr LCJ and Higgins LJ

KERR LCJ

Introduction

[1] Leave having been granted by the single judge, this is an appeal against sentences imposed by His Honour Judge Lynch QC at Belfast Crown Court on 30 March 2007. The appellant had pleaded guilty on 15 December 2006 to the following charges: -

> (a) two counts of causing death by dangerous driving contrary to Article 9 of the Road Traffic (Northern Ireland) Order 1995 in that on 18 December 2005 he caused the death of Jamie Lee Rooney and Paul McCrory by dangerous driving on the Falls Road, Belfast.
>
> (b) six counts of causing grievous bodily injury by dangerous driving contrary to Article 9 of the Road Traffic (Northern Ireland) Order 1995 namely to Thomas White, Conor Lewsley, Charles Harmon, Roy Keenan, Liam Garland and Joseph Garland all on 18 December 2005 on the Falls Road, Belfast.

(c) one count of having no insurance contrary to Article 90 of the Road Traffic (Northern Ireland) Order 1981.

[2] Mr McCartney was sentenced to a custody probation order comprising nine years' imprisonment and one year's probation on each of the dangerous driving charges. These sentences were ordered to run concurrently. It was ordered that he be disqualified from driving, holding or obtaining a driving licence for 20 years. He was fined £100 on the no insurance charge. The appeal is against the sentences imposed on the dangerous driving charges.

[3] The grounds of appeal can be summarised as follows: -

1. Insufficient credit was given for the appellant's early plea of guilty and sincere remorse.

2. The judge failed to have adequate regard to the contents of the pre-sentence report and other expert medical evidence.

3. Although the judge was correct to identify this as a case of the most serious culpability – (per *Attorney General's Reference 2, 6, 7 and 8 of 2003* [2003] NICA 28 following the approach *R v Cooksley and others* [2003] EWCA Crim 996) - he failed to have sufficient regard to the absence of a number of recognised aggravating features.

4. The judge failed to take sufficiently into account the following factors: -

(a) The view of the experts that a custodial sentence would have a considerable impact on the emotional and psychological wellbeing of the appellant;

(b) The fact that the appellant was seriously injured as a result of the accident caused by his dangerous driving; and

(c) The fact that in the post release period the appellant would require considerably greater assistance to engage in the form of statutory supervision directed because his cognitive function had deteriorated seriously.

[4] The single judge refused leave on all of these grounds but, in light of the fact that, since the decision in *Attorney General's Reference 2, 6, 7 and 8 of 2003*, the maximum penalty for the dangerous driving offences has been increased and that an equivalent increase in England and Wales has been considered by the Court of Appeal in that jurisdiction in *R v. Richardson* [2006] EWCA 3186, he considered it appropriate to grant leave so that the effect of the increase in the penalty and the relevance of the decision in *Richardson* could be considered by this court.

[5] Although the decision of the single judge has much to commend it as a pragmatic means of giving this court the opportunity to consider the change in the legislation, the grant of leave gives rise to something of a technical anomaly. Leave was refused on all of the grounds advanced by the applicant and was 'granted' on a ground that was not included in the Notice of Appeal. In the event, the applicant has unsurprisingly not sought to argue that the decision in *Richardson* should be followed. While it has been useful to have the chance to deal with the new conditions in which the proper sentence for dangerous driving causing death or grievous bodily injury should be chosen, we believe that generally leave to appeal should not be granted on a ground that has not been sought by the applicant.

Background

[6] Mr McCartney is now aged twenty five, his date of birth being 18 September 1982. On Sunday 18 December 2005 at approximately 2am he was driving his car on the Falls Road in Belfast. His cousin, Jamie Lee Rooney, aged 15 was the front seat passenger. Three young men were in the rear seat. They were Conor Lewsley aged 23, Paul McCrory aged 22 and Thomas White aged 23. Several witnesses noticed the applicant's vehicle and described it as travelling a high speed; some estimated this to be around 60 to 70 miles per hour or more. One witness described the vehicle as veering from lane to lane. As it approached a corner just after the junction of the Falls Road with Whiterock Road, the appellant lost control of his car. It veered across the road and collided heavily with a Mercedes taxi which had been travelling in the opposite direction. The Mercedes was driven by Charles Harmon. It had five passengers, Roy Keenan in the front seat and Joseph Garland, Liam Garland, Patrick Brophy and Stephen Green in the back seat.

[7] An account of what happened before the collision has been provided by Conor Lewsley. He was a friend of Paul McCrory and they had gone together to a football team event at St Paul's club on Shaw's Road, Belfast on the evening of 17 December 2005. Mr McCrory played football in a Sunday League and his team's Christmas dinner had been held in the club that evening. After the dinner, Mr Lewsley and Mr McCrory went to Caffrey's Bar on the Falls Road. There they met the appellant and Thomas White. The appellant left their company for a period but, at closing time, he returned

with his cousin, Jamie Lee Rooney. He offered Conor Lewsley and Paul McCrory a lift home and they and Thomas White accepted. On the journey an argument developed between Jamie Lee and the appellant that led to him telling her on two occasions to get out of the car. She refused. Mr McCartney became annoyed at this. He shouted at her and accelerated the car. Mr Lewsley described how it travelled faster and faster, veering on occasions onto the wrong side of the road. He estimated that at various times the car was travelling at 90 miles per hour. It was driven on to the wrong side of a central island. All the passengers were screaming at the appellant to slow down and stop the car. He ignored them. Indeed, he deliberately steered the car on to the wrong side of the road when there was absolutely no need to do so. He travelled through a roundabout on the wrong side and straddled the centre of it before finally colliding with the taxi.

[8] After the collision the police and emergency services were quickly on the scene. It was discovered that a number of the occupants of both cars had been severely injured. Several casualties had to be cut from the wreckage. A passer-by, Brian Anderson, was first to arrive at the appellant's car. None of the occupants was moving. In a poignant and desperately sad part of his statement to the police, he described how, as he leant forward to feel for a pulse on the driver, Jamie Lee Rooney caught hold of his thumb and he remained in that position while she continued to grasp his thumb as her life ebbed away. It appears that she died at the scene. Paul Macrory was thought at first not to have sustained life threatening injuries but he died after being taken to hospital. The cause of his death was a rupture of his main artery. Conor Lewsley sustained internal injuries which required surgery to remove his spleen. He also suffered fractures of his ribs. His general medical practitioner has provided a report in which he records that Mr Lewsley still suffers from depression, anxiety, neck, back and leg pain and stiffness. Thomas White suffered a dislocation of the left hip which required surgery and further treatment. He is at risk of the development of early osteoarthritis.

[9] The taxi driver, Charles Harmon, sustained a fracture to the pelvis which required treatment by traction. Liam Garland suffered head injuries and was unconscious on admission to hospital with a small blood clot on the surface of the brain. Happily, this resolved. He also sustained a fracture to the left wrist which required to be wired. Joseph Garland suffered a fracture of the fibula. Stephen Green sustained injuries to his arm and whiplash to the neck and back. Patrick Brophy suffered fractured ribs and bruising. Roy Keenan sustained a fractured dislocation of the left hip and a tear to the descending thoracic aorta which required urgent surgery including partial left heart by pass and admission to the high dependency unit. He then relapsed with a collapsed lung and pulmonary embolism which required admission to intensive care on a ventilator for five days.

[10] An issue arose on the hearing of the appeal about whether Mr McCartney had been drinking on the night of the collision. Judge Lynch discussed the possibility that drink had played a part in causing the appellant to drive as he did but said that there was no evidence that his judgement had been affected by drink or drugs. It is certainly the case, however, that he had taken some drink, as the judge acknowledged. A sample of blood was taken from the appellant at 2.10pm on 18 December 2005, some twelve hours after the collision. It was submitted to Forensic Science. On analysis it was found to contain not less than five milligrams of alcohol per one hundred millilitres of blood. Because the sample had been taken after Mr McCartney had received a blood transfusion, the authorised analyst advised that the blood alcohol level might not be the same as that of blood taken before the transfusion. Two observations may be made about this evidence. Firstly, if the transfusion affected the alcohol level, it can presumably have only done so by diluting it. Secondly, the alcohol level must have reduced considerably during the twelve hours that had elapsed from the time of the collision. This is not therefore a case in which the appellant can assert that he was not affected by alcohol. At best the evidence in relation to this is equivocal.

Previous convictions

[11] The appellant has a number of relevant previous convictions. On 14 December 2000 he was fined and disqualified from driving for 12 months for having no insurance and no driving licence. In July 2001 he was further disqualified from driving for a total period of 18 months and fined on charges of driving having consumed excess alcohol, driving while disqualified, having no insurance and no vehicle test certificate. In September 2001 he received a further period of disqualification from driving and fines for having no driving licence, no insurance and no vehicle test certificate. One other conviction was for theft in July 2003 for which he received a community service order. His plea of guilty before Judge Lynch to the offence of not having insurance means that he has now been convicted of this offence no fewer than four times. This alone is a measure of his gross irresponsibility.

Pre sentence reports

[12] A report dated 30 January 2007 was prepared by a probation officer. At that time Mr McCartney was living with his grandmother in Twinbrook, County Antrim and he was unemployed. His mother, brother and sisters lived in Ballymurphy in Belfast. He reported that he was unable to live with them as he had received threats because of the offences involved in this appeal.

[13] The probation officer reported that the appellant had been seriously injured in the collision and had been hospitalised for several weeks. He suffered two punctured lungs, lacerations to the liver and other internal

injuries which required removal of his spleen. He had also sustained head injuries which have caused memory loss and mood swings. At the time of the report the appellant was on antidepressant medication having spent a three week period in the Mater Hospital psychiatric unit following suicide attempts. He told the probation officer that these attempts had been made because he felt unable to live with the knowledge that he had been responsible for the death of his young cousin and his friend. He said that he had little recall of the events leading up to the collision or the collision itself due to his head injuries but still felt guilty and responsible. He continued to suffer from headaches and had great difficulty in sleeping.

[14] The appellant has no formal qualifications but had worked from time to time first as a trainee welder and latterly in various restaurants. At the time of the offence he had been employed as a chef. He has a five year old son with a long term girlfriend and claimed to have regular contact with the child.

[15] A report prepared jointly by Dr Colin Wilson, consultant clinical neuropsychologist, and Judith McCune, occupational therapist, of the Regional Brain Injury Unit recorded that nine months after the collision the appellant was still suffering reduced speed of processing, severe memory and learning problems and marked attention difficulties. He also had heightened anxiety and persistent feelings that life was not worth living. Dr Loughrey, a consultant psychiatrist, reported that there was no evidence that Mr McCartney had suffered any psychiatric illness before the incident. His current problems stemmed from his adjustment to his physical injuries and his reaction to the consequences that the collision had had on others.

[16] Dr Carol Weir, a clinical psychologist, provided a substantial report on the appellant which we have considered carefully. She found that he was unable to express himself well and had low intellectual ability. He suffered from very marked memory impairment as the result of his injuries. Dr Weir remarked that "his remorse and guilt … [are] very apparent and from his demeanour and facial expressions I consider [them] to be genuine". She reported that the appellant's long term girlfriend had ended their relationship two months after the incident and that he had been ostracised by other members of the family and local community and had received threats.

[17] In Dr Weir's view, as a result of the accident the appellant has suffered anxiety and depression with some features of post traumatic stress disorder including flash backs, poor sleep and aggressive outbursts. He was found to be very aggressive while in the Mater Hospital psychiatric unit following the suicide attempts referred to earlier. In October 2006 he attempted to hang himself and then to cut his wrists.

[18] Dr Weir considered there was evidence before the collision that he was impulsive and hyper active. He left school with poor basic educational skills

but managed to obtain employment and had several jobs. He also engaged in a number of hobbies such as fishing and boxing. He had maintained a stable relationship with his girlfriend and son. Post accident his cognitive function had seriously deteriorated, especially his memory. Dr Weir concluded that he was "emotionally vulnerable" and would require dedicated post head injury rehabilitation work which had not been commenced when she assessed him.

Victim impact reports

[19] The mothers of Jamie Lee Rooney and Paul McCrory submitted letters to the court and these were considered by the sentencing judge. They are heart rending documents, detailing the despair of their families at the death of these young people. It is clear that both were talented, fine examples of their generation, devoted to their parents and siblings. The loss suffered by their families is incalculable. The devastation that they have suffered, the constant sense of loss that they will experience cannot be assuaged by any sentence imposed on the appellant but it must not be left out of account in the sentencing exercise.

Sentencing considerations

[20] An extensive analysis of sentencing for this type of offence is to be found in the judgment of this court *Attorney General's References 2, 6, 7, and 8 of 2003*. The court followed the approach advocated by the Sentencing Advisory Panel and adopted in England & Wales by the Court of Appeal in *Cooksley*. At paragraph [11] *et seq*. Carswell LCJ set out the guidelines to be followed in cases of dangerous driving causing death or grievous bodily injury: -

> "[11] The Sentencing Advisory Panel propounded a series of possible aggravating factors, which were adopted by the Court of Appeal in *R v Cooksley*, with the caveat that they do not constitute an exhaustive list. The court also pointed out that they cannot be approached in a mechanical manner, since there can be cases with three or more aggravating factors which are not as serious as a case providing a bad example of one factor. The list is as follows:
>
> *'Highly culpable standard of driving at time of offence*
>
> (a) the consumption of drugs (including legal medication known to cause drowsiness) or of alcohol, ranging from a couple of drinks to a 'motorised pub crawl' (b) greatly excessive speed; racing; competitive driving against

another vehicle; 'showing off (c) disregard of warnings from fellow passengers (d) a prolonged, persistent and deliberate course of very bad driving (e) aggressive driving (such as driving much too close to the vehicle in front, persistent inappropriate attempts to overtake, or cutting in after overtaking) (f) driving while the driver's attention is avoidably distracted, e.g. by reading or by use of a mobile phone (especially if hand-held) (g) driving when knowingly suffering from a medical condition which significantly impairs the offender's driving skills. (h) driving when knowingly deprived of adequate sleep or rest (i) driving a poorly maintained or dangerously loaded vehicle, especially where this has been motivated by commercial concerns

Driving habitually below acceptable standard

(j) other offences committed at the same time, such as driving without ever having held a licence; driving while disqualified; driving without insurance; driving while a learner without supervision; taking a vehicle without consent; driving a stolen vehicle (k) previous convictions for motoring offences, particularly offences which involve bad driving or the consumption of excessive alcohol before driving

Outcome of offence

(l) more than one person killed as a result of the offence (especially if the offender knowingly put more than one person at risk or the occurrence of multiple deaths was foreseeable) (m) serious injury to one or more victims, in addition to the death(s)

Irresponsible behaviour at time offence

(n) behaviour at the time of the offence, such as failing to stop, falsely claiming that one of the victims was responsible for the crash, or

> trying to throw the victim off the bonnet of the car by swerving in order to escape (o) causing death in the course of dangerous driving in an attempt to avoid detection or apprehension (p) offence committed while the offender was on bail.'

We would add one specific offence to those set out in paragraph (j), that of taking and driving away a vehicle, commonly termed joy-riding, which is unfortunately prevalent and a definite aggravating factor.

[12] The list of aggravating factors was followed by one of mitigating factors, as follows:

> '(a) a good driving record; (b) the absence of previous convictions; (c) a timely plea of guilty; (d) genuine shock or remorse (which may be greater if the victim is either a close relation or a friend); (e) the offender's age (but only in cases where lack of driving experience has contributed to the commission of the offence), and (f) the fact that the offender has also been seriously injured as a result of the accident caused by the dangerous driving.

Again, although this list represents the mitigating factors most commonly to be taken into account, it is possible that there may be others in particular cases.

[13] The Court of Appeal went on in *R v Cooksley* to set out sentencing guidelines, stating firmly that in these cases a custodial sentence will generally be necessary and emphasising that in order to avoid that there have to be exceptional circumstances. It ranked the cases in four categories:

(a) Cases with no aggravating circumstances, where the starting point should be a short custodial sentence of perhaps 12 to 18 months, with some reduction for a plea of guilty.

(b) Cases of intermediate culpability, which may involve an aggravating factor such as a habitually unacceptable standard of driving or the death of more than one victim. The starting point in a contested case in this category is two to three years, progressing up to five years as the level of culpability increases.

(c) Cases of higher culpability, where the standard of the offender's driving is more highly dangerous, as shown by such features as the presence of two or more of the aggravating factors. A starting point of four to five years will be appropriate in cases of this type.

(d) Cases of most serious culpability, which might be marked by the presence of three or more aggravating factors (though an exceptionally bad example of a single factor could be sufficient to place an offence in this category). A starting point of six years was propounded for this category.

The Court of Appeal added in paragraph 32 of its judgment in *R v Cooksley* a warning that in the higher starting points a sentencer must be careful, having invoked aggravating factors to place the sentence in a higher category, not to add to the sentence because of the same factors.

[14] We are conscious that we stated in this court in *R v Sloan* [1998] NI 58 at 65 that it is inadvisable, indeed impossible, to seek to formulate guidelines expressed in terms of years. When that view was expressed the court did not have the benefit of a carefully thought out scheme of sentencing in these difficult cases, such as that constructed by the Panel and the Court of Appeal in *R v Cooksley*. We consider that it should be adopted and followed in our courts, and that these guidelines should be regarded as having superseded those contained in *R v Boswell* [1984] 3 All ER 353. We would, however, remind sentencers of the importance of looking at the individual features of each case and the need to observe a degree of flexibility rather than adopting a mechanistic type of approach. If they bear this in mind, they will in

> our view be enabled to maintain a desirable level of consistency between cases, while doing justice in the infinite variety of circumstances with which they have to deal."

[21] These guidelines have formed the basis for sentencing decisions in this jurisdiction for these types of offence since the judgment in that case was given. In the present appeal, Mr Ramsey QC, who appeared with Mr Kieran Mallon for the appellant, sensibly accepted that this was a case of the most serious culpability since more than three aggravating features were present. The burden of his submission was that the case could be distinguished from other even more serious cases on the basis that some of the aggravating features identified in *Cooksley* were not present here. In particular, he claimed that the following features were not present: -

> (a) There was no evidence relating to the excessive consumption of alcohol;
>
> (b) The vehicle which the appellant was driving had not been stolen;
>
> (c) The appellant was not a disqualified driver at the time of the offence;
>
> (d) The last relevant convictions had been at Lisburn Magistrate's Court on 24 September 2001 for offences of not having a driving licence, insurance or a vehicle test certificate, these offences having been committed on 7 January 2001;
>
> (e) The appellant was not subject to any operative Court Orders at the time of commission of the present offences.

[22] The aggravating feature in relation to the consumption of alcohol in *Cooksley* is in the following terms: "the consumption … of alcohol, ranging from a couple of drinks to a 'motorised pub crawl'." It is therefore not correct to assert that this aggravating feature was not present. It plainly was. What cannot be said with any confidence is the amount of alcohol that the appellant had consumed. Such evidence as is available, however, certainly does not support the view that alcohol played no part in this incident.

[23] Likewise, the fact that the last convictions of the appellant for driving offences were in 2001 does not indicate the absence of an aggravating feature. The appellant had been convicted previously of serious criminal offences in relation to driving, including driving while having consumed excess alcohol. This constituted a recognised aggravating feature. Similarly, the fact that he

was not subject to an operative court order at the time of the offence seems to us to be at most of peripheral significance in an assessment of his culpability.

[24] Indeed, the exercise of enumerating the aggravating features that are *not* present seems to us to be of highly questionable relevance to an appraisal of a defendant's blameworthiness. What is surely more important is the *presence* of aggravating features. In this instance, a multiplicity of such factors was present. The appellant had driven at greatly excessive speed; he had disregarded not only warnings but pleas to slow down; he had engaged in a prolonged, persistent and deliberate course of very bad driving; his driving could truly be described as aggressive in relation to the overtaking of other vehicles and travelling on the wrong side of the road; he had previous convictions for motoring offences, particularly the consumption of excessive alcohol before driving; more than one person was killed as a result of the offences and we consider that the appellant knowingly put more than one person at risk; and serious injury was caused to several victims, in addition to the deaths. Not only must this case be firmly placed in the most serious culpability category because of the presence of so many aggravating factors, it must rank as one of the most grave within that category.

[25] Mr Ramsey suggested that the following mitigating features were present: a timely plea of guilty; genuine shock and remorse on the appellant's part, the greater in this case because one of the victims was a close relation and the other a friend; and the fact that the appellant had also been seriously injured as a result of the collision.

[26] We take into account that the appellant never denied his responsibility for the collision. As this court has observed in *R v Pollock* [2005] NICA 43, however, "a strong case can still be made in this jurisdiction for distinguishing between those cases where the offender is caught red-handed and those where a viable defence is available … [and] the discount in cases where the offender has been caught red-handed should not generally be as great as in those cases where a workable defence is possible". In the present case the appellant had little alternative but to plead guilty. The discount that should be applied for this factor must be commensurately less on that account.

[27] We have paid careful attention to Dr Weir's view that the appellant's remorse is genuine. Again the question of remorse is one which has exercised this court in the past. We have considered the difficulty that claims of remorse present in the sentencing exercise in *R v Ryan Quinn* [2006] NICA 27 where we said "It is frequently difficult to distinguish authentic regret for one's actions from unhappiness and distress for one's plight as a result of those actions". The conclusion of Dr Weir, a respected psychologist, that the appellant's remorse was genuine must weigh heavily with us but we must also bear in mind that Jamie Lee Rooney's mother has said that he has never

expressed regret to her. Of course, one must recognise that expressing remorse to Jamie Lee's immediate family would have been beset with difficulty but, in considering what weight to attach to the appellant's professed remorse, we cannot ignore that this has not been expressed directly to those who have been bereaved as a result of his offences.

[28] The appellant's injuries must also be taken into account. In *Cooksley* the Court of Appeal dealt with this issue in the following passage: -

> "*The offender's own injuries*
>
> 20. The [Sentencing Advisory Panel's] advice relies on the case of *R v Maloney* [1996] 1 CAR (S) 221 for suggesting that a sentence can be reduced because of the extent of the offender's own injuries if the injuries are serious. We agree this is a relevant consideration. The injuries can make the sentence of imprisonment a greater punishment than usual. His injuries are also in themselves a punishment and should bring home to the offender, in the most direct possible way, what can be the consequences of dangerous driving. We however, also agree with the Panel that the fact that the offender has been injured should not automatically be treated as a mitigating factor and that only "very serious, or life changing, injury should have a *significant* effect on the sentence. Some indication of the scale of the effect is provided by the facts of *Maloney*. The offender had a very severe head injury, severe facial injuries, he lost the sight of his right eye and his right little finger, and there was continuing loss of use of his right arm and leg. On appeal this court reduced the sentence from 5 to 4 years but in doing so were taking into account, not only the injuries, but the fact that the trial judge had erroneously sentenced the appellant on the basis he had consumed an excessive amount of alcohol.

[29] The appellant has suffered serious injuries in this case but we do not consider that they are so grave as to justify a significant reduction on the sentence that would otherwise be appropriate.

R v. Richardson

[30] Section 285 (6) of the Criminal Justice Act 2003 (which came into force on 27 February 2004 by virtue of the Criminal Justice Act 2003(Commencement

No.2 and Saving Provisions) Order 2004) increased the maximum penalty in this jurisdiction for dangerous driving causing death or grievous bodily injury from ten years to fourteen years' imprisonment.

[31] This provision was considered by the Court of Appeal in England and Wales in *R v Richardson and others* [2006] EWCA 3186. The President of the Queen's Bench Division, Sir Igor Judge, identified the issue arising in the appeals as "the impact of the increased maximum sentences on the guidance offered to sentencers in *Cooksley*." At paragraph 4 he said: -

> "Statutory changes in sentencing levels are constant. In recent years, maximum sentences have been increased (for example, drug related offences) or reduced (for example, theft). In general, changes like these provide clear indications to sentencing courts of the seriousness with which the criminal conduct addressed by the changes is viewed by contemporary society. In our parliamentary democracy, sentencing courts should not and do not ignore the results of the legislative process, and as a matter of constitutional principle, reflecting the careful balance between the separation of powers and judicial independence, and an appropriate interface between the judiciary and the legislature, judges are required to take such legislative changes into account when deciding the appropriate sentence in each individual case, or where guidance is being offered to sentencing courts, in the formulation of the guidance."

[32] These observations echo what this court said in *R v Sloan* [1998] NI 58 at 63-4 when considering the then recent increase in the maximum penalty for dangerous driving: -

> "This substantial increase from five to ten years was Parliament's response to the growing carnage on the roads due to dangerous driving (previously described as reckless) which in turn is often due to excessive speed or driving when under the influence of drink or drugs. In taking this course Parliament was itself responding to a growing volume of complaints by members of the public whose friends and relatives were being killed or seriously injured in increasing numbers on the roads. In their turn the courts have been ready to

> play their part in trying to make the roads a safer place by imposing sentences which reflect the culpability of the driving and as was said by Roch LJ in *A-G's Ref (No 30 of 1995)* [1996] 1 Cr App R (S) 364 at 367 a proper sentence 'must now have in it elements of retribution and deterrence'."

[33] One of the authorities referred to by the Court of Appeal in *Richardson* was the case of *Noble* [2003] 1 CAR (S) 312. The appellant in that case had been convicted of six offences of causing death by dangerous driving, arising out of a single incident. He had spent the afternoon drinking with friends, and had participated in a "motorised pub crawl". He drove at high speed, and eventually, because of speed, lost control of his vehicle. It struck a stone wall on the opposite side of the carriageway, and then continued down the wrong side of the road, until it toppled over on to its side and struck an oncoming vehicle. Three passengers in Noble's car were killed. Three people travelling in the car with which he collided were also killed. The appellant ran away. When arrested, he asserted that one of his dead passengers had been driving. Eventually he broke down and admitted that he had been the driver. However, at trial, he contested his guilt. He was sentenced by the trial judge to a total of fifteen years' imprisonment and disqualified from driving for life. The fifteen year sentence was constructed of consecutive sentences. In accordance with principle, the Court of Appeal concluded that as all the offences arose out of a single incident, consecutive sentences were inappropriate. Accordingly the then maximum sentence of ten years' imprisonment was substituted. It was in the view of the court unrealistic "to imagine a worse case". In *Richardson* the court said of the *Noble* case, "Without the advantage of a guilty plea, a dreadful case of this kind might very well attract the new maximum sentence".

[34] Mr Ramsey argued that the *Noble* case was self evidently more serious than the present and that, if the judgment in *Richardson* was that it would attract the maximum sentence on a contest, the sentence in the present appeal should be less than ten years in light of the appellant's plea of guilty. We do not accept that argument. While it is true that some features of *Noble* are manifestly worse than the present case, there are aspects of the present case which are not present in *Noble* such as ignoring the entreaties of the passengers to slow down and the aggressive, deliberately dangerous driving. Quite apart from these considerations, we consider that a comparison between the two cases is not particularly helpful if the purpose of that exercise is to produce an arithmetical calculation of the appropriate sentence in the present appeal. As we have frequently said, comparisons between sentencing decisions is invidious because there will never be an exact replication of the combination of circumstances between various cases. Moreover, even if one were to accept that *Noble* was a worse case than the present, it does not follow that the sentence passed in the present case must

be less than that judged to be correct in that case. As we have said, this case is located firmly in the gravest category within the most serious culpability grouping and warrants the most severe punishment. There will inevitably be a spectrum of cases within that most culpable category. Because one case within the category might be said to be less grave than another does not mean that it should escape with less condign punishment.

[35] A revision of the starting points in *Cooksley* was undertaken by the Court of Appeal in *Richardson* and the outcome of its consideration was given in paragraph 19 of the judgment: -

> "The relevant starting points identified in *Cooksley* should be reassessed as follows: -
>
> (i) No aggravating circumstances – twelve months to two years' imprisonment;
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> (ii) Intermediate culpability - two to four and a half years' imprisonment;
>
> (iii) Higher culpability – four and a half to seven years' imprisonment;
>
> (iv) Most serious culpability – seven to fourteen years' imprisonment."

[36] We have concluded that these guidelines should now be applied in this jurisdiction. The appropriate range of sentence in the appellant's case is therefore within the last of these categories. The learned trial judge was correct in his view that the fact that the maximum sentence has now been increased from 10 years to 14 years should augment the range of penalty for this type of offence. He was also entirely right in concluding that the proper sentence, taking account of the aggravating and mitigating features that we have already discussed, was one of ten years' imprisonment.

Custody probation

[37] Mr Ramsey submitted that, because of the difficulties that the appellant suffers as a result of the injuries sustained in the collision, he will require a greater period of adjustment and rehabilitation on release from custody than that allowed by the judge's disposal. We found no evidence in any of the medical, psychological or other pre-sentence reports to support this claim. Indeed, Dr Weir's reports indicate that it may well prove difficult to secure the level of cooperation from the appellant that will be necessary for the success of the measures recommended by the probation officer. We see no

reason to alter the period of probation stipulated by the judge. The appeal is dismissed.