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IN THE COURT OF APPEAL
CRIMINAL DIVISION
NCN: [2023] EWCA Crim 1037



Case No: 2023/00495/A3

Royal Courts of Justice
The Strand
London
WC2A 2LL

Wednesday 30th August 2023

B e f o r e:

LORD JUSTICE MALES

MR JUSTICE HOLGATE

MR JUSTICE HILLIARD

R E X

- v -

ALAN SMITH

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Mr S Molyneux appeared on behalf of the Appellant

J U D G M E N T

Wednesday 30th August 2023

LORD JUSTICE MALES: I shall ask Mr Justice Holgate to give the judgment of the court.

MR JUSTICE HOLGATE:

1. On 7th April 2022, in the Crown Court at Cambridge, the appellant changed his plea to guilty to a non-dwelling burglary on indictment T20220082.
2. On 8th August 2022, in the Crown Court at Luton, he changed his plea on joinder indictment T20230003/0004, to guilty on 10 counts of theft and 9 counts of fraud, contrary to section 1 of the Fraud Act 2006.
3. On 28th September 2022, having pleaded guilty before the Luton Magistrates' Court, the appellant was committed for sentence in respect of 4 offences of theft from a motor vehicle on committal 40AD1241321.
4. On 20th January 2023, in the Crown Court at Cambridge, the appellant was sentenced by His Honour Judge Grey to 4 years 7 months' imprisonment for the burglary; to concurrent terms of 5 months' imprisonment on each of the theft and fraud counts; and to concurrent terms of 10 months' imprisonment for each of the offences of theft from a motor vehicle. Those concurrent terms were ordered to run consecutively to the sentence for the burglary. Thus, the overall sentence was one of 5 years 10 months' imprisonment. The appellant now appeals against sentence by leave of the single judge. We summarise the facts.

The burglary

5. This was one event, so far as the appellant was concerned, within a conspiracy involving co-defendants, Tony Smith, John Mitchell and Samuel Mitchell. The wider conspiracy

involved the theft of high powered motor vehicles stolen for use in commercial, ATM and cigarette burglaries.

6. On 21st February 2022, at around 2 am, a ramraid was carried out at the Howard Shopping Centre in Bedford. Several weeks earlier the appellant, Tony Smith and an unknown male were captured on CCTV walking through the centre and hanging around at the ATM. They were a scoping out team. On 21 February, a stolen Jeep with false number plates, was driven through the locked doors of the centre. It was driven to the cash machine, which was then strapped, dragged outside and loaded into a waiting Audi RS4. The Audi had been stolen from a residential address in Royston on 21st January 2022 and bore false number plates. The Jeep was left abandoned. The purchase price for the ATM was £3,000. It contained £2,610 in cash. The damage to the shopping centre was around £100,000.

7. The offenders sped away from the scene in the Audi. Two officers in an armed response vehicle followed it. At one point the Audi left the road and was damaged. It was then driven back on to the road and stopped. A male passenger got out and threw a brick towards the police car. He then got back into the Audi, which drove off at speed.

8. The pursuit continued. A police helicopter was deployed. The Audi entered a field. The police blocked its exit to prevent it reaching the A1. The Audi then drove into a dead end. It was crashed and abandoned. In the boot was an ATM and various tools. In the front footwell was a pile of bricks. Four people got out of the car. The driver, Tony Smith, was chased across the A1 and fields before being arrested. The police found the appellant and John Mitchell hiding. All the defendants made no comment when interviewed.

The theft and fraud Offences

9. The offences of theft and fraud took place in January and February 2020, apart from one

theft which occurred in July 2020. The charges related to thefts of vehicles in the Luton and Bedford area, which the appellant then took to European Metal Recycling Limited ("EMR") in Bedford, where he was paid between £91 and £233 for scrapping each vehicle. Each vehicle had either broken down or was parked offroad to avoid paying tax. The victims discovered their vehicles were missing when they went to collect them. Most of the vehicles were worth between £800 and £6,500, but a couple were worth only £500. The appellant completed a signed H47 document, which is required when a vehicle is at "end of life". He confirmed that the vehicles were his and that he could legally sell them to EMR to be deregistered and destroyed.

Thefts from motor vehicles

10. These were organised thefts of catalytic converters which took place in rural areas of Bedfordshire on the night of 6th May 2021. On each occasion a group arrived in a stolen car, equipped with tools such as a car jack and an axle grinder. The appellant and his co-offenders all wore face masks. Witnesses were alerted because they heard the sound of the axle grinder. One neighbour went to confront the group, but was told by a masked man holding a crowbar to go back inside. After each theft the group made off at speed in their vehicle. Later that night the police chased the vehicle. It was crashed and the group dispersed. The appellant was arrested. When he was interviewed he made no comment.

11. The appellant was aged 47 at sentence. He had 8 convictions for 10 offences spanning from 1994 to 2014. In 1994 he received a community order for non-burglary. He had convictions for attempted theft in 2000, 2002 and 2011, and convictions for theft in 2003, 2011 and 2012, for all of which he received non-custodial sentences. His most recent offence in 2014 involved using a vehicle with excess weight for which he was fined.

12. We have read the detailed pre-sentence report. The author assessed the appellant as

posing a medium risk of re-offending and of causing serious harm to the public.

13. In his sentencing remarks the judge said that the burglary fell into category 1A of the sentencing guidelines. Although the appellant was involved in only one burglary and not the wider conspiracy, there was significant planning and organisation. Furthermore, the Bedford burglary had been particularly serious and the appellant had been involved in other significant dishonesty. The judge referred to decisions of this court which explain why ram-raiding is such a serious type of burglary. He treated the thefts from the motor vehicles as planned and organised. They were high culpability offences involving category 2 harm. The starting point for these offences was 2 years' custody, within a range of 1 to 3½ years.

14. The judge gave the appellant a little less than 25 per cent credit for his guilty plea in respect of the burglary, because he had initially entered a not guilty plea at the plea and trial preparation hearing, before changing his mind shortly thereafter. He allowed ten per cent credit for the theft and fraud offences, where the appellant had pleaded guilty on the day of trial, and full credit for the thefts from motor vehicles.

15. The judge made it plain that, however structured, the overall sentence at which he had arrived was intended to reflect the appellant's overall criminality.

The ground of appeal

16. We are grateful to Mr Simon Molyneux for his submissions on behalf of the appellant. He makes no criticism of the length of the custodial terms imposed on any offence, apart from the burglary, nor of the judge's decision to order the concurrent terms for those other offences to run consecutively to the sentence for the burglary. He does not criticise the credit allowed for the guilty pleas. He accepts that the burglary fell within category 1A of the sentencing guidelines, with a starting point of 2 years' custody, within a range of 1 to 5 years.

17. However, Mr Molyneux submits that a sentence of 4 years 7 months' imprisonment for the burglary implies a sentence after trial approaching 6 years – above the upper end of the range for category 1A. He suggests that a sentence of around 42 months' imprisonment would have been appropriate, based on a sentence after trial of around 4½ years' imprisonment.

18. We see no merit in the complaint. There is a substantial margin between the upper end of category 1A and the maximum sentence of 10 years' imprisonment. Ramraiding is a serious form of burglary, and the burglary to which the appellant was a party was a serious example of that offence. The judge's implicit judgment was that the appropriate sentence after trial for the appellant was slightly above the upper end of the range for category 1A. It was not manifestly excessive.

19. In any event, the question for this court is whether the overall sentence imposed was manifestly excessive, however structured. In our judgment, the sentences imposed for the offences of theft, fraud and theft from motor vehicles were somewhat generous to the appellant, given the nature and scale of that offending. This is so even after allowing for totality and the fact that the sentences were ordered to run consecutively to the sentence for the burglary.

20. In these circumstances we conclude that the overall sentence was not manifestly excessive. For these reasons the appeal is dismissed.

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