IN THE COURT OF APPEAL

CRIMINAL DIVISION

CASE NO 202300260/A3

[2023] EWCA Crim 395

Royal Courts of Justice
Strand
London
WC2A 2LL

Tuesday 28 March 2023

Before:

LORD JUSTICE WARBY
MRS JUSTICE McGOWAN DBE
THE RECORDER OF THE ROYAL BOROUGH OF KENSINGTON AND CHELSEA
HIS HONOUR JUDGE EDMUNDS KC
(Sitting as a Judge of the CACD)

REX
V
CHARLIE JAMES REEVES

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MISS S MAHMOOD appeared on behalf of the Appellant

J U D G M E N T
(Approved)

LORD JUSTICE WARBY:

1. On 11 October 2022, in the Crown Court at Wolverhampton, Charlie Reeves pleaded guilty to two counts of handling stolen goods, contrary to section 22(1) of the Theft Act 1968. On 23 December 2022 he was sentenced on each count to imprisonment for 20 months concurrent. He now appeals against sentence with the leave of the single judge.

   The facts

2. The goods in question were two cars that had been stolen in April 2022. On 17 April 2022 an Audi was stolen from the home of a Mr Jacques. The following day, 18 April, the car keys to a Range Rover Sport were taken in the course of a burglary at an address in Willenhall. On 20 April those keys were used to steal the car.
3. The Range Rover was fitted with a tracker, which enabled an officer to trace it the following day to industrial premises in Halesowen. On 21 April 2022 therefore, having initially failed to find the car at that address, the officer obtained a spare key from the owner and returned. He climbed over a fence and pressed the key fob, upon which he heard beeping from behind some roller shutters in a unit on the industrial compound. The officer embarked on procedures to obtain a search warrant, meanwhile keeping watch over the unit to ensure that the car was not removed.
4. After around 8 am, when workers arrived at the site, the officer was able to get in touch with the site owner and gain access to the unit. Inside, the Range Rover was found. It had been damaged by efforts to try to find and remove the tracker device. The stolen Audi was also recovered from the same unit, as were a variety of number plates, presumably intended to disguise the identity of the vehicles. It turned out that the unit had been rented to the appellant since 1 April 2022, just a few weeks before the burglaries had taken place. CCTV showed the comings and goings at the unit.

5. The appellant was arrested. In interview he said he was a mechanic and he attempted to provide an innocent explanation for events. This involved a claim that he had been flagged down by individuals who themselves had damaged the Range Rover and had somehow been forced to help them, and that he had found the Audi in the garage when he got there. But he pleaded guilty at the plea and trial preparation hearing.

Sentencing

6. The appellant was aged 24 at the date of sentence as he is today. He had no previous convictions or cautions: he was of previous good character. A pre-sentence report disclosed that even after his guilty plea he had continued to insist to the probation officer that he had not known the vehicles were stolen. He had repeated the account given in interview. He did however express remorse for his part in the offending. He was assessed as presenting a low risk of re-offending, a low risk of serious harm to anyone and as having no criminogenic means requiring intervention from the probation service. The pre-sentence report identified the appellant as a mature individual with qualifications and a work ethic. It acknowledged that the court would be seeking to impose an effective punishment to act as a deterrent to future offending but it asked the court to consider the imposition of a 12-month community order with a requirement of unpaid work. If additional punishment was required it was suggested that this could be achieved by a suitable curfew requirement.
7. The prosecution and defence were agreed that the offending fell towards the bottom end of Category 1B of the Sentencing Council Guideline for Handling which has a starting point of three years' custody with a range of one-and-a-half to four years' custody. This was on the basis that the value of the stolen goods would put the case in harm Category 2 which applies to high value goods worth between £10,000 and £100,000 but that there

was a single Category 1 factor, namely the vehicles were very recently stolen from domestic burglaries. Culpability was in Category B because the appellant had a significant role in a group or organised activity.

8. The offending was said to be aggravated by the damage to the Range Rover. The prosecution note confusingly asserted both that the appellant had a previous conviction for criminal damage and a conditional caution for similar offending and that he was of previous good character. The true position was as we have already stated, and in the course of the sentencing hearing this was made clear to the judge, His Honour Judge Butterfield.

9. The judge took a different approach to sentence from that which counsel had agreed. He began by identifying the harm by reference to the value of the goods, thereby placing it at the bottom end of Category 2. Turning to culpability, he identified one Culpability A factor, namely the fact that the items were recently stolen, and one Category B factor, a role in group or organised activity that was significant but, as he put it, "no greater than that".

10. The judge went on to identify what he thought were the implications of those conclusions, saying - as we interpret the transcript - that if this were a Culpability A case the starting point would be three years but if it were a Culpability B case the starting point would be two years. He concluded that the appellant's culpability straddled those two categories and that this should lead to a starting point somewhere between the two. That, he said, would suggest two-and-a-half years, but that had to be reduced to reflect the judge’s conclusion that the harm was at the bottom end of Category 2. Thus it was that the judge arrived at a starting point of 18 months.

11. The aggravating factors which he identified were the fact that there were two offences not

one and the elements of sophistication such as the false plates and the attempt to find and remove the tracking device. The judge rejected the appellant's account to probation and in interview as unrealistic. Allowing for the maturity, qualifications and work ethic referred to in the report, he identified the appropriate sentence after a trial as one of two years and three months (or 27 months). Reducing that by 25 per cent to reflect the guilty plea and rounding down he arrived at the 20 months that we have mentioned.

12. The judge then considered whether it was possible to suspend that sentence in the light of the Guideline on the Imposition of Community and Custodial Sentences. He reviewed the factors identified in the guideline, noting that many of them were in the appellant's favour. There was no history of poor compliance with court orders, no danger to the public and there had to be a realistic prospect of rehabilitation given his good character. The judge held however that custody would not result in a significant harmful impact on others and that the mitigation offered did not deserve the label "strong". The judge concluded that one factor trumped all the others: appropriate punishment for the offending that involved the handling of not one but two expensive cars from recent domestic burglaries could only be achieved, he said, by immediate custody.

Grounds of appeal

13. In support of the overarching submission that the sentence was manifestly excessive, Miss Mahmood advanced in writing what boiled down to four grounds of appeal.

    (1) That the offending was mis-categorised with the result that the starting point was too high.

    (2) That the increase to reflect the presence of a single aggravating factor was excessive.

    (3) Alternatively, that the judge did not in fact provide the 25 per cent credit for plea

that was due.

(4) That the judge "held the discretion to suspend the sentence of imprisonment".

14. Today, in her brief oral submissions, Miss Mahmood has reiterated those points and added in support of the fourth of them that the judge had that power due to the appellant's personal mitigation and his early guilty plea. We are grateful for the brief elaboration of those points today.

Discussion

15. The arguments are, some of them, attractively presented but we have not found them all persuasive. This was a carefully constructed sentencing exercise and we consider that the judge was entitled to reach the conclusions that he did on the appropriate categorisation of the offending. He was also entitled to conclude that the custody threshold was crossed. Miss Mahmood has not sought to argue otherwise. The judge correctly identified and applied a 25 per cent reduction for the guilty plea.

16. Miss Mahmood has pointed out that the judge had a discretion to suspend but she has not argued that he was obliged to suspend the sentence or that he erred in law by failing to do so. For our part we consider that the judge's conclusion on that issue is beyond reproach. He identified and considered each of the factors in the guideline and reached a fully reasoned conclusion on the balance to be struck which discloses no legal error. It would be wrong for this court to interfere.

17. We do however see force in Miss Mahmood's other points. First, as she points out the judge's statement of the guideline starting point for a Category 2B offence was mistaken. The starting point is not two years as he said but one year. That error has obvious implications for the remainder of the judge's reasoning process. Most obviously it means that the mid-point between the starting points for offences in the two categories, from

which the judge worked downwards to arrive at his starting point for these particular offences, is two years rather than the two-and-a-half years stated by the judge. Had that been appreciated the starting point he identified for the offending would undoubtedly have been correspondingly lower. We would go somewhat further. Given that the judge concluded, rightly, that the harm was at the bottom end of Category 2, a better approach would have been to work from the mid-point between the lower end of the guideline ranges for the two categories which were in play. That mid-point is one year's imprisonment.

18. We also consider that Miss Mahmood is entitled to criticise as excessive the 50 per cent upward adjustment which the judge applied to reflect the balance of aggravating and mitigating features. These were not particularly sophisticated offences. There was significant personal mitigation which in our judgment was not given appropriate weight. We also note that although the judge recorded at an early point in his sentencing remarks that the appellant was of previous good character, he did not return to the topic when identifying the matters in mitigation. It is possible, we think, that amid the confusion on that issue he may have overlooked the matter at the later stage.

19. However that may be, in our judgment treating this as a case of Category 2 harm with culpability on the cusp of Category A and B, the appropriate starting point for the Range Rover offence would be one of 12 months' imprisonment. For the Audi offence a somewhat lesser starting point of 10 months is appropriate because of its lower value at the very bottom end of the category range.

20. No adjustment is required at step 4 in our view because the aggravating factors do not on a proper analysis outweigh those that tend to mitigate. Reduction by 25 per cent for the guilty plea produces sentences of nine months and seven-and-a-half months respectively.

Applying the totality principle, we conclude that the appropriate sentence to reflect the overall criminality is one of not more than 14 months' imprisonment.

Decision

21. It is for those reasons that we allow this appeal. We quash the sentences of 20 months' imprisonment on counts 3 and 4 of the indictment. In their place we substitute a sentence of immediate imprisonment for 14 months on count 3, with a concurrent sentence of seven-and-a-half months on count 4.

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