



# The Court of Appeal for Bermuda

## CRIMINAL APPEAL No 17 of 2014

Between:

**TYMOTHY SCRADERS**

Appellant

-v-

**THE QUEEN**

Respondent

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**Before:**     **Zacca, President**  
              **Evans, JA**  
              **Baker, JA**

**Appearances:**     Mr. Dantae Williams, Mussenden Subair, for the Appellant  
                          Ms. Nicole Smith, Department of Public Prosecutions, for the  
                          Respondent

**Date of Hearing & Decision:**                                     **12 November 2014**

### DECISION

**Evans, JA**

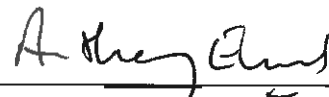
1. On the 21st of July 2013 there was a dreadful accident on the Middle Road in Paget. A motorcar driven by the defendant was overtaking two other cars at a point in the road where it was clearly dangerous to do so. A motorcycle came in the opposite direction and there was a collision between the car driven by the defendant and the motorcycle. The motorcycle was forced off the road, the passenger and the rider were both seriously injured. The motorcar driven by the defendant did not stop and it was not until a little later that the defendant reported himself to the police having heard that inquiries were in progress. On the 27th of May 2014, the appellant pleaded guilty to 3 charges. Counts 1 and 2

were of causing Grievous Bodily Harm through dangerous driving contrary to Section 34 of the Road Traffic Act 1947 and count 3 with which we are concerned today was a charge of failing to stop at the scene of a collision contrary to Section 42 (2) of the Road Traffic Act. The Learned Judge imposed sentences of 6 months concurrent on each of counts 1 and 2 those being the charges of causing Grievous Bodily Harm through dangerous driving, and a consecutive sentence of 3 months imprisonment of count 3 which is the failure to stop at the scene of a collision.

2. The present appeal is limited to the judge's sentence on count 3 which was that is a consecutive sentence of 3 months imprisonment, consecutive to the 6 months imposed on counts 1 and 2. The starting point is that six month sentence, which this court regards as the correct sentence to be imposed on the appellant for the offences of causing Grievous Bodily Harm to the motorcycle rider and his passenger through his dangerous driving. That sentence we would observe is consistent with at least 2 authorities in the decided cases in these courts. The first in the case of *Marshall*, which was heard in the Supreme Court on the 3rd of April 2013 where a sentence of 6 months imprisonment was imposed for the offence of causing serious injury through dangerous driving. A case which Mr. Williams, counsel for the present appellant, submits that that case was more serious than the present one but that is not relevant for present purposes because the prosecution represented by Ms. Smith has accepted and we agree that in light of the authorities 6 months was the appropriate sentence on counts 1 and 2 in the present case. The second authority referred to is the case of *Olivera* a judgment by Mr. Justice Kawaley, as he then was, in the Supreme Court on the 29th of 2005. We proceed therefore on the basis that 6 months was the correct sentence on count 1 and 2 in the present case but with the observation that the authorities of *Marshall* and *Olivera* may well need reconsideration by this court in due course.
3. The sentence in count 3 in the present case was in our judgment rightly made consecutive to the sentences on count 1 and 2. Failing to stop after an accident, knowingly failing to stop, is a serious matter which undoubtedly gives rise on the face of it, to some additional sentence. The learned judge's approach in the present case was unfortunately somewhat confused. Initially he imposed a

sentence of 6 months imprisonment for the offence of failing to stop, 6 months consecutive to the 6 months he had imposed for causing the accident. It was pointed out to him that 6 months is the statutory maximum for this offence and he then reduced the sentence to 3 months, apparently allowing a 50% discount because of the appellant's plea of guilty to this count 3.

4. We would hold first that the learned judge was correct to impose a consecutive sentence, secondly and obviously, he was wrong to impose the maximum sentence of 6 months in the present case. Thirdly we would hold that apart from the guilty plea and in the circumstances of the present case which have not been dealt with in any detail in this judgment, the appropriate sentence on count 3 was not more than 3 months, not taking account of the guilty plea.
5. As already stated we proceed on the basis that 6 months was the appropriate sentence in the present case for causing this accident and the dreadful injuries which resulted from it. We have to consider therefore what should be the appropriate sentence on count 3 in the present case and we have come to the conclusion that 2 months was the appropriate sentence reflecting the plea of guilty on count 3 and all the circumstances in the case. In the result the sentence on count 3 of 3 months imprisonment of count 3 is set aside, a sentence of 2 months is substituted for it and the total sentence for the 3 counts is 8 months imprisonment. To that extent, the appeal is allowed.



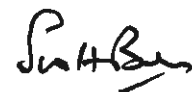
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Evans, JA



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Zacca, P



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Baker, JA