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*Judgment: approved by the court for handing down  
(subject to editorial corrections)\**

Delivered: 09/11/2023

IN HIS MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

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THE KING

v

ARTHUR McGRILLEN

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Gregory Berry KC with Stephen Toal (instructed by Finucane Toner Solicitors) for the  
Applicant  
Ciaran Murphy KC with Laura Ievers (instructed by the PPS) for the Respondent

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Before: Treacy LJ, Horner LJ and Kinney J

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**TREACY LJ** (*delivering the judgment of the court*)

*Introduction*

[1] The applicant was refused leave to appeal against sentence by the Single Judge, Fowler J on 3 January 2023. He renewed his application for leave to appeal before this court. He contended that the trial judge erred in selecting a starting point of 7 years resulting in a manifestly excessive sentence being imposed. At the conclusion of the hearing we dismissed the appeal with detailed reasons to follow.

[2] The applicant was sentenced to five years' imprisonment, half to be served in custody and half on licence, imposed upon him following his guilty plea to one count of causing death by dangerous driving; and one count of causing grievous bodily injury by dangerous driving. Both counts are contrary to Article 9 of the Road Traffic (NI) Order 1995 ("the 1995 Order").

*Background*

[3] The applicant was committed to Downpatrick Crown Court on 6 January 2022. On arraignment on 21 February 2022, he pleaded not guilty to counts 1 and 2. Some months later, on 19 May 2022, the applicant applied to be re-arraigned and pleaded guilty to both counts.

[4] On 4 November 2022, following receipt of victim impact materials, a pre-sentence report, a psychiatric report from Dr Bownes, a geriatric report from Professor Passmore, a neuropsychological report from Dr Macartney, references, a written prosecution opening and defence submissions and having heard supplementary oral submissions, the trial judge sentenced the applicant to an immediate determinate custodial sentence. The sentence was five years' imprisonment on count 1 and four years in relation to count 2 (concurrent with count 1), half of the sentence to be served in custody and half on licence. The applicant was also disqualified from driving for life.

### *Factual Background*

[5] The applicant was born on 4 March 1948. He is now in his mid-seventies. At the time of the accident, the applicant was retired and had suffered a stroke in June 2017.

[6] The background circumstances are not in dispute. The accident occurred at approximately 13:51 on the afternoon of Sunday, 19 October 2019. Mr Aiden Fitzpatrick was killed, and his friend and co-cyclist, Ralph Mills, sustained life-changing injuries in a traffic collision on Killyleagh Road, Downpatrick. They had been cycling earlier that day with their local cycling club and were returning home along a straight section of road towards Killyleagh on Killyleagh Road, Downpatrick. The road is a single-carriageway governed by a 60mph speed limit. It was a clear, dry afternoon. Both men wore blue/white, highly visible lycra cycling clothing and helmets.

[7] While driving his Mercedes saloon car along a straight section of Killyleagh Road and on approach to the cyclists, the applicant drove into the rear of both men. The collision was captured on a rear-facing camera unit on Mr Mills' bicycle. Cameras on a passing ambulance captured images of the cyclists and the car as they approached the collision scene. Forensic scientist Dr Emerson Callender examined the camera footage. This shows the cyclists cycling two abreast with Mr Mills to the nearside and Mr Fitzpatrick at or near a central position in the carriageway. There was no significant lateral movement of the cycles or the Mercedes car before impact. The car's speed was approximately 56mph, and the cyclists were in a position to be seen by the applicant for a significant distance of several hundreds of metres away and up to 20 seconds before impact. The applicant had more than sufficient time to react and avoid a collision. The weather and driving conditions were good, with no visibility issues or objects obstructing the applicant's view of the cyclists. Dr Callender could not determine why the applicant failed to perceive or respond to the cyclist's presence on the road ahead. He could identify no features or reason why the applicant would be unable to detect the presence of the cyclists. There were no vehicle defects contributing to the collision.

[8] On arrival of police at the scene, the applicant was spoken to by Sgt Dunn, who noted the applicant initially saying, 'I didn't see them ...' Subsequently, Constable Doyle spoke to the applicant, who stated:

'I was travelling along the Killyleagh Road, Downpatrick in the direction of Killyleagh. I was travelling and I saw two bikes on my side of the road. The two cyclists were two wide, they weren't travelling in single file. I went to go round them, and they bumped on top of my car.'

[9] On 5 November 2019, a claims inspector from QuestGate Claims and Loss Adjusters interviewed the applicant on behalf of his car insurers. The applicant's statement to his insurance company notes that he suffers from aphasia following a stroke in 2017 but denies taking any medication. He showed no remorse or compassion for the victims. The applicant claimed that he had no previous motoring convictions. He described observing the cyclists from a 200m distance on a clear, sunny day travelling at about 40 mph. He had indicated his intention to go around the cyclists when suddenly, one cyclist moved to the right and one to the left without warning. The applicant struck the cyclists. He believed the cyclists were trying to avoid a trench in the road that had not been filled in properly. He said this accident would not have happened had the cyclists not changed direction.

[10] The footage from the rear-facing camera mounted on Mr Mills' bicycle shows the applicant's account is demonstrably false in almost all material respects. The footage shows the applicant's car approaching the cyclists at a constant speed with no signs of indicating, pulling out or attempting to avoid the cyclists. Neither cyclist deviated from their path before the collision occurred. He was falsely claiming that the victims were responsible for the collision.

[11] The applicant was interviewed under caution with his solicitor, daughter, and registered intermediary present. He essentially made no comment on the advice of his solicitor. However, during interview two, he indicated he had seen the cyclists before impact, had felt fit to drive, and there was nothing wrong with his car. In interview three, he was asked to give his account of a collision in which a man died, to which he replied, '*What about me?*' and further stated, 'it wasn't my fault.'

### ***Previous Convictions***

[12] The applicant has 22 previous convictions, 18 of which are motoring offences, but the most recent offence was over 30 years ago.

### ***Pre-Sentence Report***

[13] The Pre-Sentence Report by Aisling Finnegan, dated 30 June 2022, highlights that the applicant is a 74-year-old single man estranged from his wife, who died in 2009 from cancer. They had four children, two of whom died as children from

carbon monoxide poisoning. Their two daughters are still alive, and one is the applicant's registered carer. He had a difficult childhood, with his father being killed in an accident when the applicant was eight years old. His mother raised seven children alone, and financial difficulties were a consistent feature of everyday life when he was growing up. He left school at 15 with no formal qualifications, likely due to his dyslexia. However, he obtained employment after leaving school and had a positive employment history.

[14] Regarding physical health, the applicant was diagnosed with Aspergillosis 36 years ago; this is a lung disorder, the symptoms of which include coughing up blood, chest pain and frequent chest infections. This has been exacerbated by the defendant contracting Covid. In June 2017, he suffered a stroke resulting in communication difficulties. He was diagnosed with Aphasia, which impacts his verbal and written communication skills and general comprehension. The applicant has irritable bowel syndrome. He suffers from double incontinence and reduced mobility, regularly requiring the use of a wheelchair.

[15] In discussing the collision with probation, it appears the applicant, despite his plea of guilty, has returned to what is, in effect, his original false narrative given to his insurers. He told probation that the collision was a 'moment of madness' that happened 'in the blink of an eye.' He once again asserted that the victims crashed into his vehicle, contrary to the available evidence and his plea.

[16] Probation identified that the applicant failed to declare the stroke he had in 2017 when applying to renew his driving licence on 2 February 2018 and considered this a reckless disregard for road safety.

[17] Regarding assessment, probation regards him as having a low likelihood of reoffending and not posing a risk of serious harm.

### *Medical evidence*

[18] Professor Passmore, Consultant Geriatrician, reviewed the applicant's medical notes, which record that on 27 June 2017, he was admitted to Downe Hospital with a large acute infarct left middle cerebral artery (MCA) and a small infarct right MCA. His speech was nonsensical and appeared to have visual disturbance. He was complaining that he could not see properly. He was transferred to Ulster Hospital for treatment and required cognitive and perceptual rehabilitation for aphasia. On 2 July 2017, he was discharged from the Ulster Hospital to Downe for occupational therapy and rehabilitation. On 7 July 2017, he was released from occupational therapy but required further retraining to improve cognitive function. On discharge, his daughters were advised to remove his car and keys. He had limited insight into his difficulties.

[19] Professor Passmore concluded from a review of the notes that the applicant had a significant stroke in 2017. At the time, he suffered apraxia, characterised by

difficulty performing daily tasks and controlling or coordinating movements voluntarily. The applicant also had visual inattention to the right side. By 30 May 2018, the applicant appears to have recovered relatively well. However, on discharge from the stroke community team on 8 July, he had still not returned to driving.

[20] Professor Passmore examined the applicant in his own home on 10 October 2022. He concluded that the applicant presently has cognitive deficiencies and has a dementia syndrome probably related to a vascular cause. This means he has a reduced life expectancy. In custody, he is of the view that he will need a high degree of supervision and will be susceptible to chest infections, delirium and stroke. In Professor Passmore's opinion, jail will likely accelerate the applicant's psychological and physical decline.

[21] Dr Macartney, consultant neuropsychologist, agreed that the applicant displays a severe range of cognitive impairment. However, Dr Macartney did not find any aspect of the applicant's neuropsychological function that would be adversely affected by a custodial sentence. The applicant would require support within the prison setting.

[22] Dr Bownes, consultant forensic psychiatrist, found no evidence that the applicant has acute mental illness requiring admission to a psychiatric unit. He identified that it is highly probable that the applicant's well-being will deteriorate in the event of an immediate custodial sentence. However, the applicant's mental well-being is most likely to stabilise satisfactorily in the Moyola unit in Maghaberry prison, which accommodates older prisoners and prisoners with disabilities.

### ***Victim Impact Statements***

[23] The trial judge took into account the details of the life well lived by Aiden Fitzpatrick and the profound loss suffered by his family. The judge also describes the physical and psychological impact of the accident on Ralph Mills, who survived the collision.

### ***Relevant Sentencing Principles***

[24] The maximum sentence for causing death or grievous bodily injury by dangerous driving contrary to Article 9 of the 1995 Order is 14 years imprisonment, and disqualification is mandatory. Both offences are 'serious' and 'specified' offences within the meaning of the Criminal Justice (NI) Order 2008.

[25] In *AG's Reference Nos 2, 6, 7, and 8 of 2003* [2003] NICA 28, the NI Court of Appeal approved and adopted the England and Wales sentencing Guidelines in *R v Cooksley & Ors* [2003] EWCA Crim 996, which noted that if a person is killed as a result of dangerous driving normally a custodial sentence will be imposed; no term

of imprisonment can reconcile a loss of life or family grief and the purpose of punishment must be focussed on the culpability of the offender.

[26] In para [11] et seq, of *AG's Reference Nos 2, 6, 7, and 8 of 2003*, 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 9 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): taking and driving away a vehicle, commonly termed joy-riding, which is unfortunately prevalent and a definite aggravating factor.

[27] The Sentencing Guidelines were subsequently adjusted to take account of the increase in 2005 of the maximum penalty for this offence from 10 years to 14 years. The result is the following scale of sentences approved by the Court of Appeal in England and Wales in *R v Richardson* [2006] EWCA Crim 3186 were adopted in this jurisdiction in *R v McCartney* [2007] NICA 41, these are:

- “(a) Cases with no aggravating circumstances, where the starting point should be a short custodial sentence of perhaps 12 months to 2 years, 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 years, progressing up to four and a half 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 and a half years rising to 7 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 7 years was propounded for this category rising to the statutory maximum of 14 years in the most severe cases."

[28] As indicated in *Cooksley*, the sentencing court must be careful not to double count in relation to aggravating factors. If driving is dangerous by reason of a particular factor, it is self-evident that the factor that gives rise to the dangerousness is not to be counted as an aggravating factor.

[29] As to the weight to be attached to personal mitigation and remorse the courts have emphasised that sentencing in cases involving dangerous driving causing death is intended to deter. Accordingly, the impact of personal mitigation is reduced – see para 30 of *R v David Lee Stewart* [2017] NICA 1 where this principle is underlined. Sentencers must bear in mind that in such cases deterrence is an essential element in discouraging others from driving irresponsibly given the fatal and life changing consequences.

[30] In relation to remorse, the court in *Stewart* at para [31] stated that the discount for a plea:

*"... generally reflects an element of remorse. Accordingly, the degree of mitigation by way of discount for the plea can be higher than would otherwise have been the case if there is positive evidence of remorse. If, however, such discount is included in the plea it should not be repeated by way of personal mitigation..."* [our emphasis]

### ***Judge's sentencing remarks***

[31] The trial judge had the benefit of written and oral submissions made on behalf of the prosecution and the defence. There was no dispute regarding the collision's background circumstances or the applicable guidelines as set out in *McCartney*. The only matter in dispute between the parties was fixing the appropriate sentencing category and, after that, the starting point and range.



[32] The judge considered the victim impact statements, recognised the immense loss suffered by the Fitzpatrick family and also detailed the impact of the severe injuries on Ralph Mills. He took into account the description of the incident that the applicant gave to his insurance company which is false when compared to the footage from Mr Mills' bicycle camera. The judge noted that the applicant claimed he had never been convicted of any driving offences, which is untrue. He carefully considered the contents of the pre-sentence report, including the applicant's personal circumstances and physical health issues. He also noted that within the PSR, the applicant claimed the cyclists crashed into him, not only minimising his responsibility but placing blame for the collision on the victims. It was also recognised and taken into account by the judge that the applicant's previous convictions were of some vintage and the assessment that he is a low likelihood of re-offending.

[33] The judge referred to the appropriate sentencing principles in *AG's Reference Nos 2, 6, 7, and 8 of 2003* [2003] NICA 28, where the Northern Ireland Court of Appeal approved and adopted the England and Wales sentencing Guidelines in *R v Cooksley & Ors* [2003] EWCA Crim 996. He correctly cited *R v Richardson* [2006] EWCA Crim 3186, which set out the sentencing band ranges relating to the index offences adopted in Northern Ireland by *R v McCartney* [2007] NICA 41.

[34] He cautioned himself to be careful not to double count aggravating factors such as dangerousness which is a component of the dangerous driving offence. Having done so, he determined that the applicant's "total abject failure to take any steps to avoid colliding with the two cyclists" is an aggravating factor in light of the agreed facts that:

- (a) The cyclists wore bright clothing and were cycling side by side on a straight stretch of road on a sunny day with no obstructions to the applicant's view.
- (b) The applicant stated he saw the cyclists from 200 metres away and had ample time to evaluate the situation and take appropriate action.
- (c) There is no evidence that the applicant took any action to overtake the cyclists, notwithstanding the oncoming lane was free.
- (d) There is no evidence of unexpected movement by the cyclists. The applicant drove into the cyclists, and the resulting death and injuries were inevitable.

[35] The judge considered the undisputed additional aggravating factor of the fact that there were two victims. He considered the potential aggravating factor of the applicant failing to declare that he had had a stroke in 2017 when renewing his driving licence in 2018. It was concluded that the applicant would have been aware of his condition, and the failure to declare this when applying to renew his driving licence was considered by the judge as a matter of significance.

[36] The judge determined that the applicant fell to be sentenced in the category of high culpability, straddling that of most serious culpability noting the need for flexibility in sentencing rather than adopting a mechanistic approach.

[37] The judge applied what we consider a generous discount stating he would apply between a 25% and 30% reduction in sentence for the plea and (limited) remorse expressed by the applicant. He considered the applicant's health and expert reports provided to the court and factored these into his considerations.

[38] He set a starting point of seven years and reduced this to five years, considering the plea and some limited remorse relating to count 1. The judge imposed a concurrent sentence of four years in relation to count 2.

[39] As appears from what we say above the judge gave detailed and very carefully crafted sentencing remarks. He took everything relevant into account, left nothing relevant out of account and properly applied the applicable principles.

### *Ground of Appeal*

[40] The single ground of appeal submits that the judge erred by selecting the wrong starting point of seven years in accordance with the available evidence and the sentencing authorities, which resulted in a manifestly excessive sentence being imposed.

### *Consideration*

[41] The applicant contends that the judge may have been unduly affected by the victim impact statements when imposing the sentence. We do not accept that the judge was unduly affected by the victim impact statements. It is only proper that a judge conducting such a sentencing exercise reflects the grievous loss suffered by the Fitzpatrick family and to the pain and suffering, both physical and psychological, of Mr Mills. The judge recognised that the purpose of punishment is not focused primarily on assuaging grief and that the principal function of the court is to make a fair assessment of the offender's culpability. As Kerr LCJ observed in *McCaughan*, the impact on the victim's family can and should be taken into account. The trial judge also stated that he would not treat the contents of the victim impact statements as an aggravating factor which is inconsistent with the contention that the judge was unduly affected by the victim impact statements when passing sentence. Professional and highly experienced Crown Court judges are well aware of the need to assess and properly take into account victim impact statements. That is precisely what the judge did in this case.

[42] The trial judge is criticised for what the applicant asserts is an overly mechanistic sentencing exercise in setting the sentencing bracket at high and straddling the most serious culpability bracket by a mathematical totalling of the three stated aggravating factors without an assessment of their qualitative impact on

culpability. We reject this argument. It is apparent from a consideration of the judges sentencing remarks that this is an unfair characterisation. On the contrary the judge reminded himself of the need to consider the particular fact-specific features of the collision and the unique personal circumstances of the applicant and to bring a degree of flexibility to this sentencing exercise.

[43] In setting the sentencing bracket at high and straddling the most serious culpability, the applicant argues the standard of driving must be more highly dangerous, and it is relevant, they say, that none of the stated aggravating factors impacted upon the standard of the applicant's driving.

[44] It is argued that the applicant's failure to declare that he had a stroke in 2017 when renewing his driving licence in 2018 did not play a part in his driving on the day of the collision and, therefore, should not impact the level of culpability. We reject this contention. *R v McCartney* at para [20] and under the heading 'Highly culpable standard of driving at the time of offence' states that the list of non-exhaustive aggravating factors includes "driving when knowingly suffering from a medical condition which significantly impairs the offender's driving skills." The applicant knew he had a stroke; he lied to the DVLA about this, he knew he had not been allowed to drive for a significant period after his stroke, and it is a reasonable inference that he did not want to be medically examined because he knew he was likely to fail any medical. We consider that the judge was entirely correct to regard this as a matter of significance and an aggravating factor indicative of high culpability for the consequences of his driving on this occasion.

[45] It is agreed that injury to the second victim, Mr Mills, is a proper aggravating factor but not one, the applicant argues, which elevates the applicant's culpability as it does not touch upon the applicant's standard of driving. However, para [20] of *McCartney* makes it clear that the outcome of the offence is to be taken into account and that serious injury to one or more victims, in addition to death, is an aggravating factor.

[46] Counsel further contended that the failure to see the cyclists is part of the dangerous driving, is an element of dangerous driving, a component of the offence, and cannot therefore amount to an aggravating feature. We reject this argument. This was not a case of distraction or not seeing the cyclists until the last moment. It was a case of not seeing them at all over a protracted period, over a considerable distance, in good visibility with no obstructions. Also, having passed one cyclist on the road he should have been alert to the prospect of other cyclists on the road. The judge was entitled to come to the conclusion, on the evidence, that this was an abject failure to take any steps to avoid this collision and sets out in para [49] of his sentencing remarks seven reasons why he considered the extent and egregious nature of this failure is such as to amount to an additional aggravating factor. He was alert to the dangers of double counting.

[47] The applicant further argues that the judge erred by imposing a sentence which is inconsistent with *R v Martin McDonnell* [2009] NICC 74 (death by dangerous driving, a sentence of 18 months suspended for three years) and *McCartney* [2019] NICC 17 (two counts of death by dangerous driving, the penalty imposed two years and four months). However, the Court of Appeal in *R v Stalford & O'Neill*, cautioned that 'direct comparisons between specific sets of facts are extraordinarily difficult.'

[48] The applicant refers to *Banks on Sentence* (17<sup>th</sup> edition) and notes that the sentencing bands are distinguished by factors predominantly relating to the standard of driving. The presence of aggravating factors may increase the starting point within the band range. The applicant contends his offending, namely failing to have proper regard to vulnerable road users, falls within level 3 with a starting point of three years after trial. The applicant acknowledges that if it is reasonably foreseeable that more than one death may occur, this propels the sentencing into a higher band level but states this does not apply to the index matter because the applicant was not engaging in a sustained course of bad driving in a built-up area.

[49] The applicant's driving risked more than one death which by itself will usually propel the culpability into the higher culpability bracket. The fact that the index circumstances differ from the inexhaustive examples in *Banks* (ie engaged in a sustained episode of dangerous driving in a built-up area) does not preclude the judge in making his assessment from taking into account the fact that the applicant's driving risked more than one death and thus place the applicant's culpability into the higher culpability bracket.

[50] There are at least three aggravating factors present in the applicant's case relevant to whether this case can be placed in the higher culpability bracket:

- (i) the applicant's abject failure to see the cyclists at all in the circumstances, and to take any steps to avoid the collision;
- (ii) the fact there was a second victim Mr Mills who was grievously injured; and
- (iii) the applicant's failure to disclose to the DVLA that he had suffered a stroke in 2017.

[51] There is also a potentially a fourth aggravating factor in that the applicant engaged in irresponsible behaviour at the time of the offence. He told Constable Doyle at the scene that the cyclists collided with him. He maintained this account to the insurers of his car and, after pleading guilty, gave this account to probation. Falsely claiming that one of the victims was responsible for the crash is regarded as an aggravating factor (see *Cooksley* above) and is present in this case.

[52] We consider that the judge was entitled to determine that the applicant fell to be sentenced in the category of high culpability, straddling that of most serious culpability

[53] The sentence of seven years before reduction for a guilty plea was well within the range reasonably open to the trial judge. He applied an appropriate reduction of between 25% and 30% for the applicant's plea, reducing the sentence to one of five years.

### *Conclusion*

[54] The courts have repeatedly emphasised that sentencing in cases involving dangerous driving causing death or grievous bodily injury is intended to deter. Sentencers must bear in mind that in such cases deterrence is an essential element in discouraging others from driving irresponsibly given the gravity of the consequences. The legislation focusses on the consequences and harm that flow from dangerous driving that causes death or grievous injury. It is designed to ensure that such consequences of dangerous driving will almost inevitably result in a significant period of immediate imprisonment. It is the role of the judiciary to ensure that the objective of the legislation is achieved, and we are satisfied that this was appropriately achieved by the sentencing judge given the woeful standard of driving in this case. It must be remembered by all drivers, young and old, that there is no more fundamental duty on any driver than the duty to avoid colliding with any other road user. All drivers must realise that if their driving is dangerous and causes death or grievous injury that they will face a significant period of imprisonment – this is because the legislation focusses on the consequences of the dangerous driving.

[55] No term of imprisonment can erase the loss of life or family grief resulting from the death and life changing injuries of innocent road users. The purpose of punishment in cases of dangerous driving with such consequences must be focussed on the culpability of the offender and the horrific consequences of his dangerous driving.