Neutral Citation Number:[2019] EWCA Crim 612

No: 201805129/A3

IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
Strand
London, WC2A 2LL

Thursday, 14 March 2019

B e f o r e:

LADY JUSTICE SHARP DBE
MR JUSTICE GOOSE
RECORDER OF NEWCASTLE
(HIS HONOUR JUDGE SLOAN QC)
(Sitting as a Judge of the CACD)
R E G I N A
v
JOHN DARREN HOLMES

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Mr B Outhwaite appeared on behalf of the **Appellant**
Mr S Heptonstall appeared on behalf of the **Crown**

J U D G M E N T
(Approved)

1. MR JUSTICE GOOSE: John Holmes, the appellant, appeals against his sentence imposed on the 15 November 2018 in the Crown Court at Nottingham by Mr Recorder Freeman, after he pleaded guilty to an offence of burglary, contrary to section 9(1)(a) of the Theft Act 1968. He was sentenced to a Community Order of 12 months with a Rehabilitation Activity Requirement and a Curfew Requirement for 12 months. Leave to appeal sentence was granted by the single judge.

2. The appellant is aged 47 and has an extensive antecedent history of offending, for 47 convictions in respect of 195 offences. Ninety-nine of those offences relate to dishonesty matters, of which 22 were for burglary or attempted burglary, of both dwelling houses and non- dwelling houses. In recent times, on 23 January 2015 he was sentenced to 2 years' imprisonment for two offences of burglary, together with other offences; on the 21 March 2017 the appellant was sentenced to 70 days' imprisonment for an offence of burglary of a non-dwelling property; on the 23 August 2017 for a similar offence of burglary of a non- dwelling, the appellant was sentenced to a term of imprisonment of 10 months.

3. On 19 May 2018, at 7.50 am, the appellant attempted to burgle a dwelling house in which the occupants were at home and in bed. The appellant rang the doorbell and then entered through the outer porch door, before attempting to open the internal door into the hallway. The occupants heard the intruder and shouted, which caused the appellant to run away. He was observed by a neighbour who took a photograph of him and reported the offence to the police.

4. The appellant's plea of guilty was on a written basis which was accepted by the prosecution. He admitted that he entered the property through the outer porch door intending to steal. He had been returning from a party the previous night and had taken a wrong turn into the road into which the complainant's property was situated.

5. In a Victim Personal Statement, the female occupant described that consequent upon the burglary, she had problems sleeping and feared that her home would be burgled again. She continued to be anxious five months after the offence and felt very concerned about the security of her home. She felt uncomfortable when on her own and could not sleep until her partner had returned.

6. In sentencing the appellant, the Recorder adopted the Burglary Guideline and, with the agreement of counsel on behalf of the appellant, assessed this offence as a category 2 burglary, involving greater harm because the occupiers were at home whilst the offender was present. The offence was, of course, aggravated in its seriousness by the antecedent history of the appellant. For a category 2 offence a starting point of sentence was one years' custody, with a category range of a high level community order up to two years' custody. The Recorder expressly took into account that the appellant had served six months on remand and imposed a community order with conditions of rehabilitation and curfew.

7. On behalf of the appellant, Mr Outhwaite, raises a short point of appeal. He submits that this sentence was manifestly excessive, because the appellant had served the equivalent of a twelve-month sentence by being on remand for six months. Further, it

is submitted that the circumstances of this offence were such that a community order was an excessive sentence.

8. As a preliminary observation this Court has previously stated that time served on remand in custody does not of itself mean that the sentence has effectively been served and prevents the court from imposing a custodial or alternative sentence on an offender - see R v Sutherland [2017] EWCA Crim 2259; R v R [2018] EWCA Crim 2447. Accordingly, it should not be thought that time served on remand is equivalent to the sentence of the court.

9. In the appellant's case his extensive antecedent history meant that the imposition of a community order with restrictions was entirely appropriate notwithstanding the time served on remand. The Recorder would have been justified in the face of such offending to go to the top of the range of sentencing under the Guideline. Further, the Recorder expressly took into account the remand period when imposing the order. The fact that he had been on remand was a significant factor allowing the judge to impose a non-custodial sentence.

10. The submission that the appellant is effectively being sentenced twice ignores the appellant's antecedent history for similar, repeated and very recent offending. We are unable to accept therefore that the sentence imposed amounted to being sentenced twice over. Further, even though this was an offence of burglary with intent to steal, contrary to section 9(1)(a) of the Theft Act 1968, it remained a serious offence given that the occupants were at home when the burglary took place and that the appellant had been convicted for two separate burglary offences in 2017.

11. Accordingly, we do not find that the sentence imposed was either manifestly excessive nor wrong in principle and this appeal is dismissed.

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

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