

# **Regina v Lee Pritchard, Brad Arnold, Aiden Jenkins**

**[2018] EWCA Crim 3012**

Before: Lady Justice Macur DBE Mr Justice Turner The Recorder of Preston His Honour Judge Mark Brown (Sitting as a Judge of the CACD)

Tuesday 23 October 2018

## **Representation**

Mr S Hamblett appeared on behalf of Pritchard.  
Mr J Evans appeared on behalf of Arnold.  
Miss P Grewal appeared on behalf of Jenkins.

## **Judgment**

Mr Justice Turner:

1 On 28 November 2017 at the Crown Court at Wolverhampton, the three appellants were sentenced in respect of their involvement in the robbery of a convenience shop. Lee Pritchard, then aged 24, was sentenced to 10 years' imprisonment for robbery, having been convicted after trial. In addition, he was sentenced to concurrent terms of four years for an offence of having a bladed article, and of 12 weeks for acting in breach of a suspended sentence respectively. Aiden Jenkins, then aged 20, was sentenced to seven years' detention in a young offender institution for robbery, having also been convicted after trial. In addition, he was sentenced to a concurrent term of one year's detention for an offence of having a bladed article. Brad Arnold, then aged 21, had pleaded guilty to the offences of robbery and having a bladed article on 12 June 2017. He received a sentence of six years and nine months' imprisonment and a concurrent sentence of nine months' imprisonment respectively for these offences. In addition, on 30 October he pleaded guilty to an offence of fraud by false representation for which he received a sentence of six months' imprisonment to be served concurrently to the other sentences.

2 A co-defendant Kyle Dingley, then aged 19, had also pleaded guilty to the offences of robbery and having a bladed article. In addition, he admitted being in breach of a suspended sentence. He received a total sentence of six years and nine months' imprisonment. He has not sought to appeal against this sentence. These appeals are brought with the leave of the single judge.

3 The facts are straightforward. On 12 May 2017 at about 5.00 pm the appellants and Dingley arrived at a convenience shop in Dudley. Three of them

disguised with masks and armed with an ice pick, a spirit level and a wooden stick entered the shop together. There was one shop assistant present, Miss Kaur, who they intimidated by slamming one of their weapons on the counter with considerable force. She was told to stay in the corner and not move. The perpetrators then took alcohol, cigarettes and cash from the till to the value of about £1,000 which they bundled into a black holdall brought with them for the purpose. Jenkins then proceeded to take £1,000 in cash from Mrs Kaur's hand-bag. It was her holiday money. The fourth man was waiting outside in a getaway car, from which the registration plates had been removed. The absence of registration plates however alerted members of the public who reported the matter to the police who made prompt arrests.

4 The offence of fraud by false representations to which Arnold had pleaded guilty involved the dishonest use of a debit card to obtain goods to the value of about £60. It had been taken in an earlier robbery.

5 The judge concluded, rightly in our view, that upon the application of the sentencing guideline in respect of less sophisticated commercial robberies the offence of robbery fell within Category A culpability as a consequence of the use of the ice pick. There was sufficient harm to the victim and detriment to the business to place the offending within Category 2 harm. Accordingly, the starting point within the guideline was five years, falling within a category range of four to six years. The guideline envisages that once the offending has thus been categorised under stage 1, there should follow a two-part process encompassed within stage 2. It provides:

"Having determined the category at step one, the court should use the corresponding starting point to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. A case of particular gravity, reflected by multiple features of culpability or harm in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out on the next page."

The sentencing judge did not adopt this approach. Instead he took account of the aggravating and mitigating features common to all of the defendants to reach what he described as a base line of eight years, which he then further adjusted to reflect the individual aggravating and mitigating features in each case. One can see the pragmatic attractions of taking this approach, but there are dangers too. One such danger is that the sequential consideration of aggravating features when thus considered in two separate stages, may lead to an incremental increase of assessment by instalments which would appear to lend support to a length of sentence which would otherwise be difficult to justify. In this case there were no multiple features of culpability or harm in step 1. The starting point was one of five years. Progress from this starting point then fell to

be made by a full consideration of all relevant aggravating and mitigating features. There were indeed aggravating features common to all the defendants, but these fell to be balanced by individual considerations of aggravating and mitigating features in each case as part of a single exercise in respect of each defendant. In the case of Pritchard, the aggravating features comprised the element of careful planning and the use of a disguise. Furthermore, he had a poor criminal record having received recent custodial sentences for offences of violence in respect of the more recent of which he was still on licence. In addition, he was still subject to a suspended sentence of 12 weeks for possessing a prohibited item whilst in prison. By applying his baseline figure of eight years, and then a further two years to reflect the individual aggravating features in this case, the judge reached a sentence of 10 years. This represented double the guideline starting point.

6 We note that the guideline expressly recognises that in some cases the aggravating features, including relevant recent convictions, may be cumulatively sufficient to move the sentence outside the category range. Nevertheless, in the case of Pritchard, bad as his record was, we are not satisfied that it was appropriate to go beyond the category range. His antecedents however fully merited placing him at the very top of that range giving a sentence of eight years from which no further deduction falls to be made.

7 In the case of Arnold, the additional aggravating features also included a bad criminal record, culminating in robbery which had attracted a custodial sentence of three years, in respect of which he was still on licence. He was however still relatively young, having pleaded guilty at the age of 20. In his case the judge increased the sentence from the baseline figure of eight years to nine years, to which a discount of 25 per cent was applied to reflect his guilty plea. This gave a sentence of six years and nine months. We consider that the combination of aggravating and mitigating features when applied to the starting point of five years merited an uplift within but towards the top end of the sentencing range at the level of seven years. The application of the 25 per cent discount for his guilty plea thus gives a sentence of five years and three months. The judge's sentence of six years and nine months was manifestly excessive.

8 In the case of Jenkins, the judge reduced his baseline figure of eight years by one year to reflect the fact that he had no previous convictions. Thus he reached a sentence of seven years' detention in a young offender institution. We consider that this sentence was too high. The aggravating features were in his case balanced by his young age and lack of criminal antecedents. The sentence of five years was the appropriate one from which no further deduction fell to be made.

9 We observe in passing that Pritchard was fortunate that his suspended sentence was not activated. Arnold was equally fortunate not to receive a consecutive sentence in respect of his unrelated fraud. We do not propose to revise these sentences, but note that the appellants could not have had any grounds for

complaint if they had been added to the terms imposed for the robbery. These appeals are therefore allowed to the extent that we have indicated and thus limited only to the sentences for the offences of robbery. All other sentences will stand.

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