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IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
Strand
London, WC2A 2LL

Friday 7 June 2019

B e f o r e:

MR JUSTICE SPENCER

HIS HONOUR JUDGE PICTON

R E G I N A

v

ARTHUR GASKIN

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Mr Martin Elwick appeared on behalf of the **Appellant**

J U D G M E N T
(Approved)

1. **MR JUSTICE SPENCER**: This is an appeal against sentence brought by leave of the Single Judge.

2. On 8th November 2018 in the Crown Court at Nottingham the appellant, now 30 years of age, was convicted by the jury of two offences of domestic burglary. There was also a committal for sentence in respect of a further offence of burglary with intent to steal (non-dwelling). On each of the counts of domestic burglary the appellant was sentenced by HHJ Burgess to a concurrent term of 7 years' imprisonment. For the offence of burglary with intent to steal, the sentence was 8 months concurrent.

3. Regrettably, there was a lengthy delay in the burglary offences coming on for trial. The offences were committed in December 2016. The trial did not take place until nearly 2 years later. The appellant was on bail with a qualifying curfew. The other offence of burglary was committed on 1st July 2017, therefore whilst the appellant was on bail.

4. On any view, these two domestic burglaries were mean and despicable offences, targeting vulnerable elderly victims in their own homes.

5. The victim in count 1, Mr Peter Pickering, was 85 years old. At lunchtime on 5th December 2016 two males purporting to be roofers arrived in a van at his home in Swadlincote, Derbyshire. They convinced Mr Pickering that roofing work was needed. He allowed them to do the work. They made out that the work had been completed and charged him £2,800. He paid them in cash. Whilst they were there they asked to use the toilet. One of the men took Mr Pickering outside to show him the work whilst the other was left inside the house. After the two men had left Mr Pickering discovered that the safe in his bedroom had been broken into and about £12,000 in cash had been stolen, along with other small amounts of cash and jewellery from around the house.

6. The victim in count 2 was an even older gentleman, Mr Henry Greengrass. He was 91 years old at the time. He had died by the time of the trial. The burglary at his home in Keyworth, Nottinghamshire, took place a week later on 12th December 2016. A fortnight before that, two men had turned up at his home and talked their way into replacing two ridge tiles. Mr Greengrass' daughter realised the work was poorly done and negotiated a lower payment to get rid of them peacefully. Mr Greengrass paid them with cash taken out of a tin in a cupboard in his bedroom. The two men witnessed him doing that.

7. On 12th December, at around 8.20 pm, Mr Greengrass walked into his bedroom and disturbed a male whom he recognised as one of the roofers who had called two weeks earlier. The man ran off, dropping his mobile phone. £3,000 had been stolen from the tin in the cupboard, along with some identity documents and some costume jewellery.

8. Analysis of the mobile phone which was dropped at the scene established that the appellant was the user. His fingerprint was found on the front of the phone. There was also cell site evidence placing him in the vicinity of both burglaries.

9. The final offence of burglary for which he was sent to the Crown Court for sentence was at a farm in Cranswick, East Yorkshire. The farmer saw a car driving down towards his farm at around 5 pm on 1st July 2017. He became suspicious when the car drove around the yard. He and his father-in-law went to investigate. The driver, it seems, was the appellant. He had got out of the vehicle and was emerging from one of the sheds in the yard. He claimed he was a gamekeeper looking to do some rabbiting and was looking for "the boss man". The appellant got back into the vehicle and drove off, but his photograph was taken at the scene, on a mobile phone we assume, and he was subsequently identified in that way.

10. The appellant had a very bad record for serious offences of dishonesty. In 2007, aged 20, he was sentenced to 18 months' detention for conspiracy to steal. In 2010 he was sentenced to a total of 7 years' imprisonment for offences of conspiracy to handle stolen goods and concealing or converting criminal property.

11. The judge sentenced the appellant immediately after the jury returned their verdicts. No pre-sentence report was required; a substantial custodial term was inevitable. The only mitigation advanced was that the appellant was a married man with two young children, one only 18 months old (who had been born in fact whilst he had been on remand awaiting trial) and there had been excessive delay in the matter coming to trial. It was common ground that each of the burglaries fell into category 1 of the relevant Sentencing Council Guideline.

12. In his sentencing remarks the judge said he was satisfied that there had been reconnaisnce to identify and select these two vulnerable victims. On the second occasion, the victim had been confronted in his bedroom, although no violence had been offered. The judge described them as very serious offences. There was planning; there was distraction so that the burglaries could be carried out; large sums of money were stolen each time. The judge noted that the burglaries and the conspiracy when he was 19 or 20 years of age involved thefts from vulnerable people (distraction thefts) with significant sums of money obtained.

13. The judge emphasised that he was dealing with two offences. He acknowledged the long delay, but observed that if the appellant had admitted the offences they could have been dealt with much sooner. The judge said in terms that he would pass concurrent sentences, but they would take account of the fact that there were two offences. The judge acknowledged that the other burglary at the farm was committed whilst on bail but said he had to look at the totality of the sentence and was therefore going to pass a concurrent sentence for that offence.

14. The grounds of appeal are that the judge failed to have sufficient regard to the delay in the case coming on for trial; that he failed to take into account the appellant's personal mitigation; and this is the real nub of the appeal as advanced by Mr Elwick in his oral submissions, that the judge failed to have sufficient regard to the principle of totality.

15. In support of those grounds Mr Elwick acknowledged that each of the burglaries plainly fell within category 1 and that the total sentence had to reflect the criminality of both offences. He submits, however, that each of them had a starting point under the

guideline of three years and that no substantial increase beyond that was appropriate. If, for example, the judge had taken the view that each merited 3-and-a-half years' imprisonment, the judge has simply added the two together to arrive at the figure of 7 years, which was simply too long in the circumstances.

16. We have considered these submissions, but we are quite unable to accept them. These were, as the judge said, very serious offences of their kind. Elderly, vulnerable victims were targeted in their own homes. The offences were planned. Substantial sums of cash were stolen. The elder of the two victims (count 2) was confronted by the appellant. There were, in reality, multiple factors of culpability and harm, which under the guideline amply justified a significant uplift from the starting point of 3 years for each offence, before any consideration of aggravating factors under the guideline. There was an aggravating factor for both offences of the appellant's bad record, and an extra aggravating factor in count 2 in that the offence was committed at night.

17. The range for category 1 is up to 6 years. In our view each of these offences taken alone could easily have justified a sentence of 4 to 5 years. The judge was quite correct in principle to pass concurrent sentences of a length which reflected the overall criminality of the two burglary offences. In principle, a consecutive sentence would have been fully justified for the further non-domestic burglary committed whilst on bail, but the judge observed the principle of totality by making that sentence concurrent.

18. The judge had presided over the appellant's trial. He was ideally placed to assess culpability and harm and the overall seriousness of these offences. In our view the sentence he passed of 7 years was properly and necessarily severe. It was just and proportionate. Therefore, despite Mr Elwick's valiant submissions, the appeal must be dismissed.