

NCN: [2019] EWCA (Crim) 1536  
201900883 A2  
IN THE COURT OF APPEAL  
CRIMINAL DIVISION

Royal Courts of Justice  
The Strand  
London  
WC2A 2LL

Thursday 29 August 2019

B e f o r e:

LORD JUSTICE SIMON

MR JUSTICE JEREMY BAKER

and

MR JUSTICE FREEDMAN

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**REGINA**

**- v -**

**PAUL MICHAEL LONG**

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**Mr A Walker** (Solicitor Advocate) appeared on behalf of the Appellant

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**JUDGMENT**

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**LORD JUSTICE SIMON:**

1. On 29 January 2019, in the Crown Court at Reading, the appellant was sentenced to an overall term of 38 months' imprisonment on his pleas of guilty to a number of offences. He appeals against that sentence with the leave of the single judge.

2. The appellant had been committed to the Crown Court for sentence by the Magistrates' Court, before whom the pleas were tendered, under sections 3 and 6 of the Powers of Criminal Courts (Sentencing) Act 2000. It is convenient to refer to the dates on which the offences took place in 2018: serially, 4 to 6 March, 5 May, 20 September, 29 September and 23 October.

Committal S20180450

3. On 4 March, police officers responded to a break-in at Keyline Civils and Drainage in Reading. The appellant was in the compound. He was chased and arrested. He was found to be in possession of a lock-pick kit (offence 4, going equipped for theft). It was established that vehicle batteries had been removed from two of the lorries parked in the compound (offences 1 and 5, theft from motor vehicles), whilst a third vehicle had evidence of an attempt to remove its battery (offence 3, attempted theft from a motor vehicle).

4. On 6 March 2018, a driver went to his parked lorry in the Big Yellow Storage Compound in Rose Kiln, Reading. He discovered wires hanging out from the front of his vehicle and that two batteries had been stolen (offence 2, theft from a motor vehicle). A hole had been cut in the perimeter fencing and a discarded rubber glove was retrieved which had the appellant's DNA on it.

5. Not discouraged by his arrest and release pending investigation, the appellant continued to commit crimes. On 5 May 2018, another driver left his van at MS Autos. On 7 May, he

received a call telling him that his van had been broken into. The rear driver's side window had been smashed and the security panel was bent in. Blood on the smashed glass panel provided a DNA match for the appellant. 23 tools valued at £1,526 had been stolen (offence 6, theft from a motor vehicle). The windscreen cost £104 to repair.

#### Committals S20180451 and S20180452

6. On the morning of 20 September 2018, a hole was discovered cut into the door of the area where tools were stored at Francis Construction in Allcroft Road, Reading. A laser level with a tripod and a De Walt radio had been stolen (offence 2, S20180452, burglary). CCTV footage showed the appellant using a variety of tools, including a distinctive curved blade to make a hole in the door, entering the room and leaving with the stolen items.

7. On 29 September 2018, police were called to an address in Albion Terrace where they noticed the appellant and another man on the steps with several items, including an HD camera and a cash box. Tools, including a screwdriver, torch, gloves and a hammer (offence 2, S20180451, going equipped for theft) and several sharp implements (offence 3, S20180452, possessing a bladed article in a public place) were found within a rucksack belonging to the appellant. When in custody, the appellant was found to have a driving licence and bank card in the name of Jonathan Slater who had reported them missing eleven days before (offence 1, S20180451, handling stolen goods). Two days later, staff at the University of Reading discovered that three laptop computers, a digital HD camera, a cash box containing £50 and a canvas tote bag had been stolen during the course of a burglary. The cash box, canvas bag and camera were the items which had previously been found in the appellant's possession (offence 3, S20180451, handling stolen goods).

8. On 23 October 2018, the appellant was seen to be acting in a suspicious manner at the Oracle

Centre in Reading. When he was approached by Matthew Clark, the duty manager, the appellant ran away and threw bolt croppers in his direction, which he was able to avoid. The appellant tripped and fell to the ground, at which point Mr Clark detained him. They grappled on the ground until police officers arrived (offence 4, S20180452, assault by beating). When the appellant was searched, the police found several tools, including a large set of bolt croppers, a chisel, a screwdriver, a hacksaw, a number of razor blades and a paint scraper (offence 1, S20180452, going equipped for theft).

9. The appellant was aged 46 at the date of sentence. He had 48 convictions between 1988 and 2009, which included 25 offences of dishonesty, 17 offences of theft and similar offences, and seven offences of fraud and similar offences. There had been no convictions since October 2009, and he had never received a custodial sentence.

10. In a report prepared in relation to the offences which took place on 4 March, the appellant had told the probation officer that he had stolen in order to fund his drug habit, with which he was now trying to come to terms. The appellant was generally assessed as presenting a low risk of re-offending; but if he continued to use drugs, the likelihood of him committing further offences would be likely to increase.

11. There was a Victim Personal Statement from Matthew Clark, in which he described the impact of being the victim of the assault.

12. In passing sentence, Mr Recorder Heslop QC described "an appalling catalogue of five sets of offences", committed between March and October 2018. The appellant had pleaded guilty and would be allowed credit of one-third. He had been out of trouble for nine years; his last conviction was in 2009. The Recorder accepted that the offences arose because of his relapse

into drug taking. Bearing in mind the number of offences and the series in which they were committed, regard was given to the question of totality both in relation to each set of offences and to the overall sentence. The custody threshold had been passed; it was not appropriate to suspend a custodial sentence.

13. For the offences committed between 4 and 6 March 2018 (three thefts and one attempted theft from motor vehicles), the sentence was twelve months' imprisonment for each offence, to be served concurrently. Bearing in mind that the appellant had pleaded guilty at the outset, those sentences were reduced by one-third to a total of eight months' imprisonment. For the offence of going equipped for theft, the sentence was six months' imprisonment concurrent. For the offence of 5 May (the further offence of theft from a motor vehicle), having regard to the question of totality, the sentence was three months' imprisonment, reduced to two months in the light of the guilty plea. That was ordered to run consecutively to the eight months passed for the offences of 4 to 6 March. The total was a term of ten months' imprisonment.

14. The offence of 20 September 2018 was a non-dwelling burglary. It could not be overlooked that it followed in sequence from the offences of dishonesty committed in March and May. The appropriate sentence was fifteen months' imprisonment, reduced to ten months with full discount on the basis of the guilty plea. That was ordered to run consecutively to the ten months already passed, making a total at that stage of 20 months' imprisonment.

15. For the offences committed on 29 September 2018 - again the previous offences could not be ignored - in relation to the two offences of handling stolen goods, the sentence was twelve months' imprisonment, concurrent on each. For possession of the bladed article, having regard to totality, the sentence was three months' imprisonment, to run consecutively, making a total of fifteen months' imprisonment. That was reduced to ten months by reason of the guilty plea,

making a total of 30 months' imprisonment. For the offence of going equipped, the sentence was six months' imprisonment concurrent.

16. In respect of the offences committed on 23 October (the further going equipped for theft), the sentence was nine months' imprisonment; and for the assault by beating, three months' imprisonment consecutive, making twelve months' imprisonment. That was reduced by one-third to eight months' imprisonment and was ordered to run consecutively to the sentence already passed. The total sentence was, therefore, 38 months' imprisonment.

17. In the Grounds of Appeal and in his oral submissions, Mr Walker stressed a point noted by the Recorder: that after a considerable period the appellant had relapsed into drug taking following the breakdown of a relationship. He was now seeking to address that addiction. Mr Walker submitted that these were opportunistic offences, but conceded that many opportunities were taken. His overall submission was that the Recorder erred in his approach in dividing up the offending in the way that he did. The offending took place over a seven month period and was driven by the appellant's addiction. He had not offended since 2009; and this would be his first custodial sentence. The starting points were too high, looked at both individually and as a matter of totality, given the relatively low-level nature of the particular offences. By imposing consecutive sentences for the different sets of offences, the overall sentence was manifestly excessive and did not take totality into account. The starting point, on the Recorder's approach, must have been of the order of 57 months' imprisonment, which was too long.

18. We have considered those submissions. The sentencing remarks were clear and the sentences, on any view of the matter, were carefully structured. Furthermore, the Recorder was entitled to pass consecutive sentences in relation to the offences. The offending was repeated, directed against different victims, and the assault by beating was of a different type of offence.

Having been arrested at an early stage in the course of his offending, the appellant continued to offend. As the Sentencing Council Definitive Guidelines on Totality make clear, consecutive sentences may be passed in these circumstances to reflect the overall criminality. However, as these guidelines also make clear, if such an approach is adopted, the court must review the overall sentence and consider whether it is just and proportionate. It may be that this court would have given greater effect to the principle of totality, but not to the extent that we are persuaded that the overall sentence was contrary to principle or led to an overall sentence that was manifestly excessive. The dishonesty in this case was persistent, planned and would inevitably have caused harm to the victims beyond the value of the stolen items.

19. Accordingly, the appeal is dismissed.