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IN THE COURT OF APPEAL

CRIMINAL DIVISION

[2020] EWCA Crim 1430

CASE NO 202001543/A3

Royal Courts of Justice

Strand

London

WC2A 2LL

Wednesday 14 October 2020

Before:

LORD JUSTICE DAVIS

MR JUSTICE SPENCER

MR JUSTICE WALL

REGINA

V

JOHN PAUL GRAINGER

Computer Aided Transcript of Epiq Europe Ltd,
Lower Ground, 18-22 Furnival Street, London EC4A 1JS
Tel No: 020 7404 1400; Email: rcj@epiqglobal.co.uk (Official Shorthand Writers to the Court)
MR R CHUDLEIGH appeared on behalf of the Appellant.

J U D G M E N T

1. MR JUSTICE SPENCER: This is an appeal against sentence brought by leave of the single judge.
2. On 7 May 2020, in the Crown Court at Cardiff, the appellant pleaded guilty to an offence of domestic burglary and was sentenced to a term of 33 months' imprisonment. It was his fourth qualifying conviction for domestic burglary, so the judge was obliged to pass a minimum term of 3 years, pursuant to section 111 of the Powers of Criminal Courts (Sentencing) Act 2000, unless there were particular circumstances relating to the offence or the offender which would make it unjust to do so in all the circumstances.
3. The judge considered that the appropriate sentence before credit for plea was 42 months. He allowed only 20% credit for plea. That was the principal ground on which the single judge granted leave. On the face of it there was no reason why the judge should not have allowed 25% credit for plea. In addition however, it is submitted in the grounds of appeal that the sentence was in any event manifestly excessive having regard to the fact that the appellant was already serving another 3-year minimum sentence for an earlier domestic burglary, less the maximum 20% credit for plea. It is therefore necessary to set out the chronology of the relevant offences.
4. The index offence for which the sentence of 33 months' imprisonment was imposed was a serious domestic burglary of its kind because it was committed in the early hours of the morning on 8 June 2019, when the householder and her partner were asleep in bed. The property was a house in Brackla, Bridgend. At around 4 o'clock in the morning her partner was awoken by a noise downstairs. They went to investigate. There were clothes strewn across the floor that had been previously hanging up in the conservatory. There were muddy footprints on the wooden floor of the conservatory which had not been present the previous evening. A music mixing desk had been stolen from a room off the dining room and also an ornamental knife. The total value of the property stolen was about £300.
5. CCTV footage from a shop some 500 metres away was examined. It showed that the appellant was in the vicinity of the shop in the early hours of the morning in possession of a sports bag. A police officer, on viewing the CCTV footage, recognised the appellant, who was arrested that evening. He was interviewed the next day. He denied being responsible for the burglary and denied that it was him on the CCTV. He was released under investigation by the police.
6. The shoes he had been wearing were seized and in due course forensic evidence was obtained which established a positive match between his shoes and the footprints left at the house. That all inevitably took a considerable time. It was not until 5 March 2020 that he appeared at the Magistrates' Court for that offence and was sent to the Crown Court for trial.
7. The burglary had left the householder extremely frightened and fearful within her own home. There was a victim personal statement. She struggled to sleep with the incident playing on her mind. She felt she had lost trust in people. She had to increase the medication she was already taking for anxiety. She was constantly checking to see if doors were locked in the house. She had to invest in CCTV and an alarm system to ease

her feelings of anxiety.

8. Meanwhile, by the time this burglary charge reached the Crown Court the appellant had been dealt with in the Crown Court for two further offences of burglary. He had been interviewed about those offences during his time in police custody following his arrest for the burglary at Brackla back in June 2019.
9. The first and most serious of the offences was another domestic burglary, committed just a week before the Brackla offence, on 1 June 2019, at a house in Coity Road, Bridgend. The appellant gained entry through an insecure window and stole items from the living room including a laptop computer, a wallet, an HSBC debit card, some keys and earrings. He used the stolen debit card to withdraw a total of £100 cash as a result of which there were five counts of fraud by false representation.
10. He admitted those offences in interview and pleaded guilty at the PTPH in the Crown Court on 8 July 2019. It was his third qualifying conviction for domestic burglary. He was therefore sentenced to 3 years' imprisonment less the maximum permitted credit of 20% for plea, expressed as a sentence of 876 days. There is no complaint about that sentence nor could there be.
11. The appellant had also committed a non-domestic burglary in Bridgend on 7 May 2019, a month or so earlier, in respect of which he was interviewed on 9 June 2019, following his arrest for the Brackla domestic burglary. That was a burglary at the premises of Navidi Hair Company in Bridgend. Entry was gained by smashing a pane of glass in the front door. Goods to the value of some £3,000 were stolen together with £60 in cash from the till. The appellant also admitted a separate offence of criminal damage committed in February 2019, in which a fire extinguisher was thrown through the window of a Portakabin on a construction site in Bridgend.
12. The appellant appeared for those offences in the Magistrates' Court on 12 December 2019. He pleaded guilty and was committed for sentence to the Crown Court. He was sentenced on 3 January 2020, to a total of 6 months' imprisonment consecutive to the sentence of 876 days he was already serving for the domestic burglary at Coity Road.
13. It follows that when the appellant appeared before Judge Jenkins on 7 May 2020 and pleaded guilty to the Brackla domestic burglary, he was already serving a sentence of 876 days (which equates to around 29 months) plus 6 months, a total of 35 months. That total sentence ran from 8 July 2019, so he had already served 10 months in custody by the time he appeared before Judge Jenkins on 7 May, the equivalent of 20 months of the sentence. Having been convicted of his fourth qualifying domestic burglary the appellant was again liable to receive a minimum sentence of 3 years.
14. In addition to the domestic burglaries the appellant had a long record of convictions, principally for dishonesty and for public order offences. For his first qualifying domestic burglary and arson associated with it he was sentenced in April 2018 to a total of 20 months' imprisonment. For the second qualifying domestic burglary, committed in August 2017, he was sentenced to 32 months' imprisonment.
15. At the time of the domestic burglaries with which we are concerned, committed in June 2019, he had only recently been released from a sentence of 28 days' imprisonment for shoplifting and failing surrender to custody.
16. There was no pre-sentence report nor was any report necessary. On behalf of the appellant his advocate, Mr Chudleigh, submitted to the judge that it would be unjust to impose a further minimum 3-year sentence, in view of the fact that he was already

...serving such a 3-year sentence for an offence committed only a week earlier. He urged the judge to have in mind the principle of totality.

17. The judge rightly considered that the Brackla burglary was a category 1 domestic burglary under the relevant Sentencing Council Guideline. There was greater harm because the occupiers were at home. There was higher culpability because there was targeting and planning beforehand. The starting point under the Guideline was therefore 3 years in any event, quite apart from the minimum sentence provisions, with a range of 2 to 6 years. The judge was therefore satisfied that it would not be unjust to impose a minimum sentence of at least 3 years. However, having regard to the appellant's record, the judge considered that the appropriate sentence after trial for this burglary would have been 42 months' imprisonment. He took into account the principle of totality and that was reflected by directing that the sentence he was imposing would run from the date of sentence, not consecutively to the sentence he was already serving. The judge said that if the appellant had admitted the Brackla offence at the time he was interviewed, both that offence and the Coity Road offence could have been dealt with together and the appellant would then have benefited from the principle of totality at that earlier stage. Nevertheless the judge made it clear he did not ignore totality.
18. The judge said that the appropriate discount for plea for the Brackla offence was 20%, which he would increase slightly to 9 months' discount, resulting in a sentence of 33 months which he then passed.
19. Owing to a failure in the recording system there is no transcript of the judge's sentencing remarks but Mr Chudleigh has very helpfully provided us with his full note of what the judge said, which is agreed by the prosecution, and we also have the judge's own comprehensive sentencing note for which we are also grateful. Prosecuting counsel and Mr Chudleigh both agree that there was no discussion in the course of submissions at the sentencing hearing about the appropriate level of credit for plea. They agree that in principle a reduction of 25% would have been appropriate because this was a plea entered at the PTPH. Although section 111 of the 2000 Act provides for a maximum discount for plea of 20% where a 3-year minimum term is imposed, it is well established that this simply means that the sentence where section 111 applies cannot ultimately be less than 80% of 3 years, that is 876 days. Where the sentence for the burglary significantly exceeds 3 years after trial, the ordinary principles of discount for plea apply, provided the eventual sentence is at least 80% of 3 years: see R v Gray [2007] EWCA Crim 979; [2007] 2 Cr App R(S) 78.
20. Thus, in the present case 25% credit against the sentence of 42 months would have produced a reduction to thirty-one-and-a-half months (or 958 days) and would not have offended against the minimum sentence provisions.
21. Although the reduction sought is comparatively small (only 2 months or so) and would not normally justify the intervention of this Court on appeal, it is appropriate where there is an error of principle in assessing credit for plea for this Court to intervene. Accordingly, we shall allow the appeal on that ground in any event.
22. More broadly, Mr Chudleigh submits that the total sentence the appellant is serving, by reason of the imposition of a further 3-year sentence elevated by 6 months to 42 months before credit for plea, breaches the principle of totality and has resulted in a sentence which is manifestly excessive. In his oral submissions this morning Mr Chudleigh has developed that point attractively but realistically.

23. We have considered these submissions carefully but we are unable to accept them. As the judge rightly observed, had the appellant admitted the Brackla domestic burglary at the outset rather than waiting until the footprint evidence gave him no prospect of avoiding conviction, both the domestic burglaries could have been dealt with on the same occasion.
24. In assessing whether the totality of the sentence that the appellant is now serving is or is not manifestly excessive, we have to consider the practical impact of the total sentence he is serving in the light of the sentence that the judge passed of 33 months. As we have already explained, the sentence of 42 months before credit for plea for the Brackla domestic burglary runs from the date it was imposed (7 May 2020). It follows that most of the earlier sentence, totalling 35 months, for the other domestic burglary and for the commercial burglary will be served concurrently with the latest sentence. In effect the appellant will only have served the equivalent of 20 months of that earlier sentence of 35 months (about 40%), with the result that the total sentence he is serving is, in effect, one of 51 months.
25. He committed these two domestic burglaries within the space of a week. The second burglary (the Brackla offence) was particularly serious. In our judgment, a total sentence of some 51 months (4 years 3 months) for all three burglaries, though stiff, cannot be said to be manifestly excessive in the light of his bad record. His total sentence, in our judgment, is just and proportionate.
26. Accordingly, we allow the appeal only to the very limited extent of affording credit of 25% rather than 20% for the guilty plea. We quash the sentence of 33 months' imprisonment and we substitute a sentence of 31 months' imprisonment.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

Lower Ground, 18-22 Furnival Street, London EC4A 1JS
Tel No: 020 7404 1400
Email: rcj@epiqglobal.co.uk