



**St John's
Buildings**

R v HODGE & ORS [2026] EWCA Crim 1181

Case Summary

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It is fair to say that Hodge is now the leading authority on the interpretation of section 277A Sentencing Act 2020, which creates a statutory presumption that custodial sentences of 12 months or less must be suspended unless there are "exceptional circumstances" justifying immediate imprisonment.

The judgment concerned a conjoined appeal of four Appellants:

- Hodge (causing death by careless driving)
- Carter (causing death by careless driving)
- Potgieter (drink/drug driving causing serious injury)
- McClements (misconduct in public office by a police officer)

The judgment, handed down by Edis LJ (VPCACD) now provides comprehensive guidance on what amounts to "exceptional circumstances", the relationship between seriousness and suspension, and when immediate custody remains permissible despite s277A.

The following considers some of the key aspects of the judgment.

MEANING OF "EXCEPTIONAL CIRCUMSTANCES"

The Court rejected any attempt to create a rigid definition and approved the earlier approach in *Morgan* [2026] EWCA Crim 886:

"Whatever such circumstances might be in any given case, they are obviously not circumstances ... which are commonly encountered." (at [13])

The Court reviewed the leading authorities on the mandatory minimum sentence provisions (e.g. third strike burglars; second strike bladed articles) which can be disapplied if there are "exceptional circumstances" for doing so. However, quite rightly the Court held that any assistance gleaned from those authorities was "limited" (at [20]).

At [20], Edis LJ explained:

"...it seems to us that exceptional circumstances in this context may properly be found where the culpability of the offender or the harm caused, intended or foreseen (s63 of the Sentencing Act), or both, were exceptionally high. An exceptional circumstance may also arise where the particular nature of the offence requires sentencing to be deterrent to a degree which is exceptional."

The Court acknowledged that this would be "quite a limited class of case" and the Court emphasised that the assessment is a holistic one, considering all relevant factors together. In respect of the question of deterrence, the Court further explained at [24] that

"[t]he question here is whether the conduct of the offender which constituted the offence is of a kind in which there is an exceptional public interest in deterring." (emphasis added) Ordinary deterrence is seemingly, therefore, not enough.

At [22], Edis LJ further explained that although culpability and harm are considered when fixing sentence length, they must be reconsidered when deciding whether exceptional circumstances justify immediate custody.

RELEVANCE OF DEATH TO THE ASSESSMENT

Two of the Appellants in this case were convicted of causing death by careless driving. One of the questions for the Court of Appeal was whether death alone could constitute exceptional circumstances.

Having devoted considerable attention to this point, the Court concluded that death alone will not automatically justify a finding of exceptional circumstances. At [21], Edis LJ stated:

“In our judgment, the fact of death in a case of causing death by careless driving is not irrelevant when considering whether the case involves exceptional circumstances, but it will not be decisive if it is the only factor which could be so described. When looking at the case “holistically” it is a factor to which the court will have regard in conjunction with other relevant circumstances.”

THE APPELLANTS' CASES

It will be beneficial to briefly consider each of the cases in turn and how the Court reached its conclusion:

Fiona Hodge

The appellant's vehicle mounted the pavement on Bristol's Brunel Way and struck a pedestrian, Donna Crossman, who was thrown over railings and died. The defence at trial was that Hodge suffered an undiagnosed epileptic seizure, which the jury rejected.

The sentencing judge imposed 12 months' imprisonment. The judge found "exceptional circumstances" and imposed immediate custody.

The Court of Appeal agreed that 12 months was the correct sentence length but held that immediate custody was unlawful because no exceptional circumstances existed. At [43], Edis LJ ruled:

"Here there are no exceptional circumstances militating in favour of an immediate custodial sentence." The Court allowed the appeal and suspended the 12-month sentence of imprisonment for a period of two years."

Jason Carter

Carter crossed into the opposite carriageway and collided head-on with another vehicle, killing a 77-year-old driver. He pleaded guilty to causing death by careless driving. The sentencing judge imposed 13 months' imprisonment.

The appeal argued, among other things, that the sentence had been pushed above 12 months in a way that avoided the operation of s277A.

The Court of Appeal agreed. Having conducted a detailed review of culpability in this case, the Court held the case was Category B rather than Category A under the guideline. The sentence was reduced to 9 months, which was then suspended pursuant to s277A.

At [72], Edis LJ explained:

“In this case, there are no circumstances which are exceptional. It is a more than usually serious Category B case of causing death by careless driving for the reasons we have given. The death of Mr Russell was its tragic consequence. He was entirely blameless in the collision which caused his death. However, in contrast to the case of Mr Potgieter, there was only one offence because there was a single victim and there were no additional offences significantly aggravating the position. This appellant had an entirely clean driving record. This appellant’s blameworthiness was at a wholly different level from that of Mr Potgieter.”

Morne Potgieter

The appellant drove over the alcohol limit; had cocaine metabolite in his blood; caused a major collision; seriously injured a mother and her 5-year-old son. The child sustained a punctured chest, fractured ribs, internal bleeding, nerve damage to an eye, and long-term psychological effects. A 12-month immediate sentence was imposed.

Unlike Hodge and Carter, the Court upheld the immediate custodial sentence. At [93], Edis LJ ruled:

"The case did have exceptional features which meant that the presumption in favour of suspending the sentences did not apply."

The exceptional circumstances included:

- multiple victims;
- very serious injuries caused;
- alcohol intoxication;
- cocaine metabolite present;
- poor driving record;
- offence committed while awaiting sentence for earlier careless driving.

At [93], his Lordship would justify this decision as such:

“The case did have exceptional features which meant that the presumption in favour of suspending the sentences did not apply. The exceptional features arose from all the offences taken together. It would be wrong, when considering whether there were exceptional circumstances, to consider each offence in isolation. The court must look at the whole of the criminal conduct.”

McClements (Attorney General's Reference)

A serving police officer formed a sexual relationship with a vulnerable domestic abuse complainant whom he had met through his official duties. He improperly accessed police systems and persuaded

her not to report a serious breach of bail by her ex-partner because disclosure would expose his misconduct.

In the Crown Court, the sentencing judge imposed a suspended sentence of eight months' imprisonment. This was the subject of an AG Reference as being an unduly lenient sentence. The Court of Appeal agreed.

The Court held that the judge had underestimated the seriousness of the offending. At [117], his Lordship reasoned:

"We consider that this conduct required a sentence in excess of 12 months, and that s277A did not therefore apply."

CONCLUSION

The key takeaways from this judgment, in my own mind, are therefore:

1. Sentences of 12 months or less should almost always be suspended.
2. Exceptional circumstances must be truly exceptional and not routinely encountered. It does not, however, mean unique, unprecedented or very rare.
3. Courts should not undermine the intention of Parliament by accepting too readily that the circumstances of a particular offence or offender are exceptional.
4. Death alone (in this case, death by careless driving) does not alone constitute exceptional circumstances, but it is relevant to the overall holistic exercise.
5. The Court held that exceptional circumstances may arise where there is:
 - a. exceptionally high harm,
 - b. exceptionally high culpability,
 - c. exceptional deterrent need, or
 - d. a combination of factors assessed holistically.
6. Both courts of first instance and appellate courts should scrutinise sentences just above 12 months because that threshold determines whether the statutory presumption applies.

The judgment is available– [R v HODGE & ORS](#)

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