Neutral Citation Number: [2018] EWCA Crim 2867

Case No: 201801705A2

IN THE COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM THE CENTRAL CRIMINAL COURT
Her Honour Judge Joseph QC
T20187026

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 21/12/2018

Before :

THE PRESIDENT OF THE QUEEN'S BENCH DIVISION
(SIR BRIAN LEVESON)
MRS JUSTICE WHIPPLE DBE
and
MRS JUSTICE CHEEMA-GRUBB DBE

- -

Between :

JAYNESH CHUDASAMA	**Applicant**
- and -	
THE QUEEN	**Respondent**

- -
- -

Leila Gaskin (instructed by **JSP Law**) for the Applicant
Oliver Glasgow QC (instructed by **Crown Prosecution Service**) for the Crown

Hearing date : 4 December 2018

- -

Judgment Approved by the court for handing down (subject to editorial corrections)

If this Judgment has been emailed to you it is to be treated as 'read-only'.
You should send any suggested amendments as a separate Word document.

Sir Brian Leveson P :

1. On 26 February 2018, at the Central Criminal Court before Her Honour Judge Joseph QC, the applicant (who is now 29 years of age) pleaded guilty to three offences of causing death by dangerous driving. On 28 March 2018, he was sentenced by the Judge to 13 years' imprisonment on each count, the sentences to run concurrently. He was also disqualified from holding or obtaining a driving licence for 13½ years and, thereafter, until he passed an extended driving test. In addition, a Victim Surcharge Order was made. His application for leave to appeal against sentence has been referred to the full court by the Registrar.

The Facts

2. This summary of the facts is taken from the way in which the case was opened before the Judge. We shall return to the issue taken concerning the inferences to be drawn from the facts later in this judgment.

3. George Wilkinson, Joshua McGuinness (both aged 16) and Harry Rice (aged 17) were friends who had all been in the same school year at Harefield Academy in Uxbridge and had left school in the summer of 2017. George had begun working as an apprentice electrician. Joshua was working as a labourer. Harry was a semi-professional footballer who was studying at the Basingstoke Academy.

4. On the evening of Friday 26th January 2018, they were on their way to a 16th birthday party at Goals in Shepiston Lane, Hayes. They were with two friends, Lewis White and Kai Priestley. Shortly after 8.30 pm the five of them were walking eastwards on the north bound side of Shepiston Lane. Coming towards them were Evie Hanson and two of her friends who had all been at the party but had left in order to go to a shop in the local petrol station. All were of a similar age and most had been at school together.

5. Shepiston Lane runs east to west between Hayes and the M4. It has a single carriageway, that is to say with one lane in each direction and is subject to a speed limit of 60 miles an hour. There were street lamps but the road was not especially well lit. The petrol station was on the south side of the road and provided a certain amount of additional lighting. For vehicles travelling eastwards, towards Hayes, there was a filter lane with crossed hatched markings before it for anyone waiting to turn right across the westbound lane and into the petrol station. On the road itself, either side of the petrol station for users of the eastbound carriageway, were traffic bollards, about ninety meters apart, marked "keep left."

6. Anyone on the eastbound lane intending to overtake in the area around the petrol station first had to enter the crossed hatched area of the road, which the Highway Code prohibits unless "it is necessary to do so". In making such a manoeuvre anyone overtaking in that area ran the risk of anyone in front pulling out and turning right into the petrol station. The driver making that manoeuvre would have to complete it before the second bollard. Beyond that there was then a bend to the right in the area of the cemetery. The Crown suggested that it was a hazardous manoeuvre that should not be undertaken at all.

7. Horace Miller was driving eastwards towards Hayes. He was travelling at about 30 miles per hour because of difficult visibility: the street lights were not working properly and shrubbery in

low hanging trees was also affecting the lighting. Having passed the first bollards, he was aware of a car swinging around past him. Mr Miller described the car as out of control when it passed. The back end had swung out. He saw the car hit a number of pedestrians head on.

8. Evie Hanson said that she and her two friends had been about ten feet away from the group of five boys walking towards them when, all of a sudden, a car came towards them and mounted the pavement. She saw George, Joshua and Harry fly into the air. She described the driver as having lost control of the car and that the car had spun around in the middle of the road. Tyre marks later found in the area showed that the car spun around in a circle three times. It was badly damaged and both airbags were inflated. It came to a halt on the other side of the road and was incapable of being driven: it was an Audi A5. Evie saw the front seat passenger jump out of the car and run around to open the driver's door. The driver got out and they both ran towards the petrol station.

9. Two friends of George, Joshua and Harry ran after the driver and his passenger. One of them struck the driver with a bottle, causing him to fall to the ground. They then dragged him back to where their friends were lying on the ground: it was the applicant. The passenger ran off and made then good his escape although he was subsequently identified.

10. Beyond the cemetery entrance George was lying half on the road and half on the pavement. Evie Hanson held his hand but could not see any signs of life. The pathologist reported that George would have died instantly as a result of the trauma to his head and neck. Over the wall and into the cemetery was Joshua. He had been stuck with such force that he had flown through the air and over the wall. He too had sustained head and neck trauma of such severity as to have killed him instantly. Harry had been carried on the bonnet of the car until it crashed into the cemetery wall. He was crushed as the wall collapsed and sustained multiple injuries of such severity as to have killed him almost instantly. One of the other two boys sustained a minor cut to his leg and the other was unhurt.

11. The Police arrived on the scene by about 8.45 pm. An Officer attended to the man on the ground, the applicant, and as he did so a number of youths asked why he was helping a man who had just killed their friends. The applicant appeared to be unconscious and was lying in a pool of vomit. The Officer noticed a very strong smell of alcohol on his breath. The only injury he was able to identify to the applicant was a small cut to the crown of his head.

12. An investigation was conducted. The damage was to the front nearside, with the wheel (and windscreen) shattered and the front nearside drive shaft and suspension broken. The front nearside edge of the roof was damaged. The airbags had deployed and DNA material was recovered from the airbag on the driver's side of the Audi. It was found to contain a DNA profile that matched the applicant. The accident investigator, using film from two different cameras, was able to establish that the applicant's car had been travelling at 71 miles per hour as it overtook Mr Miller's car. It was apparent from the film that the applicant's car overtook Mr Miller's car after the first bollard, driving into an area marked by chevrons and bordered by solid white lines (contrary to Rule 130 of the Highway Code, it not being an emergency) and that it re-joined the eastbound carriageway before the second bollard, but appeared to have made contact with the kerb and in completing the manoeuvre failed to negotiate the slight bend by the entrance to the cemetery. The investigating officer concluded that the CCTV evidence tended to indicate that

control was not lost of the vehicle at this point. 60 metres further on, the car mounted the kerb and struck the boys at the point where they were walking along the road. From the CCTV film (which we have seen) it was clear that the brakes were only applied at the very last moment. The investigator concluded:

> "It therefore appears likely that [the applicant] failed to steer, for an unknown reason, for the shallow right hand bend mounting the footpath and colliding with the young males. The Audi could have successfully negotiated the bend even at the calculated 71 mph."

13. The prosecution explained to the Judge that the applicant had left his home in Hayes at around 3.30 pm on that day. He was driving his brother's Audi, which he was insured to drive. He drove to a supermarket car park in Hayes. He passed several hours with friends, first in the carpark then at a skateboard park, during which time he drunk a considerable amount of alcohol. Eight hours after the fatal incident he provided a sample of blood which was found to contain 78 mg of alcohol per 100 millilitres of blood. By process of back calculation, allowing for a standard rate at which alcohol is eliminated from the body, at the time of the fatal incident the applicant's blood alcohol level would have been in the order of 213 mg, making him over two and a half times the legal limit for driving of 80 mg. There were also traces of cannabis in the sample provided, but the level of 1.4 μg was less than the specified limit of 2 μg.

14. The investigating officer concluded:

> "Whilst I cannot be certain about the reasons why he failed to steer for the bend, it is possible that the level of alcohol and presence of drugs within his system may have exacerbated his poor manner of driving. I also cannot rule out that he may have been distracted by clipping the kerb after completing the overtake."

15. Although taken to hospital, he was discharged and then arrested. He was later interviewed under caution in the presence of a solicitor, making no comment to all questions put to him. The applicant appeared before the magistrates on Monday 29 January; on the Better Case Management form, indicated pleas of Not Guilty were noted to the three charges of causing death by dangerous driving. However, on 26 February, when he first appeared before the Central Criminal Court he pleaded guilty to each of the three offences.

16. Before the Judge, there were a large number of Victim Personal Statements from relatives and friends providing overwhelming testament to the devastation which these deaths have caused and continue to cause to the lives of all who came into contact with the three boys. We have seen all these statements save for one from Tracey Blackwell (mother of Josh) which was before the Crown Court but which she has indicated that she wishes to retract. As a result, it was removed from the bundles prepared for this court. Furthermore, an issue arose as to the extent to which some parts of the statement of Harry's father, Mr Ian Rice, were redacted (to which we shall return). These statements not only reveal inconsolable loss but, in addition, real anger.

17. As for the applicant, he was 28 years of age (having been born on 6 May 1989). He had one previous conviction for battery (for which he was fined); he had also been cautioned for an

offence of fraud and warned for possession of cannabis. A bundle of character references testifying to the positive sides of his character were also available.

Sentencing Remarks

18. Although it would normally be appropriate shortly to summarise the sentencing remarks of the Judge, having regard to the challenge in this case, we set out the approach more fully. Thus, the Judge observed that the bald words 'three counts of death by dangerous driving' represented the immeasurable loss of three young lives. Having rehearsed the facts of the case, she observed that the manoeuvre the applicant completed in overtaking Mr Miller would, at any time, have involved risks, but the circumstances in which the applicant attempted it multiplied those risks exponentially. First, it was dark. Secondly, travelling at about 71 miles per hour when overtaking was far beyond the legal limit of 60 miles per hour (which itself was not a safe speed, Mr Miller considering that safety required a speed of half of that limit). Thirdly, the applicant was intoxicated with 2½ times the limit of alcohol in his blood and traces of cannabis in his body.

19. The Judge went on to explain that to drive in that way in those circumstances was clearly extremely dangerous. He lost control of the car at an early stage of the manoeuvre. Mr Miller later described the applicant's driving as like a bat out of hell. Had there been a vehicle turning right into the garage the applicant would have smashed into it. Had he failed to get back into the eastbound carriageway he would have caused a head on collision with oncoming traffic. He could have hit all eight of the youngsters on the pavement. What did happen was that he ploughed into and killed three wholly innocent boys.

20. She explained that the car was a mangled wreck. The damage spoke to the severity of the impact. It was only the quick thinking of the other two boys that prevented the applicant's escape. The two remaining boys and the girls did what they could for their friends. The horrific circumstances would no doubt remain with them for the rest of their lives. The Officer who accompanied the applicant to the hospital considered him to be completely intoxicated. The applicant chose to make no reply to every question in interview the next day.

21. The Judge recognised that the anguish and suffering that had resulted from the events of that evening could not be easily portrayed. Each boy had different, exciting and admirable plans for his future. Each had had that future taken from him. Each was deeply loved by his close and extended family. The Judge had seen the pain, anger, despair and loss of parents and step-parents, grandparents, siblings, cousins, aunts, uncles, entire families. All painted a picture of inexpressible loss, frustration and grief that the lives of their boys had been taken away and their own lives and those of everyone else they love had been torn apart. The friends of Harry, Josh and George who had witnessed the carnage suffered sleepless nights and bad dreams when sleep finally did come. They too were struggling to come to terms with what had happened, as were many other friends of the boys. The Judge had the suffering of the families and the friends and the grieving well in mind, but also had to consider the law.

22. It was noted that Parliament was to consider proposals for increasing the sentence for causing death by dangerous driving from the present maximum of 14 years' imprisonment to life imprisonment. Within that maximum the Judge was bound by the sentencing guidelines issued by the Sentencing Guidelines Council. It was not in dispute that this case fell into the top level

of the relevant guideline which applied where the driving involved a deliberate decision to ignore or a flagrant disregard of the rules of the road and an apparent disregard for the great danger being caused to others. That provided a starting point of 8 years custody with a range of 7 to 14 years (which was the maximum for the offence, allowing no head room for exceptional complications or circumstances outside those envisaged by the guideline).

23. The guideline gave examples of the sort of driving likely to characterise the top level; this included consumption of a substantial amount of alcohol leading to gross impairment which was clearly met in this case. Had this feature alone been present and led to the death of one boy only, the Judge would have been looking at a starting point of 8 years' imprisonment. Other features which might not, of themselves, put this offence at this level but which must be marked in finding the right point within the range then had to be taken into account. In this regard the Judge noted the applicant's extremely dangerous manoeuvre in overtaking where he did, the excessive speed (combined with the fact it was dark and the road was poorly lit), the failures to give appropriate weight to the testing layout of the road and the bollards, the presence of vulnerable pedestrians walking along a busy road, the fact that he put eight lives in danger and his attempt to leave the scene. All those features moved the starting point up from 8 years and a very long way up the range. There was then the centrally important feature that three boys had died.

24. The Judge analysed the defence submission that there was only one course of driving but she identified a cardinal principle of modern day sentencing that the harm done must also be properly reflected. The guideline said that where more than one person was killed that would aggravate the seriousness of the offence because of the increase in harm. However, there was no guideline as to how that should be achieved where other features of the case had already put the sentence towards the maximum. One obvious way (she concluded) to achieve a just and proportionate sentence to reflect multiple deaths in a case where, because of other features, the sentence was already well within the scale was to make the sentences for each death consecutive.

25. The Judge considered the authorities that indicated that normally all offences arising out of the same facts should be sentenced concurrently. The Judge noted that in the authorities in the guideline, when describing the principle requiring concurrent sentences, the word 'normally' or 'generally' was repeatedly used. This gave rise to the question of when the 'normal' or 'general' did not arise. That there were circumstances beyond the 'normal' or 'general' was made clear in *R v Mannan* [2016] EWCA Crim 1082 where it was said that if there were several victims it was perfectly possible the judge would conclude that due to the level of harm there may even be room for consecutive sentences. The deaths of three boys had to be reflected, the loss of three lives, the tearing apart of three families. That was the feature which drove the Judge to conclude that she could not find a sentence that was just and appropriate without basing her final sentence upon an approach involving consecutive sentences.

26. The Judge accepted that totality had to be considered and she was bound to bear in mind the culpability for all three deaths arose from the same culpable piece of driving. That was the reason why so many authorities stressed the importance of concurrent sentences. The imposition of consecutive sentences always needed very substantial reduction of some of the sentences so as properly to reflect the single act of wrongdoing that led to consequences that could be legion.

27. As for the personal circumstances of the applicant, his conviction for assault involved considerable violence which he committed together with another man who was in drink. The Judge noted the very large number of letters had been written on the applicant's behalf which spoke of him as a loving and supportive member of his family, his friends and his community although none referred to the fact that he was very drunk and grossly speeding at the time of the offences. The Judge identified that the only explanation for the applicant's behaviour on the day was that he had spent a number of hours with friends who were skate boarding and drinking in a park. She accepted that he was remorseful but noted that he was not remorseful enough to remain at the scene or admit his guilt to the police. Further, he was entitled to credit for his guilty pleas entered at the Plea and Trial Preparation hearing which, based on the Guideline issued with effect from 1st June 2017, should be one third.

28. The Judge concluded that this was a case in which it would not only be proper but appropriate to pass consecutive sentences in order to take account of all the aggravating features of culpability together with the harm done. However, all the authorities together with the Sentencing Council's guideline on totality made it equally clear that the total of the consecutive sentences could not be the adding together of the three terms of imprisonment as the totality was based upon the single act of driving. Being as faithful as possible to all the guidelines, she arrived at the figure of 20½ years for the three offences, reduced by 1 year for personal mitigation and by one third thereafter for the guilty pleas, which would reduce the total sentence to 13 years. Having reached that figure, the Judge passed that sentence on each count concurrently, imposed the discretionary disqualification of 7 years, extended to 13½ years to reflect the period in custody as required by s. 35A Road Traffic Offenders Act 1988.

Preliminary Issues

29. Before dealing with the grounds upon which this application is based, it is necessary to deal with a number of preliminary issues. The first relates to a complaint articulated by more than one relative of the deceased boys made from the well of the court that Cheema-Grubb J recuse herself from the hearing: this application was explained on the basis that there was a perception of bias by reference to two decisions to which she was a party. Mr Ian Rice (the father of Harry) said that he had referred to Cheema-Grubb J before the judge. In fact, his reference to her was in one of a number of e mails sent to the police. On 6 March at 12.05, he wrote referring to the ability to pass discretionary sentences and referred to two cases asking "Where is the consistency" and "Where are the guidelines that she followed?".

30. We believe that these cases were *R v Aslam* [2017] EWCA Crim 2454 when a constitution of this court (of which she was a member) reduced a sentence of 5 years' imprisonment to 4 years' for an offence of attempting to cause grievous bodily harm with intent and dangerous driving when, following a confrontation with a group of men, he drove a car into their midst; fortunately, no serious injury was caused to anyone. This case applied the relevant assault guideline issued by the Sentencing Council. The second is the sentence which she passed in *R v Osborne* which concerned the murder by the use of a van of a Muslim man near Finsbury Park Mosque and the attempted murder of "at least a dozen people"; the murder was for the purposes of a religious, racial or ideological cause and had a terrorist connection. The sentence in this case followed the approach set out in Schedule 21 of the Criminal Justice Act 2003. There is no comparison between either of these cases and the present not least because of the different principal offences.

Suffice to say there is absolutely no basis for Cheema-Grubb J to recuse herself: no fair-minded and informed observer could conceivably conclude that there was a real possibility of bias (see *Porter v Magill* [2002] 2 AC 357).

31. The second preliminary point concerns the families' vocal attack on the police and the Crown Prosecution Service in connection with the investigation of these offences. Their belief (also articulated from the well of the court) was that the applicant was guilty of three counts of murder and other offences of attempted murder having deliberately driven his car at the boys and their friends. As we understood it, they challenged the adequacy of the charges without success. They had also complained to the Commissioner of the Metropolitan Police and the Mayor of London. Finally, we were handed a Notice of Application for Voluntary Bill of Indictment for a voluntary bill against a Metropolitan Police Officer for "misconduct in office by failing to exercise his powers to investigate allegations of murder". The document goes on to assert that "the families of the victims have exercised their common law right to refer the matter to a Middlesex Grand Jury of their peers which has issued a presentment".

32. The professional experience of each member of the court has revealed many examples of the raw devastation caused by the death of loved ones and we recognise the emotions that lie behind the concerns which these families have expressed. Without requiring them to accept the position, however, it is important to underline that criminal courts operate only on the basis of adjudicating upon charges brought before them. In the light of the evidence we have seen, we can understand why the charges preferred were those of causing death by dangerous driving but, in any event, the decision was not and is not for the court to make. Our duty is to determine whether the sentence imposed for those offences was either wrong in principle or manifestly excessive having regard to the law which relates to the crime or crimes for which sentence is passed. It is neither more nor less than that.

33. Combined with this argument, a third point was made challenging the jurisdiction of this court as failing to comply with the common law. In fact, there was no common law right of appeal in criminal cases: after 1848 the Court for Crown Cases Reserved could issue reasoned decisions when invited to do so by the trial judge but the first statutory right of appeal came with the Criminal Appeal Act 1907; the Court of Appeal (Criminal Division) is now governed by the Criminal Appeal Act 1968: it is pursuant to that legislation that this Court operates.

34. Finally, Mr Rice complained that his Victim Personal Statement had been altered by leading counsel then appearing for the Crown such that parts were omitted. In fact, we have seen an e mail (dated 6 March 2018 and timed at 9.56 am) which he sent to the police who forwarded it to the Crown Prosecution Service and which is faithfully replicated in the statement we have seen, the bottom of which has a blank part which has been crossed out and initialled by Mr Rice. Having looked at the documents in their original form, it appears that counsel then instructed for the prosecution may have struck out parts of the statement that were critical of the prosecuting authorities on the basis that they were irrelevant to the task being undertaken by the sentencing judge. Ensuring that relevant material only is placed before the court is, indeed, part of counsel's duty but, for the avoidance of all doubt, we have seen the statement that accords word for word with the e mail sent by Mr Rice in March. Mr Rice suggests that there is a further page but no other version has been identified and he has not provided us with any other document.

35. In that regard, we have also seen updated victim impact statements from Christine Baker, Sarah Baker, Stacey Wilkinson, Rebecca Brown, Taylor Thompson (George's grandmother, mother, step-mother, aunt and cousin) and also from Ian Rice (Harry's father). We have read with care both the statements put before the Crown Court and the updated statements. In addition, in a manner which was profoundly moving and clearly took great courage, Taylor Thompson read her statement and that of her grandmother. All these statements only serve to underline the profound impact the events of 26 January 2018 have had on the victims' families and friends.

The Application

36. Turning to the application for leave to appeal, Leila Gaskin (who also appeared for the applicant in the Crown Court) submits that it was wrong to calculate the length of sentence by reference to consecutive sentences in respect of each death, because these offences arose from a single piece of driving. She argues that the sentence was manifestly excessive in two respects. The first concerns the increase in sentence from the starting point identified, taking into account the additional determinants of seriousness, to one near the maximum sentence; the second concerns the further increase for harm caused above the available statutory maximum to a total of 20.5 years, before giving credit for personal mitigation and guilty plea. Oliver Glasgow QC (who appeared on the appeal but not below) recognises that the decision in *AG's Reference (R v Brown)* [2018] EWCA Crim 1775, [2019] 1 Cr App R (S) 10 subsequent to the sentence in this case makes it clear that consecutive sentences were not appropriate but argues that the indication of not guilty pleas in the magistrates' court justifies reducing the discount for a guilty plea to one of 25%. To these arguments we now turn.

37. By s. 33 and Schedule 2 Part 1 of the Road Traffic Offenders Act 1988, the maximum penalty for causing death by dangerous driving is prescribed as imprisonment not exceeding 14 years. In addition, and of real importance in this case, s. 125(1) of the Coroners and Justice Act 2009 provides:

> "Every court –
>
> (a) must in sentencing an offender, follow any sentencing guidelines which are relevant to the offender's case, and
>
> (b) must, in exercising any other function relating to the sentencing of offenders, follow any sentencing guidelines which are relevant to the exercise of that function,
>
> unless the court is satisfied that it would be contrary to the interests of justice to do so."

38. The relevant guidelines are those in place for the offence of causing death by dangerous driving (issued by the Sentencing Guidelines Council in relation to those convicted of the offence after 4 August 2008), which identify a starting point for the most serious offences of 8 years and a sentencing range of 7-14 years (the latter being the statutory maximum). These guidelines were fully described by the Judge who identified additional aggravating factors which she explained (including the fact of more than one death, other offences committed at the same time and the attempt to run away).

39. We deal first with the challenge to the approach of the Judge in relation to the fact of more than one death and the calculation of the sentence with consecutive sentences in mind arising, as it did, from a single piece of driving. This concerns the guidelines issued by the Sentencing Council on totality (which guidelines have been effective from 11 June 2012). Those guidelines make it clear that although the overriding principle is that the overall sentence must be just and proportionate, concurrent sentences "will ordinarily be appropriate where offences arise out of the same incident or facts". A specific example is identified as "a single incident of dangerous driving resulting in injuries to multiple victims". The word "ordinarily" is to permit the possibility of consecutive sentences when more than one type of offence is established (such as causing death by dangerous driving and driving whilst disqualified).

40. The Judge analysed a number of the authorities, specifically *R v Noble* [2013] 1 Cr App R (S) 65 which quashed consecutive sentences for causing several deaths on the basis that there was a single act of dangerous driving and *Attorney General's Reference (No 57 of 2009) R v Ralphs* [2009] EWCA Crim 2555 to like effect. *R v Jenkins* [2015] EWCA Crim 105 concerned serious injury to two people in a collision caused by dangerous driving and Treacy LJ observed (at [12]) that the decision of *Noble* approved in *Ralphs* was binding on the court. The judge also referred to *R v Kroker* [2017] EWCA Crim 2472 which concerned four counts of causing death by dangerous driving and underlined (at [16]) that the fact that each count arose from the same incident "required" concurrent terms.

41. On the other side of these decisions, the Judge relied on *R v Mannan* (*supra*) in which it was observed that "if there are several victims it is perfectly possible that a judge would conclude that due to the level of harm there may even be room for consecutive sentences". Since that decision *Kroker* was decided.

42. Furthermore, since this sentence was imposed, this Court has decided an Attorney General's Reference *(R v Brown)* [2018] EWCA Crim 1775, [2019] 1 Cr App R (S) 10 in which the Solicitor General argued that a judge could impose consecutive sentences in circumstances where two small children (in a group including three mothers and nine children) were killed by a drugged driver (4½ times the legal limit) said to have been driving "at motorway speeds" in a 30 mph limit who then drove off and sought to hide from the police. That offender had never lawfully been entitled to drive (with 30 convictions for driving whilst disqualified) and had been released from prison six days earlier.

Notwithstanding the many aggravating features of that case, this court concluded (at [36]) that there was no basis for changing the principle that consecutive sentences should not be imposed for offences arising out of a single incident. As for *Mannan*, the court went on:

> "The statement [that there may be room for a consecutive sentence] was not part of the ratio of the decision in *Mannan*. There was only one death in that case. In any event, it was consistent with the use of the term "normally" (in *Ralphs*) or "generally" (in the Definitive Guideline) and is consistent with a consecutive sentence being imposed for an offence committed at the same time but entirely distinct from the offending giving rise to death. A good example could be the imposition of a consecutive sentence for driving while disqualified."

43. A flawed proposition, advanced by counsel for the offender in *Brown*, needs to be underlined. It was suggested that there would be worse cases for which the maximum should be reserved and that, therefore, a sentence before mitigation and discount had to be less than the statutory maximum. The Court made it clear (at [38]):

> "We have no hesitation in rejecting the argument that the maximum sentence must be reserved for some notional case, the gravity of which cannot be matched by any other set of circumstances. As we already have noted, the sentencing guideline for the offence of causing death by dangerous driving provides a sentencing range which encompasses the maximum sentence for the offence. At p.10 of the guideline this appears:
>
> > 'Level 1 is that for which the increase in maximum penalty was aimed primarily. Where an offence involves both of the determinants of seriousness [which this offence did] ... particularly if accompanied by aggravating factors such as multiple deaths or injuries or a very bad driving record this may move an offence towards the top of the sentencing range.'
>
> It is clear that the top of the sentencing range (which, for this offence, is the maximum sentence permitted by parliament) is not reserved for a notional exceptional case (which might itself justify a charge of manslaughter). If the nature of the offence is serious enough, it may attract the maximum sentence after a trial even if one could envisage some even more grave set of circumstances."

44. The answer to this aspect of the case is clear. Parliament has prescribed that the maximum sentence for causing death by dangerous driving is 14 years' imprisonment and the authorities are consistent that where the sentence is imposed for a single act of dangerous driving (putting to one side offences such as driving whilst disqualified), concurrent terms should be imposed for each offence when more than one death results. To do otherwise would be to subvert the maximum term. In that regard, the mechanism for change is not to subvert sentencing practice but to re-examine the maximum sentence for this offence. That is not for this Court to do.

45. Turning to the facts of this case, we entirely agree with the Judge that the harm caused is very seriously aggravated by the number of deaths and that there are many aggravating features in relation to culpability. In those circumstances, we take the view that this is one of those cases where the appropriate starting point is the maximum sentence, that is to say 14 years' imprisonment. Although we have read the many character references in relation to the applicant (and note the positive report from prison which also describes the impact on him and his family as well as the impact on his mental health), it cannot be said that he was of previous good character (in relation to the commission of crime) and positive aspects of character are not unusual in cases of this type. In those circumstances, we do not consider it appropriate to reduce the term from 14 years to reflect this element of what is said to mitigate the offences.

46. We turn to the question of the discount for guilty plea. In that regard, we refer to the Sentencing Council's Guideline in relation to guilty pleas (effective with effect from 1st June 2017). The

approach mandates that the appropriate sentence for the offences must be determined in accordance with the offence specific guideline after which the level of reduction should be identified. Paragraph D1 of the Guideline makes it clear:

> "Where a guilty plea is indicated at the first stage of proceedings a reduction of one third should be made (subject to the exceptions in section F). The first stage will normally be the first hearing at which a plea or indication of plea is sought and recorded by the court."

The relevant exception is F1 which concerns further information, assistance or advice necessary before plea and is in these terms:

> "Where the sentencing court is satisfied that there were particular circumstances which significantly reduced the defendant's ability to understand what was alleged or otherwise made it unreasonable to expect the defendant to indicate a guilty plea sooner than was done, a reduction of one-third should still be made.
>
> In considering whether this exception applies, sentencers should distinguish between cases in which it is necessary to receive advice and/or have sight of evidence in order to understand whether the defendant is in fact and law guilty of the offence(s) charged, and cases in which a defendant merely delays guilty plea(s) in order to assess the strength of the prosecution evidence and the prospects of conviction or acquittal."

47. In this case, the first stage of proceedings was in the magistrates' court when a plea of not guilty was intimated. Ms Gaskin explained the difficulties of communication at the magistrates' court but the position would have been clear even at that stage. First, it is not suggested that he was unaware of what happened: even if he did not know the level of alcohol in his blood, he must have known he had drunk too much and, having done so, driven off the road and killed three boys. Secondly and in any event, he was advised by a solicitor while being interviewed by the police after his arrest. In the record of interview (which we have read and which covers some 28 typed pages), although the applicant refused to answer any questions, the circumstances of the offences were clearly identified (with the accounts of a number of witnesses outlined). From that moment, in the absence of some medical explanation (which it has never been suggested was a concern), it is difficult, if not impossible, to imagine what possible defence could be available.

48. The Judge made the point that prosecuting counsel did not disagree with the claim to an entitlement of one third. That is not decisive. It was for the Judge to assess the position for herself. In our judgment, in the circumstances of this case, having regard to what the applicant knew about what he had done, how that had been described by witnesses (as well as how much he had drunk), he did not need further sight of evidence and was able to receive legal advice on the day of the interviews. The first hearing at which an indication of plea was sought was before the magistrates. Ms Gaskin told us that the applicant changed his legal advisers and that it was difficult to proffer advice in the magistrates' court. All this flowed from decisions he made and does not alter the fundamentals of this analysis.

49. In the circumstances, in our judgment, the discount open to the applicant was not one third but one quarter (being the maximum level of reduction after the first stage of proceedings). Applying that discount to the sentence of 14 years reduces the term imposed by the Judge from 13 years' imprisonment to 10½ years' imprisonment. Compliant with s. 35A of the Road Traffic Offenders Act 1988, the period of disqualification is reduced to 12 years 3 months.

Conclusion

50. The death of each of the victims in this case is a disaster and tragedy of almost unimaginable proportions for them, their families and their friends; no sentence of the court can assuage that loss. Parliament, however, has prescribed that the maximum penalty for causing death by dangerous driving is 14 years' imprisonment and well established sentencing law and practice requires that the harm caused by the single offence (as opposed to any additional penalty for different offences albeit committed at the same time) does not permit the calculation of sentence to be based on consecutive, rather than concurrent, terms. In that regard, the Judge fell into error.

51. The applicant is granted leave to appeal and, in place of the sentence imposed at the Central Criminal Court, we impose a sentence of 10½ years' imprisonment on each count concurrent. Compliant with s. 35A of the Road Traffic Offenders Act 1988, the period of disqualification is reduced to 12 years 3 months. The order that the disqualification will continue thereafter until the applicant passes an extended driving test remains in place as does the Victim Surcharge Order. To that extent, this appeal is allowed.