



**HMA**

**v**

**Mark Ian McQueen**

**7<sup>th</sup> February 2008**

**Today at the High Court in Edinburgh Lord Brodie sentenced Mark Ian McQueen to three years detention for causing death by dangerous driving and disqualified him from driving or applying for a driving licence for five years. Mark McQueen pled guilty to causing the death of Angela Helen McCormick on the A76 Dumfries to Kilmarnock Road near Auldgirth on the 22<sup>nd</sup> February 2007.**

**On sentencing, Lord Brodie made the following statement in court:**

“Mr McVicar described this as an anxious and troubling case and that is right. The word “tragedy” is sometimes used loosely but this case can properly be described as tragic; tragic for you and your family but more clearly so for the family of Angela McCormick. You appeared before me at Glasgow on 18 December 2007 when you pled guilty by way of what is intended as an accelerated procedure in terms of an indictment served under section 76 of the Criminal Procedure (Scotland) Act 1995. I take that into account.

By pleading guilty you have accepted responsibility for causing the death of Angela Helen McCormick by your dangerous driving. At the time of her death Angela Helen McCormick was 39 years of age. She died at the scene of the collision between your car and the car driven by James McCormick on 22 February 2007. Angela McCormick was the mother of three children, a daughter of 3 (who was in her grandfather’s car at the time of the collision but was fortunately not injured) and twin boys who were only 10 days old at the time of the accident.

You also have accepted responsibility of causing quite appalling injuries to Angela McCormick’s parents, James McCormick, aged 62, and Helen McCormick, aged 61. On 18 December 2007 I was told that Mr McCormick required to spend no less than

16 weeks in hospital during which he suffered massive organ failure. He was readmitted to hospital in January 2008. He is walking only with the aid of a stick and has continuing difficulties with his wrist. As at 18 December 2007 Mrs McCormick remained in hospital until November 2007, having been unconscious for a period of 5 weeks. She is able to walk but only with the help of a Zimmer frame. She too required to be readmitted to hospital in January 2008.

Your dangerous driving therefore has had the result of taking away one life and causing inestimable damage to the lives of many others. These include Angela McCormick's parents and her three children who have been deprived of their mother.

In a number of the character references which have been provided and which I have read it is said that you made a "mistake". That no doubt is true, but I must remind myself that Mr McVicar described it as an error of judgement, albeit a catastrophic error of judgement. In terms of section 2A of the Road Traffic Act 1988 a person is to be regarded as driving dangerously (which is what you have pled guilty to) if the way he or she drives falls far below the standard that would be expected of a competent and careful driver, and that it would be obvious to a competent and careful driver that driving in that way would be dangerous.

Causing death by dangerous driving is always a serious offence. It inevitably gives rise to extremely serious and irreparable harm: the death of at least one victim. There is, however, a quite wide range of driving that can properly be described as dangerous and the courts, both in Scotland and England, have emphasised that while the tragic consequences are very important, the main consideration in determining sentence must be the gravity of the dangerous driving involved. I therefore must look at the various factors that the courts have held must be considered in order to place this case at its appropriate point on the scale of cases of causing death by dangerous driving.

While I must attempt to apply all such guidance as is available from the Criminal Appeal Court, I consider that I must pay particular attention to the case of *Du Plooy v HMA* where the court indicated that sentencers should be prepared to allow a discount from the sentence that would otherwise be imposed where there is a plea of guilty and the case of *HMA v MacPherson* 2004 S.C.C.R. 579 where the Criminal Appeal Court drew attention to the decision of the Court of Appeal in *R v. Cooksley* [2003] 2 Cr. App 18. In that case the Court set out guidelines for sentencing in respect of contraventions of section 1 of the Road Traffic Act 1988, approving with certain modifications the recommendations of the Sentencing Advisory Panel for England and Wales. These guidelines do not apply to Scotland, but the Criminal Appeal Court in *MacPherson* did regard them as providing useful examples of factors relevant to aggravation or mitigation in the individual case. As is noticed in the Scottish case of *Wright v HMA* 2 March 2007 to which I also have had regard, the Cooksley guidelines were revised by the English Court of Appeal in *R v Richardson & Others* [2006] EWCA Crim 3186.

Turning to the gravity of your dangerous driving, I depend on the description provided by the Advocate Depute on 18 December 2007. From that description what constituted dangerous driving was your decision to overtake a lorry as you approached a blind summit and your pulling out into the opposite (northbound) carriageway of the A76 road despite the solid white line road marking prohibiting such a manoeuvre. You were then confronted with Mr McCormick's vehicle which was being driven on its proper side of the road in an entirely appropriate manner. Neither you nor he were able to avoid a collision. I use the expression "blind summit" because that is the expression which was used on the 18<sup>th</sup> December 2007.

Photographs would indicate that it might also be described as a high point in an undulating but broadly straight road.

You could not but accept that that was dangerous driving, but I accept that it does not have any of the aggravating features about it that are identified in the *Cooksley* case. I must reflect that in your sentence.

What is, however, an aggravating factor is the fact that in addition to causing one death you caused very serious injury to two other direct victims.

I must also take into account the other factors in the case. These appear to me all to have mitigating effect.

- your plea of guilty and your expressed profound regret which I accept to be genuine
- you have no previous convictions
- your youth – you were 18 at time of the offence
- your good character as demonstrated by the references from friends and family with which I have been provided

I take you to be a hard-working young man from a good and supportive family

I have a duty to consider whether there is an alternative to imposing a custodial sentence, but having given that alternative consideration I have concluded that it is not available to me. Having regard to these various factors, the contents of the social enquiry report and what has been said on your behalf, the sentence of the court will be 3 years detention in a Young Offenders' Institute from today's date. That reflects, as I must do in terms of the decision in the case of *Du Plooy* a discount of the order of a third to reflect your plea of guilty by way of the section 76 procedure. Had it not been for your plea of guilty using that procedure the sentence would have been 4 years and 6 months.

In addition I shall disqualify you from driving or applying for a driving licence for 5 years. After that you will require to pass the extended test, if you wish to drive."