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IN THE COURT OF APPEAL

CRIMINAL DIVISION

ON APPEAL FROM THE CROWN COURT AT LEICESTER

HIS HONOUR JUDGE MOONCEY 33JJ2426822

CASE NO 202400675/A3

NCN: [2024] EWCA Crim 1256

Royal Courts of Justice  
Strand  
London  
WC2A 2LL

Friday, 13 September 2024

Before:

LORD JUSTICE SINGH  
MRS JUSTICE MAY DBE  
MR JUSTICE GRIFFITHS

REX  
V  
STEVEN CARVELL

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MISS V VAITHA (Solicitor Advocate) appeared on behalf of the Applicant  
MISS E DODDS appeared on behalf of the Crown

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**JUDGMENT**

MRS JUSTICE MAY:

Introduction

1. The application for leave to appeal in this case has been referred to the full court by the single judge. On 28 December 2023 having pleaded guilty before the Leicester Magistrates' Court, the applicant was committed for sentence pursuant to section 14 of the Sentencing Act 2020 in respect of an offence of non-dwelling burglary.
2. On 25 January 2024 in the Crown Court at Leicester before His Honour Judge Mooncey the applicant pleaded guilty to a further offence of non-dwelling burglary (count 2) and one count of going equipped (count 3). On the same occasion he was sentenced to three years for the burglary on count 2, with concurrent sentences of twelve months for going equipped and six months for the burglary offence which had been committed for sentence from the Magistrates' Court. The total sentence of three years was ordered to run consecutively to a sentence of three years passed at the same court on 26 June 2023 and which the applicant was then already serving.

Facts of the offending

3. We deal first with the indictment offences. On 3 November 2022 a burglary took place at the Kayal Restaurant on Granby Street in Leicester. CCTV footage showed that there were a number of individuals involved. The applicant was identified from the CCTV footage. Items stolen included an iPhone, a television and Uber and Deliveroo terminals. Over 270 bottles of alcohol were taken. The total loss, including damage caused to the premises, was some £6,800. The burglary caused a substantial amount of inconvenience and disruption to the business.
4. The applicant was arrested a week later on 10 November 2022 in Leicester. He had a rucksack with him which was searched and found to contain various articles, including

wire cutters, screwdrivers, torches, a Stanley knife, a lock pick and Allen keys, described by the judge accurately as "a professional ... collection of items".

5. The offence in respect of which he was committed from the Magistrates' Court took place after these offences, on 20 December 2022. Occupants above the Asha charity shop in Leicester heard noises and the police were called. The police attended at 4.14am. The door had been damaged. The owner confirmed that £40 worth of jewellery was taken, as well as the displays on which the jewellery was placed. The cost of the damage to the premises was £1,100. The applicant was arrested and answered no comment to questions asked but entered a plea to this offence on his first appearance at the magistrates.

#### Sentence

6. The applicant was aged 47 at sentence with a very long offending record. He had 42 convictions for 91 offences spanning the period 1993 to 2023 including 46 convictions for theft and multiple convictions for dwelling and non-dwelling burglaries, aggravated vehicle taking, going equipped for theft and handling stolen goods. His most recent convictions were for domestic burglary, possessing class B drugs and indecent behaviour in a police station for which he was sentenced to three years' imprisonment on 26 June 2023. This latter was the sentence to which the sentence for which leave is now sought to appeal was ordered to be served consecutively.
7. When sentencing the applicant in January 2024 the judge referred to his "horrendous" list of previous convictions, before turning to the facts of the burglary on 3 November 2022 which he placed into Category 1A of the relevant Sentencing Council Guideline, pointing out that the starting point in the guideline is two years with a range of one to five years. Having indicated that the applicant's previous convictions took the sentence up in the range, the judge went on to say this:

"I am also going to be sentencing you for other matters on which I am going to pass concurrent sentences so the ultimate sentence reflects the totality of it ... There is a slight discount because of totality in the sense of your other case where your sentence is three years."

8. The judge proceeded to set a notional sentence of four years after trial for the burglary offence, which he discounted by 25 per cent for the applicant's plea, resulting in the sentence of three years. For the offence of going equipped he passed a concurrent sentence of 16 months reduced by 25 per cent to 12 months and for the other offence of burglary sent up from the Magistrates' Court he passed a concurrent sentence of nine months reduced by 33 per cent to six months. He ordered that the total of three years run consecutively to the sentence which the applicant was already serving.

#### Grounds of appeal

9. Miss Vaitha, who appears for the applicant before us, as she did at sentence, seeks to challenge the total sentence on the following grounds. First, she says that insufficient regard was given to delay and that if all matters had been dealt with in June 2023 together then the sentence could not have been one of six years. The applicant is being unfairly penalised, she suggests, for a delay by the prosecuting authorities in deciding whether or not to prosecute for the offences later in 2022. She submitted further that making the sentence of three years consecutive to the existing sentence was manifestly excessive.
10. Today she accepts that leaving aside the matter of totality the length of sentence imposed by the judge in January 2024 cannot of itself be criticised. Her point in essence is either that the judge should have reduced that sentence for totality bearing in mind the earlier 3-year sentence passed in June the previous year, or that he should have ordered the sentence to begin immediately, thus overlapping that sentence.

## Discussion and decision

11. It is necessary for us first to set out matters relating to the offences for which the applicant was sentenced on 26 June 2023. On that date the applicant was before the court for three offences of which the most serious was a domestic burglary committed in May 2022 in the early hours of the morning. The occupier of the house in question, in bed upstairs, heard someone break in and came down to find his car keys missing. He rang his sister living down the road where the car was parked and she took pictures of the applicant. Police attended and arrested the applicant. When searched he was found in possession of cannabis and when taken to the police station he exposed himself there, giving rise to the charge of indecency. He came before the court for these offences on 26 June 2023, pleaded guilty and was sentenced. In the course of his remarks at that hearing the judge noted that this was a "three strike" burglary, engaging a minimum sentence of three years. He categorised the burglary as a B1 offence in the Sentencing Council Guideline which carries a range of one to four years. Noting aggravating features of the applicant's record and the fact that he was on licence for similar offending at the time, the judge took a notional sentence of four years after trial which he reduced by 25 per cent to three years for the applicant's plea. He passed no separate penalty for the drugs and exposure matters.

12. It is important to bear in mind that the sentence which the judge passed in June 2023 involved an offence in respect of which there was a mandatory minimum term. Section 314 of the Sentencing Act 2020 requires the court to pass a mandatory minimum term of three years for a third qualifying burglary offence. By operation of section 73 of the same Act the maximum discount for plea on a minimum term for burglary is restricted to

20 per cent of three years. It follows that the least sentence which could be passed on a third strike domestic burglary offence is one of two years and five months. Where the court takes a sentence before discount of higher than three years, as the judge did here, then a greater discount may be applied for plea provided that the resulting sentence does not fall below 80 per cent of the three year minimum term (*Bray* [2007] EWCA Crim 979). The other important point to bear in mind is that sentences passed at the same time or subsequently for other offences must not be allowed to "dilute" the effect of the minimum term. This is emphasised in the Sentencing Council Guideline on Totality where, at example D under the heading of "Consecutive sentences", this guidance is given (the example is of a minimum term for a firearms offence but the principle is the same):

"Other offences sentenced alongside possession of a prohibited weapon (which attracts a five year minimum term) – any reduction on grounds of totality should not reduce the effect of properly deterrent and commensurate sentences. The court should not reduce an otherwise appropriate consecutive sentence for another offence so as to remove the impact of the mandatory minimum sentence for the firearms offence."

13. In the present case, the judge had to be mindful not to allow the sentence he passed for the offences committed in November and December 2022 unduly to dilute the effect of the mandatory minimum term for the domestic burglary offence committed in May 2022 and sentenced in June 2023. It is not said, nor could it be, that the notional sentence after trial of four years was of itself excessive for the collection of offending before the judge in January 2024, taking account of the applicant's appalling offending history, nor that the judge was wrong in principle to pass a consecutive term for this separate offending. The fact that all of these offences were committed whilst the applicant was under

investigation for the May offences and, as Miss Vaitha has said this morning, on licence for earlier offences, was not specifically mentioned by the judge but these were further aggravating features. There was negligible personal mitigation and as is evident from a passage from his remarks in January 2024, the judge had the previous sentence in mind and made "a slight discount for it". In view of the fact that the previous sentence encompassed a mandatory minimum term, we think that he was right to make only a slight discount for that. The essence of Miss Vaitha's submissions is that the judge should have made a higher reduction for totality on the consecutive sentence passed in January 2024 or that he should have ordered the three year sentence which he passed in January 2024 to run immediately, overlapping with the three year sentence passed in June 2023 and equating to a four year sentence if passed on all offences together at that time. But in our view either of these steps would improperly have reduced the effect of the mandatory minimum term for the domestic burglary offence. We can test it in this way: had all the offences been sentenced at the same time in June 2023, a proper sentence for the later matters would still have been three years for the reasons the judge gave in January 2024. To that three years would have had to have been added not less than two years five months in respect of the three strike burglary, resulting in a sentence of at least five years and five months. Looked at in that light, a sentence of three years consecutive in January 2024 equating to one of six years if passed on all offences together in June 2023 is not arguably excessive, particularly when one considers the aggravating features of previous history, offences committed whilst on licence and on police bail or under investigation, and the other offences in respect of which concurrent sentences were passed at the same time.

14. For these reasons, we refuse the extension of time and refuse leave, dismissing the

appeal.



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