IN THE COURT OF APPEAL
CRIMINAL DIVISION

CASE NO 202301798/B2

Neutral Citation No.: [2024] EWCA Crim 161

Royal Courts of Justice
Strand
London
WC2A 2LL

Tuesday 6 February 2024

Before:

LADY JUSTICE ANDREWS

MRS JUSTICE CHEEMA-GRUBB

THE RECORDER OF REDBRIDGE
(HER HONOUR JUDGE ROSA DEAN)
(Sitting as a Judge of the CACD)

REX

V

ALEXANDER WOODBURN

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MR G MYRIE appeared on behalf of the Appellant.

J U D G M E N T

1. MRS JUSTICE CHEEMA-GRUBB: Alexander Woodburn was convicted of aggravated burglary, after a trial by judge and jury at Shrewsbury Crown Court. On 19 May 2023, he was sentenced by HHJ Lowe to 11½ years' imprisonment. He appeals against sentence with leave of the single judge.
2. On the morning of 3 November 2022, Susan Harthill was at her family's home in Highley, a village in Shropshire. A decorator was working at the address when two men broke in, intending to steal. Entry was gained by smashing a patio window. The appellant wore a balaclava and carried a claw hammer. He had cut himself and was bleeding. He grabbed Mrs Harthill and pushed her head over the kitchen table. He took her phone and demanded to know where the money was as he pressed the hammer into her neck and head. She was physically uninjured but terrified and feared for her life. He let her sit down when she told him she had a heart condition. An accomplice, who has not been identified, went upstairs and conducted a search, breaking into the bedroom from where he took £9,000 in cash, and jewellery worth £500 and of sentimental value to the family. The men were in the house for less than 20 minutes.
3. Neighbours had taken a photograph of the vehicle the burglars had used, and the appellant was traced. He surrendered himself to the police and admitted that he had gone into the house with another man because he believed that the occupants were responsible for cheating him and his partner out of the true value of gold that they had sold. He believed that they were owed £4,000. He had acknowledged that he had gone to the wrong house. He confessed to wearing a balaclava and breaking in by windows but denied being armed. He said he had left emptyhanded.

4. The issue in the trial was whether the appellant was armed with a hammer and whether anything had been stolen from the property.
5. In a victim personal statement, made in February 2023, Mrs Harthill described experiencing a panic attack immediately after the burglary and being taken to hospital by ambulance. She reported daily flashbacks and had been prescribed antidepressants. She was undergoing counselling and found it difficult to be at home by herself. The family was planning to move as a consequence of the burglary. None of the lost cash or jewellery had been recovered by the police. The majority of the money lost had not been insured and the jewellery she had inherited was irreplaceable.
6. The appellant had three previous convictions for shoplifting, being concerned in supplying cocaine and possession of a bladed article in public. For the drugs offence in 2017, he was sentenced to 18 months' imprisonment, and for the bladed article in 2018, to a sentence of 41 weeks suspended.
7. The prosecution submitted that the appellant had been convicted of a category 1A aggravated burglary for the purposes of the Sentencing Council Guideline. The judge agreed. He found a significant degree of planning, substantial loss to the victims and some, albeit limited violence inflicted on Mrs Harthill, who he found had suffered emotionally and then felt unsafe in her home.
8. The starting point for sentence of 10 years' imprisonment was increased to 12 years to reflect the aggravating features of involvement of an accomplice, the fact that the victim was forced to move home and the appellant's previous convictions. The final term reached and imposed incorporated an allowance for the admission to burglary made at interview.
9. Mr Myrie, for the appellant, acknowledges the level of harm was correctly assessed, but

he submits that the sentence was manifestly excessive because the facts do not disclose a significant degree of planning and, in addition, the aggravation of the sentence by 2 years before the modest discount applied for the admissions in interview, was excessive and demonstrated a degree of double counting. He identifies the absence of evidence of any prior reconnaissance, the failure to wear gloves, the limited number of men involved as all ways to distinguish between a significant degree of planning and some degree of planning. The latter would, of course, lead to a lower categorisation in the guideline.

10. Whether an offence discloses a significant degree of planning will depend axiomatically on the nature of the specific crime and often require weighing the cumulative effect of its features. Our short summary of the facts illustrates how appalling this crime was. The appellant prepared to commit an offence in order to seek vengeance on someone who he believed had financially harmed him and his partner. He armed himself but also took a guise. He recruited an accomplice similarly disguised and identified a specific property which he knew was in a rural area and likely to be isolated. He attacked the house where two wholly faultless people were. Furthermore, although this was not a case of serious violence being inflicted, the weapon was held to a vulnerable part of a victim's body (her neck and head). Plainly the judge was entitled to find that some violence was used and that there was a substantial degree of loss caused to the victim's family. The latter feature is of course to be assessed subjectively.

11. While we are not persuaded that the judge was wrong to find a significant degree of planning and category 1 harm, we do find merit in the argument that the subsequent increase of 2 years' imprisonment within the category range was unjustified. In our judgment, the features that the judge relied on were already incorporated in reaching the categorisation of a 1A offence. In addition, those factors, or the previous convictions,

being for entirely different offences, did not justify an increase in sentence beyond the starting point. On the other hand, given that the victim had to give evidence at the trial, no discount was required for the limited admission to the police.

12. Accordingly, we are satisfied that the total sentence imposed on the appellant was manifestly excessive. The sentence of 11½ years is quashed and replaced with a sentence of 10 years' imprisonment. To that extent only, this appeal succeeds.

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

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