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IN THE COURT OF APPEAL  
CRIMINAL DIVISION

Royal Courts of Justice  
The Strand  
London  
WC2A 2LL

ON APPEAL FROM THE CROWN COURT AT WARWICK  
(MR RECORDER STEEL KC) [20CV1364223]

Case No 2024/03178/A3 & 2024/03180/A3  
[2024] EWCA Crim 1416

Wednesday 6 November 2024

**B e f o r e:**

**LORD JUSTICE WILLIAM DAVIS**

**MRS JUSTICE STACEY DBE**

**HIS HONOUR JUDGE SHAUN SMITH KC**  
**(Sitting as a Judge of the Court of Appeal Criminal Division)**

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**R E X**

**- v -**

**MARIAN CATALIN PATILEA**  
**MIHAITA VIOREL PATILEA**

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**Miss T Rosso** appeared on behalf of the both Applicants

**Miss L McClement** appeared on behalf of the Crown

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**J U D G M E N T**

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Wednesday 6 November 2024

**LORD JUSTICE WILLIAM DAVIS:** I shall ask Mrs Justice Stacey to give the judgment of the court.

**MRS JUSTICE STACEY:**

1. On 15 July 2024, in the Crown Court at Warwick before His Honour Judge Rochford, both applicants pleaded guilty to one offence of attempting to steal, contrary to section 1(1) of the Criminal Attempts Act 1981.

2. On 12 August 2024, at the same court before Mr Recorder Steel KC, Marian Catalin Patilea was sentenced to 90 weeks' immediate imprisonment, and his brother Mihaita Viorel Patilea was sentenced to 54 weeks' immediate custody. Both applicants were ordered to pay the victim surcharge of £187.

3. Both applicants apply for leave to appeal against their sentences on the following grounds: first, that the judge erred in the categorisation of harm; secondly, that he then made too great an upward adjustment to the starting point; and thirdly, that the sentences that they both received should have been suspended, all of which resulted in the imposition of a manifestly excessive sentence. The Registrar has referred the applications for leave to appeal against sentence to the full court. She has also granted a representation order for each applicant for junior counsel. We grant leave.

### **The Facts**

3. The appellant, Marian Patilea was employed as a driver for a transport company, Popescu Limited, owned by Mr Miah Popescu. He was employed from 1 March 2023 until his arrest in July 2023. Mr Popescu's haulage firm had a contract with Amazon for the

delivery of parcels. He had a fleet of 23 lorries. Mr Popescu was informed by Amazon that parcels totalling tens of thousands of pounds had gone missing from his shipments between May and June 2023. Because of this Mr Popescu was suspicious that one of his drivers was stealing the parcels intended for delivery and he fitted a tracking device to the truck driven by Marian Patilea.

4. On 7 July 2023 Mr Popescu could see that Marian Patilea's truck was not following the intended route and had made an unscheduled stop in an industrial estate in Coventry. When Mr Popescu travelled to that location, he saw his vehicle there. A grey Saab was parked at the tail end of the lorry with its boot open. The seal on the doors of the trailer to the vehicle had been broken so that the doors could be opened at the rear of the trailer. Mr Popescu began filming on his mobile phone. He opened the rear doors of the trailer to find that the appellant Mihaita Patilea (the younger brother of Marian who was not employed by Mr Popescu), was in the rear of the trailer with a knife, apparently opening the packages. At this point Marian Patilea came round from the cab of the truck and tried to talk to Mr Popescu who did not wish to engage with him.

5. The two appellants then got into the grey Saab and drove away. It was clear from what was in the back of the trailer that a large number of packages had been opened but Mr Popescu was unable to say what, if anything, had been taken.

6. Mr Popescu later informed the police that over the period of time in 2023 he had had to reimburse Amazon in excess of 84,000 Euros for parcels which had gone astray. He received notification of shipments on specific dates which had not been delivered. As a result of this, he lost his contract with Amazon which he said resulted in a loss to his company of nearly half a million pounds.

7. Both appellants were originally charged with theft of an unknown quantity of Amazon parcels. They elected for jury trial and were committed on 5 August 2023. The indictment was later amended to specify that the value of the parcels they were accused of stealing was £40,000 over the period 1 April to 31 July 2023. The case was listed for trial on 15 July 2024.

8. On 21 June 2024, both appellants offered guilty pleas to attempted theft, but continued to deny actual theft. The Crown did not accept this offer until the day of trial, recognising then that there was insufficient evidence to provide a realistic prospect of proving that the theft of £40,000 worth of Amazon parcels or items over that period had been stolen by the appellants. The prosecution's attempts to obtain the evidence to link the drivers of the lorries containing the stolen parcels to the appellants was unsuccessful.

9. The appellants then pleaded guilty to a new count on the indictment of attempted theft (count 2), and a formal not guilty verdict was entered for count 1. The case was adjourned for the preparation of pre-sentence reports and for the sentencing hearing to be heard on 12 August 2024.

10. Ms Kilby represented the prosecution at the hearing on 15 July 2024 and had prepared a very helpful sentencing note that suggested credit for the guilty pleas should be in the region of ten to 15 per cent, and that under the Sentencing Council guidelines the offending was culpability B for some breach of trust and some degree of planning. In relation to the assessment of harm, the Crown submitted that it was a more difficult exercise as an attempted theft. However based on the losses from previous similar thefts from Mr Popescu, the appellants had access to and the ability to cause loss of up to £40,000. It was conceded that Mr Popescu's loss of the Amazon contract could not be attributed to the attempted theft. Therefore, in their written submissions the Crown suggested level 3 harm, medium value,

£500 to £10,000. For category B3 offending, the starting point on the guidelines is a high level community order, with a range of a low level community order to 36 weeks' custody.

11. At the sentencing hearing the Crown was represented by different counsel, Ms McClement, who appears before us today. She disagreed with Ms Kilby's assessment of harm, and uploaded a widely shared comment on the DCS that she placed the harm into category 1, as the entire financial impact of Mr Popescu's company could be taken into account. She also considered that culpability could be assessed at category A for Marian Patilea, because there was a breach of a high degree of trust and he had a leading role. Category 1A carries a starting point of three years and six months with a range of two years six months to six years' custody.

12. For his younger brother, Mihaita Patilea, the offending was category 1B, with a starting point of two years' custody, and a range of one year to three and a half years.

13. Marian Patilea was aged 44 years at the date of sentence. He has one previous conviction in England and Wales for fly tipping from January 2023, for which he received a £220 fine and was ordered to pay costs. He has been in the United Kingdom since 2019. He has worked as a driver, including as an HGV driver, which is well-paid. His family remains in Romania. He has three children, one of whom has extensive medical problems and treatment needs which he funds privately. According to the pre-sentence report, there is a low risk of recidivism. The author of the report recommended a community order with unpaid work and that he would be suitable for an electronically monitored curfew.

14. Mihaita Patilea is now aged 39. He has no previous convictions. He was in this country visiting his elder brother. He arrived in July 2023, but lived mainly in Romania with his partner of two and a half years. He works as a casual taxi driver and looks after his mother

who has health issues. He has no children. The author of his pre-sentence report also assessed him as being at low risk of re-offending, and as suitable for a curfew, with requirements of unpaid work and Rehabilitation Activity Requirement days.

15. Both appellants had a number of character references from family, friends and colleagues attesting to their many good qualities, commitment to their families, and hard work ethic.

16. In his sentencing remarks, the Recorder concluded that an immediate custodial sentence was necessary for both appellants. He said that he had considered whether it would be possible to suspend the sentence and had concluded that it was not. He concluded that the offence did not fit neatly into any of the Sentencing Council categories, given the various facets, and he arrived at a notional sentence for Marian Patilea of two and a half years' imprisonment. It would seem from his sentencing remarks that he had considered the offending to be category 1A or 1B, although it is not entirely clear, which he then reduced by 25 per cent to reflect the guilty plea indication before trial, to reach 22½ months, which he then translated into 90 weeks' imprisonment.

17. For Mihaita Patilea, where there was no breach of trust but there was a degree of planning, the Recorder reached a notional of 18 months' imprisonment, which he reduced by 25 per cent to arrive at 13½ months, which for technical reasons he translated into 54 weeks' imprisonment.

### **Discussion and Conclusions**

18. On the facts that could be proved to the criminal standard by the prosecution in this case, Mr Popescu's loss of the Amazon contract could not be attributed to either appellant. Nor could the losses from the previous thefts. The appellants fell to be sentenced only for the single incident of attempted theft on 7 July 2023. The ambition of the attempted theft on 7

July can be assessed as somewhere between £10,000 and £40,000, being the value of all the parcels in the van that day.

The guidelines state that the intended loss should be used where the actual loss has been prevented. That places the harm at the lower end of category 2, which applies to goods valued at between £10,000 to £100,000, with no significant additional harm.

19. As to culpability, this was a group activity carried out by two brothers. There was some degree of planning involved. Mihaita had arranged to meet Marian at the industrial estate with his Saab, which he had parked right by the doors of Marian's delivery van. Mihaita had brought a knife or other implement with him to remove the packaging from Amazon parcels so that he could see what was inside. Marian had diverted from the route he was to take to deliver the parcels to meet his younger brother at the industrial park. Although there was a breach of trust by Marian as he was responsible for the safe delivery of the parcels to the intended recipients, this cannot be said to be a breach of a high degree of trust. There is no evidence that the appellants were part of some wider conspiracy, or that they were aware of others stealing parcels from Mr Popescu.

20. Under the general theft guidelines, the correct category was therefore 2B, with a starting point of one year's custody and a range of 26 weeks to two years' custody for both appellants.

21. It is unclear why the Recorder gave 25 per cent credit for guilty pleas when no offer to plead to the lesser offence of attempted theft was made in the magistrates' court or at any time until three weeks before the trial. Accordingly, the reduction for the guilty plea should have been in the region of ten to 15 per cent, as submitted by the prosecution.

22. We find that the appropriate sentence after trial would have been 11 months' imprisonment under category 2B for Marian Patilea. He is entitled to a small downward

reduction from the starting point, since in fact nothing had been stolen, the intended theft that day was not at the top end of the harm category, which goes up to £100,000, and for his limited mitigation. He accepted that he was the prime mover in the enterprise and more culpable than his younger brother. His sentence, after a 15 per cent reduction for his guilty plea shortly before trial would therefore result in a sentence of nine months' imprisonment.

23. Mihaita Patilea's culpability is significantly lower within the 2B range. He was a recent visitor to this country, and the junior partner in the enterprise. It was his brother who was Mr Popescu's employee, with the access and the means to attempt this theft. After a 15 per cent reduction for his guilty plea shortly before trial, this would result in a final sentence of six months' imprisonment.

24. There was no discussion in the sentencing remarks of the Sentencing Council Guidelines on the Imposition of Community and Custodial Sentences, or why the Recorder considered that Mihaita Patilea's sentence, which was for less than two years, could not be suspended. It is not obvious that any of the factors indicating that it would not be appropriate to suspend a custodial sentence applied. There was no risk of danger to the public. The author of the pre-sentence report considered that appropriate punishment could be achieved in the community. Nor was there any history of poor compliance with orders. On the contrary, there appeared to be a realistic prospect of rehabilitation.

25. However, since both appellants have now been in custody for approaching four months and will shortly be due to be released on licence – their counsel has not asked for their sentences to be quashed and replaced with community orders and no doubt Mihaita Patilea wishes to return to his family in Romania as soon as he can – we have approached the matter on the basis of reducing the sentences to be served, rather than considering community orders.



26. We therefore allow the appeal in both cases. We quash both sentences and substitute an immediate term of nine months' imprisonment for Marian Patilea, and a term of six months' imprisonment for Mihaita Patilea.

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

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