

Neutral Citation Number: [2018] EWCA Crim 2538

No: 201801585/A1

**IN THE COURT OF APPEAL**

**CRIMINAL DIVISION**

Royal Courts of Justice

Strand

London, WC2A 2LL

Friday, 26 October 2018

**B e f o r e:**

**LORD JUSTICE HICKINBOTTOM**

**MR JUSTICE JEREMY BAKER**

**RECORDER OF WESTMINSTER**

**(HER HONOUR JUDGE DEBORAH TAYLOR)**

(Sitting as a Judge of the CACD)

**R E G I N A**

v

**MARTIN GRIFFIN**

**GAVIN MARK BENNETT**

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**Mr D Hughes** appeared on behalf of the **Appellants Griffin & Bennett**

**Ms K Rafter** appeared on behalf of the **Crown**

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

(Approved)

1. MR JUSTICE JEREMY BAKER: On 16 March 2018, in the Crown Court at Sheffield, Gavin Mark Bennett and Martin James Griffin, having previously pleaded guilty on indictment to conspiracy to burgle (count 1) and conspiracy to steal (count 2) were each sentenced to 9 years' imprisonment on count 1 and 1 year's imprisonment on count 2. The periods of imprisonment were ordered to run consecutively with one another, resulting in total sentences of 10 years' imprisonment.

2. Gavin Bennett's application for an extension of time and leave to appeal against sentence has been referred to the Full Court by the Registrar, whilst Martin Griffin's application for leave to appeal against sentence was granted by the single judge. We extend time and grant leave to Gavin Bennett.

3. The circumstances of the offences were that over a 2-month period between 1 August and 5 October 2017, the appellants committed 22 burglaries, 20 of which were burglaries of dwellings whilst two of them were of the same commercial premises. The burglaries generally took place in the early hours of the morning and in the vast majority of cases the occupiers, who often included children, were asleep in the premises. The main aim of the burglaries was to steal valuable motor vehicles parked outside the burgled premises whilst the keys were inside the premises. The total value of the stolen vehicles was well in excess of £500,000. However, other items of property were also stolen from the various premises, some of which were subjected to extremely untidy searches.

4. Two dwellings were burgled on 3 August 2017, both of which were occupied at the time. In the first, not only were two motor vehicles stolen from outside the premises using keys stolen from within but a safe was removed and its contents including important documentation, £1,500 in cash and jewellery was stolen. In the second, the appellants were disturbed during the course of the burglary but still managed to make off with two suitcases. In that case the householders had just returned from holiday, one of them, Claire Ward, was 5 months' pregnant at

the time.

5. The next dwellings which were burgled were broken into on the night of 11 August 2017. Both homes were occupied at the time and in the second burglary children were asleep upstairs in bed. In both cases a motor vehicle was stolen from outside the premises with keys stolen from within. The householders in both cases were significantly affected by the offences and the parents of the children in the latter offence were concerned as to the potential harm which could have been caused to them.

6. The appellants continued to commit similar offences throughout August 2017. One of these was the home of Adrian Senior and his family, who returned home from holiday with their children to find their home had been wrecked and expensive items of property had been stolen within the premises together with a VW Golf motorcar from outside.

7. On 30 August and again on 4 October 2017 the appellants broke into commercial premises known as Eton Fashion. The first offence comprised a ram-raid type offence, using one of the motor vehicles stolen in one of the earlier dwelling-house burglaries. Both incidents caused in excess of £30,000 loss of stock. The owners stated that these were the worst incidents that had ever happened to them and their business has been severely adversely affected by the increased security costs and loss of trade caused by the offences.

8. In the period between these last two offences the appellants continued to break into homes at night. On 17 September 2017 they broke into a home at night whilst the owners were inside and their children were asleep upstairs in bed. Various items which the family used to assist their disabled children were stolen including a motor vehicle.

9. On 23 September 2017 a similar burglary took place whilst the householders' children were upstairs in bed. Two BMW motor vehicles were stolen from outside the premises as well as jewellery and high value electric items from within the premises. A further similar burglary took place on 27 September 2017 when the Curtis' family home was burgled at night while the family were asleep upstairs. When they came down in the morning they found that the whole of the downstairs had been searched and both economically and emotionally valuable property had been stolen. The effect on the family was such that they were considering moving out of their home to live elsewhere.

10. The final burglary took place at the Siddalls' family home while their three children were upstairs asleep and their BMW motorcar was stolen from outside the house using a key stolen from within.

11. Nearly all of the householders had provided victim impact statements which disclosed the very significant detrimental effect which these offences had had upon themselves and their families.

12. In so far as the appellants are concerned, Gavin Bennett is 37 years of age and has a long history of serious offending, including robbery in 1994 and repeated convictions for burglary of dwellings in 1995, 1996 and 1998 and 2007. Martin Griffin is 28 years of age and he too has previous convictions for a variety of offences including robbery in 2013 and burglary of a dwelling in 2016.

13. In the lower court the Recorder was informed by both the prosecution and the defence that the maximum sentence for count 1 was 10 years' imprisonment and it was on that basis that the Recorder proceeded to sentence the appellants. In his sentencing remarks he stated that it was clear that the appellants were both professional offenders. He noted, not only the very high value of goods which had been stolen in the course of the burglaries but also the severity of the emotional harm which had been caused to the householders and their families. He stated that the appellants' antecedents were an aggravating factor and that the timing of the appellants' pleas of guilty would only attract a discount of 10% from the sentence which he otherwise would have imposed to reflect these various factors.

14. The grounds of appeal advanced on behalf of the appellants by Mr Dermot Hughes of counsel are two-fold. Firstly, that the Recorder's selection of a period of 10 years' custody on count 1, prior to any discount for plea, was manifestly excessive and it is pointed out that it represented the maximum sentence for this offence. Secondly, it is submitted that the criminality represented by count 2 was already reflected in count 1, such that the period of 1 year's imprisonment should have been ordered to run concurrently rather than consecutively with the period on count 1.

15. The prosecution was invited to attend today's hearing to address the question of the maximum sentence for count 1. Ms Katy Rafter of counsel submitted that the maximum sentence for this count is 14 years' imprisonment rather than 10 years. This is on the basis that the vast majority of the offences of burglary which were the subject matter of the conspiracy were burglaries of dwelling-houses which have a maximum sentence of 14 years' imprisonment, pursuant to section 9(3)(a) of the Theft Act 1968. Moreover, that section 3(3) of the Criminal Law Act 1977 provides that the maximum sentence for a criminal conspiracy involving imprisonable offences was a period not exceeding the sentence for the offence with the longest maximum sentence.

16. This issue has already been addressed by this court on a previous occasion in *R v Bridge* [2010] EWCA Crim 3026, which referred to previous decisions of the House of Lords and this court in *R v Courtie* [1984] 1 AC 463 and *R v Miller* [2010] EWCA Crim 809. In *Courtie* the House of Lords was dealing with a situation where the sentences for various offences under the Sexual Offences Act 1967 differed, depending upon the existence of absence of particular factual ingredients. It held that the effect of a provision of that kind was to create separate and distinct offences, depending upon the factual ingredients which

were proved and that each of which had its own maximum sentence.

17. This decision was relied upon by this court in Miller to determine that the sentence on conviction for an offence of burglary, which although it involved a burglary of a dwelling had been indicted without any express reference to it being so, was one of 10 years' imprisonment in accordance with section 9(3)(b) of the Theft Act 1968.

18. These decisions were in turn relied upon by this court in Bridge, which held that where a conspiracy to burgle, which had in fact involved burglaries of dwellings, had not been indicted as such in the particulars of the offence of conspiracy, the maximum sentence was one of 10 years' imprisonment.

19. It seems to us that although in Bridgethere was no express reference to section 3(3) of the Criminal Law Act 1977, the reference to "relevant offence" in that section is to a particular offence and that in accordance with Miller, such that in the present case as the indictment to which the appellants pleaded guilty made no express reference to the burglaries being burglaries of dwellings, despite the fact that the vast majority of them were, the maximum sentence is limited to that provided for by section 9(3)(b) of the Theft Act 1968, namely one of 10 years.

20. However, as the present case is not one in which the Recorder sentenced the appellants on the basis of a mistaken belief that the maximum sentence was more than that upon which he based his sentence, no issue of principle arises, rather it remains for this court to determine whether, in so far as count 1 is concerned, the Recorder's selection of the maximum sentence for these offences, as the appropriate sentence prior to the application of the discount to reflect the timing of their pleas of guilty, was justified. In our judgment, it was. These offences were, on any view, carried out in a planned and professional manner, over a significant period of time. They not only involved breaking into occupied premises at night time, not infrequently when there were children asleep upstairs, causing significant psychological harm to the occupants, but the items stolen were valued in excess of £500,000. If these burglaries had been individually indicted as burglaries of dwelling-houses then they would have been category 1 offences within the relevant sentencing guidelines, each of which would have attracted an appropriate starting point of 3 years' custody, with a category range of between 2 and 6 years. Furthermore, the position of both of these appellants was significantly aggravated by their previous history of relevant offending.

21. In written submissions, although not advanced this morning, Mr Hughes referred to a number of previous decisions of this court dealing with appeals against sentence in cases involving multiple dwelling-house burglary offending. Clearly each case is fact specific and the extent to which these decisions are particularly useful to the present appeal is limited. However, we need only refer to one of these, *R v Wakelin* [2017] EWCA Crim 623, to appreciate that there is

nothing out of line with our view that the nature and extent of the offending reflected in count 1 justified a sentence, after discount for plea, of 9 years' imprisonment, in relation to both appellants.

22. It has been pointed out that the imposition of such a period reflects a determination by the Recorder that the offending reflected by count 1 justified the imposition of the maximum sentence for this offence of conspiracy. We consider that the Recorder was justified in reaching this view. We accept that the maximum sentence for an offence should be reserved for the most serious examples of those offences and in our judgment, this is one such example.

23. However, our conclusion as to the consecutive nature of the sentence upon count 2 is different. At an earlier stage the respondent sought to justify the Recorder's view that this required a consecutive sentence of imprisonment to be imposed. However, it is now appreciated that there really is in essence no separate criminality which that particular count represents. Although we understand that count 2 reflected the theft of the various motor vehicles from outside the burgled premises, it is apparent from the Recorder's sentencing remarks that he considered that this was part and parcel of the criminality involved in count 1.

24. In these circumstances, we consider that although it was correct to impose a sentence of imprisonment in relation to this count, as the criminality which it reflected was taken into account in determining the appropriate sentence in relation to count 1, the period ought to have been ordered to run concurrently rather than consecutively.

25. In these circumstances, although we will not interfere with the length of the period of imprisonment imposed on count 2, we will order that the period of 1 year be ordered to run concurrently with the period of 9 years on count 1, resulting in a total sentence for both appellants of 9 years' imprisonment. To that extent the appeal is allowed.

Before leaving this case we would observe that in view of our conclusions as to the maximum sentence which was available for the offence of conspiracy in count 1, those responsible for drafting indictments ought to make express reference to the nature of the buildings involved, where they are dwellings, in order to attract the higher maximum sentence of 14 years' imprisonment.