Neutral Citation Number: [2023] EWCA Crim 1023

Case No: 202302190 A2

**IN THE COURT OF APPEAL (CRIMINAL DIVISION)**
**ON APPEAL FROM THE CROWN COURT AT CARDIFF**
**HIS HONOUR JUDGE DAVID WYNN MORGAN**
**Case No: 61CY0191122**

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 08/09/2023

**Before :**

**LORD JUSTICE POPPLEWELL**
**MR JUSTICE LAVENDER**
and
**MR JUSTICE BRYAN**

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**R v KEILAN ROBERTS**

**A REFERENCE BY HIS MAJESTY'S ATTORNEY GENERAL UNDER SECTION 36 OF THE CRIMINAL JUSTICE ACT 1988**

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**Jeffrey Jones (**assigned by **the Registrar of Criminal Appeals)** for **Keilan Roberts**
**Philip McGhee** (instructed by **His Majesty's Solicitor General**) for **His Majesty's Attorney General**

Hearing date : 7 September 2023

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# JUDGMENT

**Lord Justice Popplewell:**

1. Shortly after 5 o'clock in the morning on Sunday 24 July 2022 the offender, Keilan Roberts, crashed his car on a country road in Wales killing his passenger Chloe Hayman. He was 21. She was 17.

2. On 6 June 2023, he was sentenced by His Honour Judge Morgan at Cardiff Crown Court to four concurrent sentences of 3 years 9 months imprisonment for causing death by careless driving under the influence of drink and drugs in excess of the prescribed limits, contrary to s. 3A(1)(b) and (1)(ba) Road Traffic Act 1988. Count 1 reflected the excess alcohol and counts 2 to 4 three different drugs, namely benzoylecgonine ('BZE'), which is the primary metabolite of cocaine, ketamine and MDMA,

3. His Majesty's Solicitor General seeks leave to refer the sentences as unduly lenient pursuant to s. 36 Criminal Justice Act 1988.

4. The facts in more detail are as follows.

5. The offender and his friend Regan Gittings were planning to go to a nightclub in Pontypridd on the Saturday night. They arranged for a friend, Jaimie Huntley to drive them there and back in return for cash. The offender left his car, a Skoda Octavia, in Deri. Mr Huntley picked them up at about 5.15 in the afternoon and drove them to the nightclub. He agreed to return at 4 am to take them back.

6. Ms Hayman was at the nightclub with a friend, who left before she did. Mr Huntley returned shortly after 4 am and collected the offender and Mr Gittings. Chloe Hayman was now with them.

7. Mr Huntley thought they were all drunk and sleepy. He drove and stopped at a Texaco garage in Nelson. Mr Gittings bought wine and cans and bottles of alcohol, some of which he gave to the offender. Mr Huntley then drove on.

8. In Deri, the offender asked Mr Huntley to stop by his car so he could get something. The offender and Chloe Hayman went to the offender's car and both got in. Mr Gittings had a bad feeling about the offender getting into his car. He flagged him down and spoke to him through the window and asked him to get out. The offender, however, drove off intending to go to his home in Rhymney with Chloe. She was in the front passenger seat.

9. Mr Huntley followed in his car with Mr Gittings, though at a distance. Mr Huntley thought the offender was travelling "at about 40 mph" but otherwise his driving "didn't look too bad".

10. The accident occurred on the road into the village of Fochriw, Gwent. On the approach to the village, the road bends sharply right and then left. A short straight section then leads to a shallow right-hand bend just prior to a cattle grid which separates the village from the surrounding open hillside. There are no edge of carriageway markings on the road, though it is bordered by square edged kerb. There is a footway on the offside. The opposing traffic lanes are separated by painted hazard lines. There are evenly spaced streetlights along the offside of the road. The applicable speed limit is 30 mph.

11. A road sign warns of the cattle grid on the approach. The sides of the cattle grid are bordered by metal fencing which runs parallel with the carriageway, with the ends

highlighted by black and white marker posts. On the nearside and to the left of the metal fencing is a stone wall running perpendicular to the roadway.

12. The road was wet but there was no standing water on it and visibility was unimpaired. There was a long clear view along the straight section of the road to the cattle grid, where the accident took place. A subsequent investigation report concluded that the offender's vehicle travelled up onto the curb a short distance from the cattle grid. Its nearside headlight then collided with the nearside marker post and the metal fencing beside the cattle grid. Mr Huntley, in the car a little distance behind, described the offender "skidding out of control" on the approach to the cattle grid on the descent into Fochriw. There was no evidence from road markings of loss of control or any avoiding action taken by the offender prior to the point of impact. It was not possible to make a forensic estimate of the speed of the offender's car prior to, or at, the point of impact.

13. Mr Huntley drove to the scene of the collision and stopped his car. Barry Rees, a nearby resident, arrived at the scene of the collision shortly afterwards. He saw the offender still in the driver's seat of the Skoda Octavia and drinking from a bottle of beer. He described the offender as obviously very drunk: "blotto". Mr Rees dialled 999. He then saw the offender get out of his car and sit on the kerb and start to drink another bottle of beer. The offender told him he had not been drinking at the time of the collision and had just opened "a few bottles to take the edge off".

14. The offender also dialled 999 and spoke to an operator. He said there had been a collision and a fatality. He gave his name. He was tearful during the call. The offender went to sit inside Mr Huntley's car.

15. The fire service arrived at the scene about 20 minutes after the accident. Chloe Hayman was found slumped in the front passenger seat of the offender's car. She had evidently suffered a catastrophic thoracic injury, and was pronounced dead at the scene.

16. When police arrived shortly after, the offender was standing in the road by his car. He smelled strongly of alcohol and was unsteady on his feet. His eyes were glazed and his pupils were dilated. He slurred his words. His demeanour was captured on body worn CCTV footage. He had an unopened bottle of Peroni beer in his pocket. Police found empty bottles of beer on the grass verge by the front of the offender's car and also inside and near to Mr Huntley's car.

17. The offender was asked to perform a roadside breath test. He told police he had recently consumed alcohol. He said he knew he would fail the test because he had drunk three bottles of beer after the accident. He denied drink driving. At 05.43 hours he provided a specimen of breath which showed no reading but gave a result of 'fail'.

18. He was arrested and cautioned. He made no reply, but then repeated that he had drunk alcohol after the accident.

19. At 08.24, some 3½ hours after the accident, he provided a sample of blood. During the procedure, he told the police he had drunk four alcoholic drinks shortly after the collision had happened. He then told the police, "I don't know if it will make any difference but I am extremely sorry for the girl's family."

20. The offender was interviewed under caution and in the presence of a solicitor by police later on Sunday 24 July 2022. He said that he did not know the exact number of drinks he had consumed that night. He said he drank two or three pints of light beer in the nightclub, around 6 or 7 pm. He said he also had a double vodka and lemonade. He later added that he had also had a mouthful of wine before going into the nightclub. He thought he was tipsy at one point but not drunk. He said he finished his last drink in the nightclub around 9 pm. He said he had met Chloe at the nightclub and must have asked her to come back to his house though he was unaware of how she had come to be in the car driven by Mr Huntley. He said that when they both got into his car at Deri he felt fit to drive. He set off to drive back towards his house in Rhymney. He wanted his car to be back at home because it would be more convenient for him the next day.

21. He said he was driving between 30 and 40 mph prior to the accident. He negotiated two bends and drove down a straight part of the road. He then clipped a stone wall on the left hand side and the collision occurred. He was familiar with the stretch of road downhill towards Fochriw. He said he was not clear as to what had happened. He said the impact was the first he knew that he had crashed.

22. He said that after the collision he then drank two bottles of Peroni beer which he had in his car for when he got home. He said he had done so because it was a traumatic situation and he thought it might help him. He drank these in quick succession, by around 5.15 am. He had been found in possession of a third bottle of Peroni.

23. He said he had taken "half a pill" of ecstasy on the Friday night but no other controlled substances since then.

24. He said he was "extremely sorry" for what had happened.

25. A vehicle examination report confirmed that the offender's car was ten years old and had no mechanical faults that contributed to the collision. The car was, however, not in a fit state to be on the road and would have failed its MOT test. This was because the rear tyres each had a dangerous defect, in that each was older than the car itself and the tread depths were not in accordance with requirements.

26. In interview the offender said he had owned the Skoda Octavia since February 2022 and he drove it daily. He said he checked the tyres "a couple of times a week" and had last checked them "last week" when they had looked intact.

27. The offender's blood sample was analysed. Taking account of the lapse of time between the collision and the provision of the evidential blood sample, and the offender's assertion to police at the roadside that he had drunk three bottles of Peroni beer after the collision, it was calculated that the level of alcohol in the offender's blood at the relevant time was approximately 96 mgs of alcohol per 100 mls of blood. This is above the legal limit of 80 mgs per 100 mls of blood. It is the equivalent of 48 µg per 100 mls in a breath sample, the legal limit being 30.

28. Based on the blood analysis results and calculations, the offender's account of the total amount of alcohol he had consumed did not explain the levels found in his blood, and more alcohol must have been consumed by him at some point.

29. The blood analysis also showed the following levels of controlled drugs which were above the specified limits:

    the level of BZE was not less than 118 µg/L, where the specified limit is 50 µg/L;

    the level of ketamine was not less than 34 µg/L, where the specified limit is 20 µg/L; and

    the level of MDMA was greater than 75 µg/L where the specified limit is 10 µg/L.

30. The offender has held a full licence from May 2019 and had not previously committed any offence save for one of speeding on 2 November 2021 in respect of which 3 points were added to his licence and he was fined. There was also information before the court that, within the period of twenty months leading up to the date of the collision which killed Chloe Hayman, the offender had failed roadside breath tests for alcohol on five occasions, though later evidential readings had been within the prescribed limit. On another occasion in that time, he had provided a roadside breath sample which showed the presence of alcohol but just below the prescribed limit, and on two other occasions he had been involved in road traffic collisions.

31. The offender pleaded guilty at the PTPH, having indicated an intention to do so about a week earlier. He had not given an indication of guilty pleas at the magistrates court.

32. A Pre-Sentence Report was prepared, by a senior probation officer. The report noted that the offender put forward an explanation for the positive breath test which did not appear credible. He did however accept responsibility for his offences. He displayed evident remorse and shame, and he showed a level of victim empathy. He had suffered from depression and had had flashbacks since the collision.

33. The offender had completed his education and had been in stable employment in plumbing since leaving college. He had, however, had an unsettled childhood which was characterised by parental neglect and exposure to domestic abuse. He had been living since the age of twelve with his maternal grandmother, with whom he played an active role in the care and upbringing of his younger siblings. She was now hospitalised following a road traffic collision which had left her in a coma. His imprisonment would undoubtedly therefore be difficult for his siblings.

34. The offender's father had died when he was aged fifteen years which triggered a deterioration in the offender's behaviour and emotional well-being. He had a history of drug and alcohol misuse from his teenage years, likely by way of self-medication. This was an issue he minimised. There was some evidence of a history of driving having consumed alcohol, though this had not led to any convictions. The offender was "clearly devastated" at the consequences of his pattern of behaviour. He evinced an intention to engage with intervention to address his issues. His impulsive behaviour and poor decision making were partly attributable to his young age and immaturity.

35. He presented a low risk of reoffending but a high risk of serious harm due to the risk factors he presented which had yet to be addressed.

36. The Judge also had a number of character references speaking to the offender's good qualities.

37. The Judge heard two moving statements read by Chloe's mother and stepmother which poignantly expressed the devastation caused by Chloe's death in its effect on them and other members of the family and friends whose lives she enriched.

38. In sentencing the Judge said that the offender's drinking immediately after the accident was an attempt to frustrate what he knew would be the efforts of the police to establish how much he had previously drunk, an attempt in which he ultimately succeeded. He concluded that the inference to be drawn from the evidence was that the offender lost control of his car through momentary inadvertence, no doubt because of the alcohol and controlled substances he had consumed.

39. The Judge referred to the Sentencing Council Guideline published in 2008 for the offence of causing death by careless driving when under the influence of drink and drugs contrary to s3A RTA 1988 ('the Guideline'). The Guideline predates the statutory amendment which added s (1)(ba) to s. 3A of the 1988 Act imposing the offence of causing death by careless driving when over the prescribed drug limits. The Judge was nevertheless right to use it: see *R v Adebisi* [2020] EWCA Crim 1446 at [14].

40. The maximum sentence for these offences had been increased from 14 years to life imprisonment for offences committed after 28 June 2022, a few weeks before the accident. The Sentencing Council has issued revised guidelines with effect from 1 July 2023, a few weeks after this offender was sentenced. The Solicitor General does not suggest that the Judge made any error in applying the Guideline in force at the time of sentencing, without any adjustment for the increased maximum sentences at the date of offending or the new guidelines coming into force shortly after sentencing.

41. The table for the sentence starting points and ranges in the Guideline is as follows

| The legal limit of alcohol is 35µg breath (80mg in blood and 107mg in urine) | Careless/ inconsiderate driving arising from momentary inattention with no aggravating factors | Other cases of careless/ inconsiderate driving | Careless/ inconsiderate driving falling not far short of dangerousness |
|---|---|---|---|
| 71µ or above of alcohol/ high quantity of drugs OR deliberate non-provision of specimen where evidence of serious impairment | Starting point<br>6 years' custody | Starting point<br>7 years' custody | Starting point<br>8 years' custody |
| | Sentencing range<br>5 – 10 years' custody | Sentencing range<br>6 – 12 years' custody | Sentencing range<br>7 – 14 years' custody |
| 51–70 µg of alcohol/ moderate quantity of drugs OR deliberate non-provision of specimen | Starting point<br>4 years' custody | Starting point<br>5 years' custody | Starting point<br>6 years' custody |
| | Sentencing range<br>3 – 7 years' custody | Sentencing range<br>4 – 8 years' custody | Sentencing range<br>5 – 9 years' custody |
| 35–50 µg of alcohol/minimum quantity of drugs OR test refused because of honestly held but unreasonable belief | Starting point<br>18 months' custody | Starting point<br>3 years' custody | Starting point<br>4 years' custody |
| | Sentencing range<br>26 weeks' – 4 years' custody | Sentencing range<br>2 – 5 years' custody | Sentencing range<br>3 – 6 years' custody |

42. In his clear, careful and structured sentencing remarks the Judge started his application of the Guideline by reference to the level of alcohol alone (i.e. the equivalent of 48 µg per 100 mls of breath), which fell within the lowest bracket (encompassing 35 to 50 µg per 100 mls), treating Count 1 as the lead offence. The conclusion from the evidence was that that the offender had lost control of his car through momentary inadvertence, which would put this in the lowest category with a starting point based on the level of alcohol of 18 months imprisonment and a range of 26 weeks to 4 years imprisonment. The Judge then treated the drugs element as requiring an upward adjustment for the totality of the offending. He did so by treating the culpability as comprising careless/inconsiderate driving falling not far short of dangerousness. That would move the starting point based on the lowest alcohol bracket to 4 years with a range of 3 to 6 years.

43. The Judge identified the aggravating factors as the dangerous state of the rear tyres; and the offender's attempts to frustrate the breathalyser process. He identified the mitigating factors as the lack of previous convictions, and the fact that this would therefore be the offender's first experience of imprisonment; the positive testimonials, which included references to difficulties in the offender's upbringing; and the offender's remorse. In balancing these he determined that the starting point should be adjusted upwards by one year to 5 years. Giving 25% credit for the guilty plea, he imposed concurrent sentences on the four counts of 3 years 9 months imprisonment. He also ordered disqualification from driving for 10 years and until an extended retest is passed. Following a query from counsel he indicated that he intended to add the period required by ss. 35A and B of the Road Traffic Offenders Act 1988 so that the disqualification would be extended by the period of custody. He did not pronounce that the extension period was 22½ months, as it should be, but we take the opportunity to clarify that that is the effect of his sentence. He also ordered the victim surcharge.

44. On behalf of the Solicitor General, Mr McGhee makes two submissions in support of the argument that the period of imprisonment of 3 years 9 months was unduly lenient. His first, and principal, submission is that the Judge made an error of principle in the application of the Guideline by looking first only at the level of alcohol and then putting the offending in a different level of driving culpability by reason of the drugs. Both the alcohol and the drugs should have been taken into account in placing the offending in the relevant vertical category in the table, not by moving across it horizontally. The drugs toxicity aggravated the offending by reference to those levels, not by reference to the degree of carelessness of the driving.

45. This is not only wrong in principle but results in an unduly low starting point and range because of the way the table is structured, as explained in paras 6 and 7 of the Guideline. The Guideline provides:

    "6. The guideline is based on the level of alcohol or drug consumption and on the degree of carelessness.

    7. The increase in sentence is more marked where there is an increase in the level intoxication than when there is an increase in the degree of carelessness reflecting the14 year imprisonment maximum for this offence compared with a 5 year maximum for causing death by careless driving."

46. Mr McGhee submitted that had the Judge focussed on the level of alcohol and drugs together, he would have been bound to have put it in the highest category which is where

there is 71 µgs or above of alcohol/high quantity of drugs, which when coupled with the lowest category of carelessness has a starting point of 6 years and a range of 5-10.

47. We agree that the Judge made an error in approaching the table in the Guideline in this way. The question arises, however, whether as Mr McGhee submitted, the correct category was that for 'high' quantity of drugs, or whether, as Mr Jones argued, the quantity of drugs was no more than 'moderate', which would give the same starting point as that used by the Judge, albeit by a different route, and only a slightly more elevated range.

48. An assessment of what quantity of drugs qualifies as 'high' and what as 'moderate' is, in our view, informed by the way the limits were set when the offence was subsequently introduced, and the evidence which lay behind the imposition of those limits. The 2014 Regulations prescribing the limits, with effect from 2 March 2015, made pursuant to the Crime and Courts Act 2013, followed a very full report published on 7 March 2013 by a panel of medical and scientific experts under the leadership of Sir Kim Wolff ('the Wolff Report') and public consultation on proposals made in the light of it. The Wolff report considered a wide range of empirical data on the effect of various levels of controlled drugs and the extent to which they impaired driving. In relation to BZE, it identified that if only BZE, and not cocaine itself, was found in a sample it indicated that the person was in the 'come down' period following acute intoxication, resulting often in tiredness. It recommended a threshold of 80 µg/L for cocaine with the threshold for BZE of 500 µg/L. For MDMA, the typical range of blood intoxication for the acute phase was 100-400 µg/L with a median of 320 µg/L. The come down phase was typified by tiredness and lethargy. The recommendation for the limit was 300 µg/L for the presence of MDMA alone but 150 µg/L where combined with the presence of alcohol. For ketamine, feelings of drowsiness and unreality were prominent at blood levels of 50-200 µg/L. The recommendation was of a limit of 200 µg/L for the presence of ketamine alone and 100 µg/L when in conjunction with alcohol.

49. As is apparent from these figures, the limits imposed by the Regulations were very much lower than the Wolff report recommendations. This was explained in the Ministry of Transport's Consultation Document in July 2013 as being because for controlled drugs, as distinct from those which might be medically prescribed, there should be a policy approach of zero tolerance, in order to serve as a strong deterrent to drug driving.

50. It is clear, therefore, that impairment of driving ability is not a necessary ingredient of the offence, which can be committed by the presence of controlled drugs at very low levels. That for MDMA, for example, at 10 µg/L is below the level at which the Wolff Report describes impairing effects.

51. Whilst the extent to which the intoxicant drugs impair driving is not an ingredient of the offence, it is nevertheless relevant in determining the seriousness of the offence, as this Court has said on a number of occasions: see *R v Mohamed* [2020] EWCA Crim 596 [2020] 4 WLR 1 at [24]; and *Adebisi* at [24]. That is apparent from the list of factors set out at page 3 of the Guideline as common examples of issues which determine the seriousness of the offence and include "consumption of illegal drugs where this impaired the offender's ability to drive". We take it to be self-evident that the greater the impairment, the more serious the offending.

52. In *R v Roberts (Karl)* [2018] EWCA Crim 2965 [2019] 1 Cr. App. R. (S.) 49, this Court said at [24] that the sentencing judge in that case, having assessed that the case fell within the 'moderate' bracket simply by reference to the level of cannabis in the sample, did not need to go on to a further question of the extent to which that cannabis actually impaired the offender's ability to drive. The passage was cited with approval in *R v Norman* [2022] EWCA Crim 1738 [2023] 1 Cr. App. R. (S.) 38, at [24], to which Mr McGhee referred us. However *Roberts* was decided before *Mohamed* and *Adebisi*, which do not appear to have been drawn to the Court's attention in *Norman*; and in *Norman*, the Court went on to say that in that case the sentencing judge had been entitled to reach and express the conclusion that the cannabis had caused the offender to lose consciousness, which was a finding of impairment. In our view it follows from the fact that the degree of impairment is relevant to an assessment of the seriousness of the offence that the sentencing court ought to consider impairment where it has the material to do so. In some cases expert evidence is given as to impairment. In others, inferences can be drawn from aspects of the evidence apart from blood sample results (see e.g *R v Myers* [2018] EWCA Crim 1974 [2019] Cr. App. R. (S.) 6) Where neither is the case, caution must be exercised in assuming impairment simply from a multiple of the limit for the offence, given the contents of the Wolff report and the rationale for setting the limits at a zero tolerance level.

53. The Judge was given no assistance on this question. We agree with the Solicitor General that the evidence in this case taken as a whole would have required the Judge to move to the highest toxicity level, applicable for high quantity, because there was a body of evidence showing substantial impairment of the offender's driving ability. The levels of the drugs were all in excess of the limit by some margin, and in the case of the MDMA over 7 times the limit. This was in a sample taken some 3½ hours after the accident. Their effect has to be considered not individually, but in conjunction with each other, and in conjunction with the alcohol level, which was itself not far short of the middle category. Even if not in the acute phase of the effect of the drugs, the offender was at the least in the 'come down' phase involving increased tiredness, which is itself a dangerous impairment to driving ability.

54. Mr Huntley's view, which he expressed to Mr Gittings when they set off to follow the offender, was that he was drunk and unfit to drive. Mr Gittings had sought to persuade him not to drive. Mr Rees described him as "blotto", albeit after he had consumed one or two bottles of Peroni at the roadside. Mr Rees regarded himself as good judge of whether people were drunk by reason of having worked part time in a pub. A reading of the transcript of the offender's 999 call suggests that he was either drunk or under the influence of drugs or both. The body worn police cameras confirmed his demeanour as heavily intoxicated by drink and/or drugs. All these observations suggest a substantial degree of impairment by a combination of drink and drugs.

55. The starting point should therefore have been one of 6 years, not 4 years. With an uplift of one year for the balancing of aggravating and mitigating features, that would have resulted in a sentence of 7 years before reduction for plea. At 25% this would have resulted in a sentence of 5 years 3 months.

56. Mr McGhee's second and subsidiary submission was that the Judge had failed to give adequate weight to the aggravating factors, and in particular had not taken account of the aggravating feature that Mr Gittings had tried to dissuade the offender from setting off in his car from Deri.

57. Mr Gittings' evidence about this in his statement was as follows:

> "Jamie parked on the road and allowed Keilan to reverse out. I had a bad feeling about him getting in the car, he is my best friend, I didn't want anything to happen to him. Jamie and I waited whilst he reversed out onto the road, I beeped the horn on Jamie's car and flagged him down. We were still parked up and he pulled up beside us on our passenger side to his driver's side. I could see that Kielan had his seat belt on and I spoke to him through his open driver's window and asked him to get out of the car, in my opinion he was fit to drive although I know that he had been drinking, I wanted to protect him from crashing and losing his licence. Keilan was getting arsey with me saying "Drive like what" when I was challenging him."

58. Although this account involves Mr Gittings seeking to dissuade the offender from driving, it is not premised on his either thinking or saying that he was unfit to drive. It is difficult to identify what reason he did give to the offender for not driving, on his account. The account is internally illogical and Mr Huntley's statement makes no reference to a conversation.

59. In these circumstances, we do not consider that the Judge can properly be criticised for failing to treat this evidence as significant aggravation. Even if it was to be accorded some weight, we do not consider that increasing the starting point by one year for the balance between the aggravating and mitigating features could properly be said to be outside the range reasonably available to the Judge. As Lord Lane CJ said in the oft-cited passage in *Attorney General's Reference (No. 4 of 1989)* [1991] WLR 41 at p.45H, sentencing is an art, not a science, and the exercise of quantifying the weight to be given to aggravating and mitigating factors, and in reaching a balance between them, is an exercise of judgement which defies precision or prescriptive quantification and for which there is no one right answer. The evaluation may properly fall anywhere within a range.

60. This is also an answer to Mr Jones' submissions that the Judge gave inadequate weight to the mitigating features. The Judge identified them, and the weighting he gave to them was with the reasonable range of his evaluation. Indeed we would agree with it.

61. Mr Jones also submitted that the Judge should have given a full 1/3 discount for plea. We cannot accept that submission; the charges which formed the subject matter of the indictment were before the offender at the magistrates court and he gave no indication at that stage of an intention to plead guilty. There was nothing he needed to investigate further to know that he was guilty as charged.

62. Our conclusion, therefore, is that the error in the Judge's approach to the table in the Guideline resulted in a sentence which was unduly lenient. We grant leave. We quash the sentences on counts 1 to 4 and replace them with a sentence of 5 years 3 months imprisonment on each count, to run concurrently. We increase the length of the disqualification by adding to the discretionary 10 year period passed by the Judge a period of 31½ months to ensure that the disqualification takes place from the date of release. The total period of disqualification becomes 12 years 7½ months.

63. The other aspects of the sentence remain undisturbed.