



In The Supreme Court of Bermuda

CRIMINAL JURISDICTION

2023: No. 23

BETWEEN:

THE KING

-v-

LARRY BENJAMIN

Defendant

SENTENCING REMARKS

Causing grievous bodily harm, when driving under the influence of alcohol contrary to section 35(b) of the Road Traffic Act 1947, Reduction in sentence due to delay

Date of Sentencing: 3 June 2025

Appearances: **Mr. Kael London, Crown Counsel for the Prosecution**
 Mr. Philip Perinchief, PJP Consultants, for Defendant

SENTENCE of Mussenden CJ

1. On 20 March 2025 you pleaded guilty to count 2 on the indictment that on 19 October 2018 you caused grievous bodily harm to Tzare Gibson whilst driving under the influence of alcohol contrary to section 35(b) of the Road Traffic Act 1947 (the “RTA”),

the particulars on the indictment stating that you had consumed alcohol of such a quantity that the proportion of it in your blood exceeded the prescribed limit.

2. Section 35 of the RTA states as follows:

Causing death, or grievous bodily harm, when driving under the influence of alcohol or drugs

35. Any person who causes the death of, or grievous bodily harm to, another person when driving, or attempting to drive, or having care or control of a vehicle on a road or other public place, whether it is in motion or not, commits an offence if—

- (a) his ability to drive is impaired by alcohol or a drug;*
- (b) he consumes alcohol of such quantity that the proportion of it in his blood exceeds the prescribed limit; or*
- (c) there is present in his body any dangerous drug.*

3. When you pleaded guilty, a Social Inquiry Report was ordered and you were placed on bail. On 24 March 2025, as a condition of your bail, I suspended you from driving all vehicles pending sentence. The Social Inquiry Report dated 2 June 2025 (the “**SIR**”) has now been prepared for this matter. I have read it in full and I have been taken to various parts of it by both counsel.

4. I now have to sentence you for that offence.

5. The Traffic Offences (Penalties) Act 1976 (the “**TOPA**”) sets out that for this offence the following apply:

Head 5 - On Indictment, for a first offence, a maximum period of imprisonment of 7 years. I accept that this is your first offence for this charge.

Head 6 - On Indictment, for a first offence, an obligatory disqualification of 5 years and a discretionary maximum of 7 years.

Head 7 – On Indictment, for a first offence 10 - 12 points

6. The Summary of Evidence was read which set out the facts of the case.
7. A Victim Impact Statement of Mr. Gibson states that he has suffered pain, scarring and specific pain when using his dominant hand for writing. He explained that the accident has had an emotional impact on him.
8. The SIR indicates that you have a history of use of alcohol, particularly over the last few years. I note that you had a conviction for drink driving many years ago and were

disqualified from driving then. I cannot and will not take that offence into consideration for this sentencing but it means that you are aware of the consequences of drink driving. I accept that the SIR sets out that you are at low risk of re-offending and that there is a low need for rehabilitative services. The SIR stated that you have taken limited responsibility for your actions as you are of the view that you acted as a result of someone else indicating that you could turn and Mr. Gibson had then appeared on his cycle.

9. The Prosecution presented two cases by guilty pleas.

(a) The case of *R v Nwaomiko Rock* Case No 21 of 2018 involved offences of causing bodily harm by driving contrary to section 320 of the Criminal Code and causing GBH by driving without due care and attention contrary to section 37A of the RTA 1947. He was sentenced to 4 months and 6 months imprisonment respectively concurrently, suspended for 2 years and disqualified from all vehicles for 3 years.

(b) The case of *Tian Xu* Case No. 25 of 2015 involved the offence of causing grievous bodily harm careless driving contrary to section 37A of the RTA 1947. He was sentenced to 6 months imprisonment suspended for 2 years and disqualified from driving all vehicles for 3 years. He received 10 demerit points.

10. I note here, that in those cases, the defendants were not charged with offences involving alcohol. However, this case involves alcohol. Thus, the prosecution suggests a sentence of a fine of \$5,000, 2 years of probation and the obligatory disqualification from driving all vehicles of 5 years.

11. Your defence counsel has offered various areas in mitigation. He stated that the SIR shows that you do not have a problem with alcohol and that you are a low risk of reoffending and that you have a low need for rehabilitative services. Mr. Perinchief submitted that you deserve credit for your guilty plea, albeit I note that your guilty plea came just prior to the trial of this matter.

12. Mr. Perinchief then submitted that special circumstances exist such that I should reduce any sentence imposed. He directed me to the TOPA section 4 where the Court has the power for periods of disqualification under Head 6 of Schedule 1 to impose the

obligatory period of 5 years unless the Court for special reasons thinks fit to order the person to be disqualified for a shorter period or not to order him to be disqualified.

13. Mr. Perinchief then directed me to the Ruling of Assistant Justice Swan Taylor dated 3 March 2025 which was in respect of an application for a stay because of an abuse of process as a result of the delay in bringing the case. Swan Taylor AJ ruled that “*The delay in this matter thus far, has caused the unreasonable delay as the Applicant has been deprived of his right to be tried within a reasonable time and I make a declaration that his right has been infringed.*”. Mr. Perinchief then directed me to the Ruling of Assistant Justice Duncan dated 13 September 2019 in the case of *Robinson and Wallington v DPP* [2019] Bda LR 73 which involved the issue of delay in a criminal trial. At para 68, Duncan AJ, in reaching his decision to stay the proceedings, stated:

“68. *In the case of the First Plaintiff, it is more difficult to determine the appropriate remedy. The traditional remedies consequent upon a Defendant establishing unreasonable delay are expedition, compensation and reduction of sentence.*”

14. Thus, Mr. Perinchief submitted that a reduction in sentence was appropriate as a result of the declaration of delay by Swan Talor AJ. I accept this mitigation and will apply a reduction in sentence.

15. In your allocutus you stated that you were concerned about the time it took to get to this point.

16. As I stated earlier, the sentencing scheme is as follows:

Head 5 - On Indictment, for a first offence, a maximum period of imprisonment of 7 years.

Head 6 - On Indictment, for a first offence, an obligatory disqualification of 5 years and a discretionary maximum of 7 years.

Head 7 – On Indictment, for a first offence 10 - 12 points

17. I have taken into account all the circumstances, the statutory requirements, the SIR, the case authorities, the Victim Impact Statement and the mitigation and allocutus on your behalf. The Courts have to take a strong stand in respect of offenders who cause injury to others, having consumed alcohol. I note that there are non-stop appearances in the Magistrates Court for driving under the influence of alcohol. On occasion, misfortune happens when someone who is driving under the influence causes someone else to be

injured. In this case, Mr. Gibson was using the road when you collided with him. As a result he has suffered serious injuries, scarring and ongoing pain when he uses his dominant hand to write. He has also suffered emotional effects. Thus, I am not prepared to accept the cases of suspended sentences which were placed before me as they did not involve driving under the influence of alcohol. In my view, any person who appears charged with the offence of causing grievous bodily harm whilst driving under the influence of alcohol should expect an immediate custodial sentence. The maximum sentence is 7 years although this case is not one for a maximum sentence as you are not the worst offender and this is not the worst kind of its case.

18. Taking into account all the circumstances, I accept that you were given an indication to execute a move by a courteous driver but I find that you did not carry out further checks yourself to see if it was safe to do so. Had you not had the alcohol in your system, the outcome at that precise time might have been different. In any event, I take the presence of alcohol to the level that it was and the injury to be very serious factors. In respect of the actual driving decision, that is on the low end in that it was a single act of attempting to cross the oncoming lane that resulted in the collision.
19. The cases put before now indicate a final sentence generally of imprisonment of 1 year¹. If I were sentencing you after trial, I would have taken as my starting point a sentence of imprisonment of 18 months on Count 2. Giving you a third off for your guilty plea would result in a sentence of 18 months less 6 months for a sentence of 12 months imprisonment.
20. I have accepted the submission that a reduction in sentence is an appropriate remedy in respect of a declaration of delay in these proceedings. The Ruling of Swan AJ set out that the offence took place on 19 October 2018 but that it was nearly 5 years before the file was passed to the Department of Public Prosecutions after which the matter proceeded on a timely basis from August 2023 to the present date. In my view, had the matter proceeded on a timely basis from the start it is likely that you would have been sentenced and such sentence completed. In those circumstances I would reduce the

¹ Lamont Marshall Case No. 38 of 2012; Jonathan Guishard Case No. 7 of 2010; Shawn Smith Case No. 5 of 2009; Nisham Sabnayagan Case No. 9 of 2008; Angela Ambrosini Case No. 39 of 2010.

sentence of imprisonment by one quarter, that is 3 months, such that your sentence is 9 months imprisonment. I am not satisfied that there are any reasons to impose a suspended sentence.

21. I am obliged to sentence you to an obligatory period of disqualification from driving or riding all vehicles for 5 years – and I do so effective from today, subject to a reduction as set out below. For clarification, the time that you were disqualified from driving since your guilty plea was a condition of your bail and does not count towards this period of disqualification. In my view, there is no need to impose a discretionary greater period of disqualification. I now turn to the principle of reduction of the period of disqualification due to special reasons and the remedy for delay. I adopt the same reasoning as above in respect of a reduction in sentence for the declaration of delay for the disqualification period and I will reduce such period of disqualification by 1 year so that the obligatory disqualification period will be 4 years from driving all vehicles.
22. I make no award of demerit points due to the period of disqualification that I have imposed.
23. I hope that this sentence will send a clear signal to you that driving a vehicle whilst over the limit has serious impact on everyone involved, including you and the victim. I hope it is also a strong deterrent message to the community that causing grievous bodily harm by drink driving will not be tolerated and that it will result in a sentence of imprisonment due to the harm caused to innocent people who have the right to use the roads also.

Dated 3 June 2025



HON. MR. LARRY MUSSENDEN
CHIEF JUSTICE