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IN THE COURT OF APPEAL
CRIMINAL DIVISION
[2024] EWCA Crim 32
CASE NO 202301581/A2

Royal Courts of Justice
Strand
London
WC2A 2LL

Tuesday 16 January 2024

Before:

LORD JUSTICE COULSON

MRS JUSTICE FOSTER

MR JUSTICE HILLIARD

REX

V

SHAKEEL JANJUA

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MS MORRELL (SOLICITOR ADVOCATE) appeared on behalf of the Appellant.
MR SCOTT appeared on behalf of the Crown

J U D G M E N T

LORD JUSTICE COULSON:

Introduction

1. The appellant is now 26. On 14 April 2023, in the Crown Court at Birmingham, he was sentenced for a variety of offences by Mr Recorder Stephens ("the judge") to a total of 7 years' imprisonment. He seeks permission to appeal against that sentence. However, part of that sentence is made up of two consecutive terms of 3 months' imprisonment, for two Bail Act offences, for which permission to appeal is not required. The Registrar has therefore referred both the appeal and the application to the full court so that all matters can be dealt with together. For convenience we will refer to him as "the appellant".

2. We set out below the appellant's previous offending; the particular offences the subject of the three separate indictments for which the appellant was sentenced by the judge; the breakdown of the judge's sentencing exercise; the grounds of appeal; and our analysis of the individual sentences and the complaints about totality. We are grateful to Ms Morrell, who appeared on behalf of the appellant, for her submissions this morning. We are also grateful to Mr Scott, for the prosecution, who, in his note, provided a careful explanation of the sentences that the judge must have had in mind before applying the various discounts.

The Appellant's Previous Offences

3. For such a young man, the appellant has a terrible record. This includes a number of driving and drug offences of a similar nature to those for which he was sentenced by the judge. It is also important to note that in November 2016, the appellant was sentenced to a lengthy period of detention in a Young Offender Institution for robbery, possession of

an imitation firearm, assault occasioning actual bodily harm and dangerous driving. Thus, all the offences with which this Court is concerned were committed whilst the appellant was on licence for those earlier offences: a gravely aggravating factor, of which no mention is made in the grounds of appeal.

Indictment T20210295 (Birmingham)

4. At about 10.00 pm on 11 April 2019, the appellant was driving a Ford Focus car in Birmingham city centre. His brother was a passenger. At the time of these offences the appellant was not entitled to drive due to an earlier disqualification. He failed to stop when requested by the police and, following a chase, the appellant was blocked in by two police vehicles.

5. However, as PC Walker exited the rear police vehicle, the appellant reversed into it and then sped off. He performed a U-turn and came to the major Five Ways roundabout. Because there was traffic at the lights there, he mounted the central reservation before going through a red light onto the roundabout, narrowly avoiding a collision with the traffic. He overtook other vehicles before travelling through roadworks. Although the chase was abandoned, CCTV operators were able to track the appellant, who drove the wrong way down a one way street before abandoning the car.

6. The appellant ran off on foot, carrying a bag which he dumped on Hill Street. The bag contained a box of cannabis weighing about 100 grams. He was arrested. He made no reply to caution. He failed to provide his identity to the police and remained silent in interview. He was released under investigation.

Indictment S20230058 (Wolverhampton)

7. On 22 October 2020, the appellant was driving a stolen Land Rover around Dudley on cloned plates. When approached by police officers he drove off, thereby initiating an 11-minute pursuit. During that chase, the appellant reached speeds of 70 miles in a 30-mile per hour zone, went through red lights, performed dangerous overtaking manoeuvres, and drove across the central reservation of dual carriageways. He collided, not once but twice, with a Suzuki motor vehicle driven by a member of the public. At the junction of Saltwells Road and Quarry Road, the appellant mounted the pavement, narrowly missing PC Knott on his motorcycle and then sought to ram PC Knott off his motorcycle by reversing at him.

8. The attempt to ram PC Knott caused the appellant's front nearside tyre to deflate but he continued to drive on that damaged wheel in a dangerous manner and again refused to stop for police. He abandoned the vehicle and ran down an alleyway into a back garden in Orchard Road. The police found him hiding in a shed. He was arrested. In custody he was searched and 94 wraps of Class A drugs, (namely 35 wraps of heroin and 59 wraps of cocaine, with a total value of £940) were found concealed in his anus. His Nokia mobile telephone was seized and was found to contain evidence of drug dealing, suggesting that he was holding a drugs line which was sending out bulk messages to prospective buyers. Again, he was silent in interview; again he was released under investigation.

The Failures to Surrender

9. In March 2021, the appellant was charged with the offences in the Birmingham indictment. He pleaded not guilty at the PTPH on 12 May. His trial on that indictment was listed on 23 August 2021. He was absent. The trial was adjourned for a Mention Hearing on 9 September 2021, at which the appellant was re-arraigned and entered guilty pleas. However, fearing that he would be sentenced to a custodial term, the appellant then absconded for a prolonged period. He was absent from Birmingham Crown Court on 7 December 2021, and again absent at the proposed sentencing hearing on 17 December 2021. At that point, a Bench Warrant was issued.

10. By this time there were also separate proceedings against the appellant at Lincoln Crown Court. The appellant failed to surrender on 24 March 2022 in connection with that indictment, and a Bench Warrant was issued. The appellant only reappeared in the criminal justice system on 16 January 2023, having absconded for well over a year. On that occasion he admitted the Birmingham Bail Act offence. He subsequently admitted the Lincoln Bail Act offence when it was put to him on the day of his sentence.

The Sentencing Exercise

11. At the sentencing hearing, on 14 April 2023, the judge sentenced the appellant as follows.

12. In relation to the Birmingham indictment, he imposed a term of 18 months' imprisonment for the dangerous driving and 3 months consecutive imprisonment for the first Bail Act offence. As to the possession of cannabis, he imposed a 3 month concurrent term. Thus, the total term arising out of the Birmingham indictment was 21 months' imprisonment.

13. In respect of the Wolverhampton indictment, the judge imposed a term of 3 years 6 months' imprisonment for possession with intent to supply heroin, and a consecutive term of 18 months' imprisonment for the dangerous driving. He imposed a concurrent term of 3 years 6 months in respect of the cocaine. Thus, in relation to the Wolverhampton indictment, there was a total term of 5 years' imprisonment.

14. The substantive offences on the Lincoln indictment are not relevant to this application/appeal save for the second Bail Act offence. In relation to that offence, a further consecutive term of 3 months' imprisonment was imposed. The 21 months in respect of the Birmingham indictment, the 5 years in respect of the Wolverhampton indictment and the 3 months in respect of the Lincoln indictment, were all made consecutive to one another. That resulted in the overall period of 7 years' imprisonment imposed by the judge on the appellant.

The Grounds of Appeal

15. On behalf of the appellant, Ms Morrell complains that there was no breakdown in the sentencing remarks explaining the starting point for each offence, the credit for plea and the credit, if anything, for mitigation and totality. Although she submits that the term in respect of the Wolverhampton dangerous driving was too high, her main point is that there was insufficient credit allowed to the appellant, particularly in relation to totality, and the total sentence was therefore manifestly excessive.

The Failure to Explain the Sentence or to Consider the Totality Guideline

16. We agree that the judge's explanation of the constituent parts of this 7-year term was unsatisfactory. When a judge imposes any term of imprisonment, particularly one as long as 7 years, it is always necessary for him or her to explain, in simple language, how that term has been calculated. The judge is not required to identify every last plus or minus in the calculation, or to use particular phrases or expressions; sentencing is not a formulaic exercise (see the decision of this Court in *R v Bailey* [2020] EWCA Crim 1719, at paragraphs 34-39). But it is necessary to explain to a defendant, in clear terms, how the overall term of imprisonment has been calculated. In some important respects, we consider that that did not happen here.

17. There is another fundamental problem with the judge's sentencing exercise in this case. He made no reference to the Sentencing Council Guideline on Totality (we shall call that the "Totality Guideline"). Any judge sentencing for more than a single offence needs to have express regard to the Totality Guideline. Of course, in most cases, that is a relatively straightforward matter. But in a case like this, where there were a variety of different offences, committed at different times, it was important for the judge to have particular regard to the overall length of the sentence that he intended to impose, in order to ensure that it was just and proportionate. The Totality Guideline provides practical assistance in achieving that result, by identifying various structured ways in which it can be achieved. The judge's failure to have regard to the Totality Guideline, or even to refer to it, was regrettable.

18. For these reasons it is necessary for this Court to reconsider the entire sentencing exercise in this case.

Analysis - The Individual Sentences

19. We start with the Birmingham indictment. Ms Morrell takes no issue with the term of 18 months for the offence of dangerous driving. She also agrees that a limited discount for plea, of say 10 per cent, was appropriate, given the very late guilty plea on re-arraignment. That would make the judge's starting point for the dangerous driving offence one of 20 months.

20. In our view, a starting point of 20 months' imprisonment was appropriate. It was prolonged offending and it put members of the public at risk. There was also the aggravating factor that the appellant was on licence for previous serious offending, including other dangerous driving offences. In those circumstances, there can be no criticism of the 18 month term imposed.

21. It is unnecessary to consider the 3 month term in respect of the cannabis offence, since that term was in any event concurrent. It does show, however, that the judge made some allowance for totality in respect of the Birmingham indictment. As for the related Bail Act offence, it is agreed that it was in category A1 in the applicable guidelines. The term of 3 months that was imposed, in circumstances where there was a prompt guilty plea, means that the (unexplained) starting point must have been around 5 months. Such a starting point was within the relevant guideline for an A1 offence, so although it was stern, the resulting 3 month term was not excessive. It was also a separate offence which warranted a consecutive sentence.

22. For those reasons, we do not consider that the 21 months imposed in respect of the Birmingham indictment was manifestly excessive or wrong in principle.

23. We turn to the Wolverhampton indictment, which concerned the possession of two different Class A drugs with intent to supply, and the second dangerous driving offence. Ms Morrell accepts at paragraph 11 of her grounds that the judge was entitled to make the terms imposed for these offences consecutive to the sentence imposed on the Birmingham indictment. We agree.

24. Ms Morrell does argue that the term imposed for the dangerous driving on the Wolverhampton indictment (18 months, which she says was in any event too high), should have been made concurrent with the term imposed for the supply of drugs. We disagree with that. The drug offences and the dangerous driving offence were entirely separate matters. Plainly, consecutive terms were justified, provided that totality was properly taken into account.

25. As to the individual terms imposed for the Wolverhampton offences, it is agreed that for the drug offences the judge was right to place the appellant in category 3 as a result of the quantity of drugs and the significant nature of the role. The starting point for that level of offending is 4½ years' imprisonment, and the recommended sentencing range is between 3½ and 7 years' imprisonment.

26. The judge imposed a term of 3 years and 6 months for this offending. It seems to us therefore that, although he did not say so, the judge must have had in mind a starting

point of around 5 years and 4 months before giving full credit for the appellant's guilty plea. That was, of course, above the recommended starting point but was well within the recommended range.

27. It was a starting point which, in our view, was justified. There were a number of aggravating factors: the appellant's previous convictions, which included drug offences; the fact that these offences were committed whilst the appellant was on licence; and the fact that they were committed whilst the appellant was under investigation for the offences contained in the Birmingham indictment. Moreover, the appellant was in possession of two different Class A drugs and a line phone. That suggested a degree of involvement that went considerably beyond ordinary street dealing.

28. For those reasons, therefore, we consider that the 3 years 6 month term in relation to the first Class A drug offence, with the other drug offence being the subject of a concurrent term, was appropriate and justified. The defect with this sentence was that it was not properly explained; save for the question of totality, which we address in a moment, there was nothing wrong with the sentence itself.

29. As to the second dangerous driving offence, it seems to us that the judge was entitled to take as his starting point the maximum term, namely 2 years' imprisonment. This was appalling driving, which was used, amongst other things, to threaten the safety of PC Knott. It again involved danger to members of the public. It again has to be seen against the backdrop of the appellant's earlier and repeated dangerous driving offences.

30. The appellant was however entitled to a full discount for his guilty plea. That would have reduced the starting point of 24 months to one of around 16 months' imprisonment. In other words, the sentence of 18 months that the judge imposed was miscalculated: it could never have been as high as 18 months, once full credit had been given. The judge was therefore wrong to say in his sentencing remarks that the timing of the guilty pleas for each of the driving offences made no difference to the appropriate term of imprisonment. It did, or at least it should have done: the difference was between a discount of 10 per cent for the late Birmingham plea and a discount of 33 per cent for the prompt Wolverhampton plea. We consider that these errors arose because the judge failed to set out his calculations. If he had done the exercise properly, he would have realised that he had got his maths wrong.

31. In addition, we consider that the sentence for the second dangerous driving offence should also have been the subject of a discount for totality, which we deal with separately below.

32. It is convenient to pause there and address the second failure to surrender in respect of the Lincoln indictment, for which a 3 month consecutive term was imposed. Although that was a separate failure to surrender, in relation to a separate indictment, and was therefore an offence which could have been dealt with by way of a consecutive term, that is, again, subject to considerations of totality.

Analysis: Mitigation and Totality

33. On behalf of the appellant, Ms Morrell took two general points in her grounds of appeal. First, she said the judge failed to have regard to the appellant's general mitigation. Secondly, she said that the judge failed to have regard to the principles of totality.

34. As to mitigation, we do not consider that there was any significant personal mitigation that could have been advanced on behalf of the appellant. On the contrary, he has treated the criminal justice system with disdain, committing similar offences again and again, and ignoring Bench Warrants and his Bail Act obligations. The reason put forward for his absconding was the pregnancy of his partner which, so it is said, led the appellant "to choose not to attend court". In our view, that encapsulates the appellant's attitude: he appears to think that it is up to him whether he chooses to attend court and acknowledge his wrongdoing, or not.

35. We therefore reject the contention that there was any significant personal mitigation which the judge failed to take into account. Any mitigation that there was, was comprehensively outweighed by the aggravating factors to which we have already referred.

36. That leaves the question of totality. In our view, Ms Morrell's submission on that topic was well founded. The judge failed to have proper regard to totality. As set out in the Guideline:

> "... it is usually impossible to arrive at a just and proportionate sentence for multiple offending simply by adding together notional single sentences."

However, we consider that that is what the judge did in the present case. He did not stand back and ask himself whether the 7 year term, which his aggregation produced, was just and proportionate. If had done, he would have concluded, as we have done, that it was not. It was simply too long.

37. The first consideration is whether any of these terms should have been made concurrent. We have already said that the Birmingham and Wolverhampton indictments were properly the subject of consecutive terms and so too were the significant offences within each of those indictments. As is often the way, totality did not require any of those sentences to be made concurrent (see in particular paragraph 37 of Bailey).

38. However, we consider that the term for the second offence of failing to surrender in respect of the Lincoln indictment should have been made concurrent. As we see it, the absconding - from late 2021 to early 2023 - was the same for both the Birmingham and the Lincoln indictments: the same period, for the same (unacceptable) reasons. On the particular facts of this case therefore, in order to reflect totality, we would make the 3 month term in respect of the Lincoln indictment concurrent rather than consecutive.

39. The remaining question is whether there should be any further reduction in the length of the individual sentences to reflect totality. We consider that there should be such a reduction. As we have said, 7 years' imprisonment for these offences was simply too long. On the particular facts of this case, we consider that the sentences in respect of the Wolverhampton indictment should have been reduced to reflect totality.

40. The term in respect of the most serious offending, namely the supply of Class A drugs should have been reduced from 3 years 6 months to 3 years, to reflect totality. In addition, the 18 month term imposed for the Wolverhampton dangerous driving, which should not in any event have been more than the maximum term available for 16 months, should be reduced to 12 months, again to reflect totality.

Conclusion

41. For the reasons that we have given, we consider that the overall term of 7 years in this case was manifestly excessive. It was in part incorrectly calculated and, more importantly, it failed to take into account the principle of totality. Accordingly:
    (a) We grant the appellant permission to appeal.
    (b) We leave the overall term of 21 months in respect of the Birmingham indictment unchanged.
    (c) We make the 3-month term in respect of the Lincoln indictment (the second failure to surrender) concurrent rather than consecutive.
    (d) We quash the sentences of 3 years 6 months, in respect of the Class A drug offences on the Wolverhampton indictment and replace them with concurrent terms of 3 years' imprisonment.
    (e) We quash the sentence of 18 months in respect of the Wolverhampton dangerous driving and replace it with a term of 12 months' imprisonment.
    (f) We leave undisturbed the period of disqualification from driving at 5½ years. In any event, it appears that an extended re-test will be required.
42. The changes that we have announced have the overall effect of reducing the 7 year term to an aggregate term of 5 years and 9 months. In other words, we make a total reduction

of 15 months. To that extent therefore, this appeal against sentence is allowed.

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

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