

1985 June 26

[TRIANTAFYLIDIS, P., PIKIS, KOURRIS, JJ.]

GAVRIEL GEORGHIOU PAMPORIS,

*Appellant,*

v.

THE POLICE.

*Respondents.*

*(Criminal Appeal No. 4642).*

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*Criminal Law—Causing Death by want of precaution contrary to section 210 of the Criminal Code—Sentence—Whenever the negligence of the accused is marked with an element of recklessness imprisonment is warranted—Driving without lights during night and on the wrong side of the Road—Amounts to reckless conduct—Disqualification from obtaining or holding a driving licence—When (as a matter of discretion) may be limited to coincide with the term of imprisonment imposed.*

10 At about midnight, on 20th to 21st May, 1984 appellant was driving his saloon car on the Phassouri—Limassol road without lights and on the wrong side of the road. The driver of an oncoming car tried to avoid collision by swerving to his right. In the meantime, the appellant  
15 tried to correct his course. The result was a nearly head-on violent collision, causing instantaneous death of the front seat passenger of the other car, an English visitor to Cyprus. Although there was some street lighting, undoubtedly the absence of lights made the position and the direction of the appellant's car uncertain. Appellant, a  
20 family man of 36, the father of two young children, a forester in the public service, was the holder of a driving licence for 16 years. He had a wholly unblemished record. The appellant pleaded guilty to the charge of causing death  
25 by want of precaution contrary to section 210 of the Criminal Code. The appellant was crushed by the consequences of his conduct and experienced severe feeling of

remorse. The trial Court sentenced the appellant to three months' imprisonment and ordered his disqualification from holding or obtaining a driving licence for a period of twelve months. The imprisonment would have the additional consequence of depriving the appellant of three months salary amounting to a sum in the region of £1,000. As the appellant was bound by the terms of his service to have the amenity to drive a Government vehicle, his driving licence was essential for the discharge of his duties. 5

*Held*, dismissing the Appeal against the sentence of imprisonment and partly allowing the Appeal against the Order of Disqualification (1) Cyprus case law firmly establishes that imprisonment is an apposite, and in aggravating cases of negligence, an unavoidable mode of punishment for Offences under section 210 of the Criminal Code. Imprisonment is warranted whenever the negligence of the accused is marked with an element of recklessness, but may be avoided in cases of momentary inattention. The authorities acknowledge wide discretion to the trial Court to determine the precise length of imprisonment, usually ranging from two to twelve months. 10 15 20

(2) Driving a vehicle without lights at night creates foreseeable risks for the safety of users of the road of considerable magnitude. Having created such a risk to fail in one's lookout, as the appellant did in this case, by driving on the wrong side of the road, is an act of utter recklessness. Therefore, the sentence of imprisonment was right in this case. The trial Judge applied correctly to the facts of this case the relevant sentencing principles. 20

(3) The decision in *R. v. Boswell*, *infra* purports to follow and reinforce the decision in *R. v. Guilfoyle*, *infra*. The enumeration of mitigating and aggravating circumstances attempted in *R. v. Boswell* is not exhaustive, but indicative of some of the facts that may legitimately be taken into consideration in determining whether a sentence of imprisonment is warranted. 25 30

(4) Respecting disqualification there is a wide margin of discretion. When a driving licence is needed for professional purposes, the Court may limit its length to coincide with the sentence of imprisonment. There is no rule 35

of Law that disqualification must coincide with the term of imprisonment, but merely a discretionary power to be exercised in the light of the facts of each case. In face of the appellant's unblemished driving record coupled with his need of a driving licence for professional purposes, his disqualification is limited (not without reluctance) to three months.

*Appeal partly allowed.*

Cases referred to:

- 10 *R. v. Boswell* [1984] 3 All E.R. 353;  
*Attorney-General v. Andreas Nicolaou* (1967) 2 C.L.R. 194;  
*Attorney-General v. Yiannis Panayiotou Mavrommatis*  
 (1967) 2 C.L.R. 190;
- 15 *Koumas Georghiou Kouma v. The Police* (1967) 2 C.L.R.  
 230;  
*Panayiotis Foka Kannas alias Pombas v. The Police* (1968)  
 2 C.L.R. 29;  
*Attorney-General v. Iacovides* (1973) 2 C.L.R. 344;  
*R. v. Guilfoyle* [1973] 2 All E.R. 844;
- 20 *Mustafa Aras v. The Police* (1968) 2 C.L.R. 13;  
*Spiritos v. The Police* (1969) 2 C.L.R. 36;  
*Sherif Kiamil v. The Police* (1974) 2 C.L.R. 16.

**Appeal against sentence.**

25 Appeal against sentence by Gavriel Georghiou Pamporis who was convicted on the 30th May, 1985 at the District Court of Limassol (Criminal Case No. 25804/84) on one count of the offence of causing death by want of precaution contrary to section 210 of the Criminal Code, Cap. 154 and was sentenced by Artemis, S.D.J. to three months' imprisonment and was further disqualified from holding or  
 30 obtaining a driving licence for a period of twelve months.

*E. Kolatsi (Mrs.)*, for the appellant.

A. M. Angelides, Senior Counsel of the Republic, for  
the respondents.

*Cur. adv. vult.*

TRIANTAFYLIDIS P.: The judgment of the Court will be  
delivered by Pikis, J. 5

PIKIS J.: Mainly at issue in this appeal is the propriety  
of a sentence of three months' imprisonment for causing  
death by want of precaution contrary to s. 210 of the Cri-  
minal Code. Also, appellant contested the propriety of an  
order of twelve months disqualification imposed in addi- 10  
tion to the sentence of imprisonment.

At about midnight, on 20th to 21st May, 1984, appellant's  
saloon car, driven by himself, collided with an oncoming ve-  
hicle on the Phassouri-Limassol road, resulting in the death 15  
of the front-seat passenger of the other car. Indisputably,  
appellant's car was driven on the wrong side of the road,  
causing the driver of the oncoming car to swerve to his  
right in an effort to avoid a collision. In the meantime,  
the appellant tried to correct his course resulting in a  
nearly head-on violent collision. Because of the collision 20  
the front-seat passenger of the other car, namely Keith Ru-  
therford, an English visitor to Cyprus, suffered instantane-  
ous death.

Appellant pleaded guilty to the charge, admitting he  
drove his car on the wrong side of the road, precipitating 25  
thereby, in the circumstances above mentioned, the colli-  
sion that followed. He denied the case for the prosecution  
that he was driving without lights, an allegation that no  
doubt compounded the gravity of his negligence.

In order to elicit the facts for sentencing purposes the 30  
trial Judge very rightly heard evidence on the disputed  
issue. He concluded appellant was driving without lights, a  
fact that cast a far more serious complexion on his negli-  
gence. The driver of the oncoming vehicle testified that  
the fact that appellant's vehicle was unlighted caused him 35  
to form the view that the vehicle was stationary on the  
road. Although there was some street lighting, undoubtedly  
the absence of lights made the position and the direction  
of the vehicle of the appellant, on the road, uncertain.

The appeal was confined to the sentence imposed. There was no challenge to the finding of the trial Court that the vehicle of the appellant was driven without lights. Perusing the record, this finding was, at the least, open to the trial Court, if not inevitable, in view of the evidence before the Court.

Counsel argued with fervour that imprisonment was inappropriate in view of the exemplary record of the appellant as a citizen and driver. At the age of 36 he had a wholly unblemished record. He was the holder of a driving licence for 16 years. Counsel for the appellant took every point on behalf of her client that could legitimately be raised in mitigation. However, faced with the finding that appellant was driving without lights at night, she had little room to argue that appellant's conduct was anything other than reckless. And reckless, indeed, it was. Relying on a recent decision of the English Court of Appeal, namely *R. v. Boswell*<sup>1</sup>, she submitted that imprisonment is not inevitable on a charge of causing death by want of precaution, even in face of a finding of recklessness, unless there are other aggravating circumstances. And she argued there were none. On the contrary, there was much to be said in mitigation of the appellant, a family man of 36, the father of two young children, a forester in the public service. Appellant was crushed by the consequences of his negligent conduct and experienced severe feelings of remorse, as the trial Judge noted. Imprisonment would have the additional consequence of depriving him of three months salary, amounting to a sum in the region of £1,000.-. His driving licence, on the other hand, is essential for the discharge of his duties as a forester, being bound by the terms of his service to have the amenity of driving government vehicles for the discharge of his duties.

Cyprus caselaw firmly establishes<sup>2</sup> that imprisonment is an apposite, and in aggravating cases of negligence, unavoidable mode of punishment. Imprisonment is warranted

<sup>1</sup> [1984] 3 All E.R. 353.

<sup>2</sup> See, inter alia, *Attorney-General v. Andreas Nicolaou* (1967) 2 C.L.R. 194; *Attorney-General v. Yiannis Panayiotou Mavrommatis* (1967) 2 C.L.R. 190; *Koumas Georghiou Kouma v. The Police* (1967) 2 C.L.R. 230; *Panayiotis Foka Kannas, alias Pombas v. The Police* (1968) 2 C.L.R. 29

in accordance with *Attorney-General v. Iacovides*<sup>1</sup>, whenever the negligence of the appellant is marked with an element of recklessness, but may be avoided in cases of momentary inattention. The Supreme Court adopted in the case of *Iacovides* and gave expression to the sentencing policy for offences of causing death by want of precaution evolved by the English Court of Appeal in *R. v. Guilfoyle*<sup>2</sup>. 5

The learned trial Judge rightly noted in his judgment that the authorities acknowledged wide discretion to the trial Court to determine the precise length of imprisonment, usually ranging from two to twelve months' imprisonment<sup>3</sup>. 10

Far from agreeing with counsel for appellant that *R. v. Boswell* approved a departure or modified the principles adopted in *Guilfoyle*, it purported to follow it and reinforce its effect. Summing up its effect, they said: "Thus it is clear that anyone who is guilty of causing death by reckless driving must fall into the more serious category, as set down by Lawton, L.J., in the judgment in *R. v. Guilfoyle*."<sup>4</sup> If anything was positively established in *R. v. Boswell*, it is the breadth of the discretion of the trial Court to assess the sentence merited by the facts of the case. It was said: "It is not possible, it needs hardly to be said, to say in advance what the proper sentence should be in any particular case. However, the duty of the Court is to reflect the concern of Parliament and also, which is sometimes forgotten, to reflect the concern of the public about these matters<sup>5</sup>. Like the English public, the Cyprus public too is greatly concerned by the unnecessary loss of human life in road traffic accidents. 15 20 25 30

The enumeration of aggravating and mitigating circumstances attempted in *R. v. Boswell* is, by no means, exhaustive but indicative of some of the factors that may legitimately be taken into consideration in determining whether a sentence of imprisonment is warranted. Nothing said in *R. v. Boswell* puts it beyond the discretion of the Court to 35

<sup>1</sup> (1973) 2 C.L.R. 344.

<sup>2</sup> [1973] 2 All E.R. 844.

<sup>3</sup> See, inter alia, *Mustafa Aras v. The Police* (1968) 2 C.L.R. 13

<sup>4</sup> See, p. 356, Letters D - E.

<sup>5</sup> See, p. 356, Letters E - F

impose a sentence of imprisonment if death is the result of reckless driving. As indeed was the driving of the appellant in this case. Driving a vehicle without lights at night, creates foreseeable risks for the safety of users of the road of considerable magnitude. Having created such a risk to fail in one's lookout, as the appellant did in this case, by driving on the wrong side of the road, was an act of utter recklessness. Therefore, the sentence of imprisonment was right in principle and nothing said before us casts a doubt of its propriety. The learned trial Judge made a succinct analysis of the relevant sentencing principles and applied them correctly to the facts of the case. The length of a term of imprisonment is primarily a matter for the trial Court. Here, again, the trial Judge made a sound analysis of the breadth of his discretion. We uphold his decision.

Respecting disqualification, the authorities acknowledge a wide margin of discretion where an order of disqualification is made in addition to a sentence of imprisonment<sup>1</sup>. Where a driving licence is needed for professional purposes, the Court may limit its length to coincide with the sentence of imprisonment in order to enable the appellant on his release to resume his professional duties without further consequences. There is no rule of Law that disqualification must coincide with the length of the term of imprisonment but merely a discretionary power to be exercised in the light of the facts of each case. A long and unblemished driving record, coupled with the need of a driving licence for professional purposes, are no doubt strong considerations for limiting disqualification in a manner coinciding with the term of imprisonment. In face of the unblemished driving record of the appellant and his need for his driving licence, we have decided, not without reluctance, to limit disqualification to three months and thus enable the appellant, on his release from prison, to resume his duties as a forester without further hindrance. And we so order.

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<sup>1</sup> Koumas Georghiou Kouma v. The Police (1967) 2 C.L.R. 230; Spiritos v. The Police (1969) 2 C.L.R. 36; Sherif Kiamil v. The Police (1974) 2 C.L.R. 16.

In the result, the appeal against the sentence of imprisonment is dismissed. The appeal against the order of disqualification is partly allowed.

*Appeal partly allowed.*