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No: 201901335/A1
IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
Strand
London, WC2A 2LL

Thursday, 4 July 2019

B e f o r e:

LORD JUSTICE IRWIN

MR JUSTICE KERR

HIS HONOUR JUDGE PATRICK FIELD QC

(Sitting as a Judge of the CACD)
R E G I N A
v
IMRAN SADIQ KHAN

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Mr B Singh appeared on behalf of the **Appellant**

J U D G M E N T
(Approved)

1. LORD JUSTICE IRWIN: On 21 January 2019, at the Birmingham Crown Court, the appellant pleaded guilty to an offence of handling stolen goods, contrary to section 22(1) of the Theft Act 1968. On 25 March 2019, in the same court, on this occasion before Her Honour Judge Montgomery QC, he was sentenced to 2 years and 8 months' imprisonment for that offence.

2. The co-defendant, Edwin Geoff Gilbert, pleaded guilty to the same offence and was sentenced to 3 years and 2 months' imprisonment consecutive to a much longer prison sentence he received for other offences.

3. This appellant appeals by leave of the single judge.

4. The facts can be summarised as follows. The appellant had been under police surveillance for an unrelated matter for a number of days early in 2016. During the course of those observations the appellant had been seen spending time in a unit under some railway arches which was being used as a car repair or vehicle repair garage. The surroundings are of some interest. The unit was at the end of a cul-de-sac beside the railway track. It was a position which was very unobserved. The entrance to the garage or to the railway arch was an unmarked door.

5. On the morning of 12 February 2016 police officers entered the unit with a warrant and discovered the shell of a car that had the appearance of being worked on. There were also a considerable number of car parts including tyres, doors, engines, gearboxes, cutting tools

and equipment. The police (as the matter was opened to the court) found no evidence of a legitimate business. The appellant and Gilbert were inside the premises and were arrested.

6. A vehicle examiner subsequently examined what had been found and discovered that all of the parts could be traced to particular vehicles. The various parts had come from 16 vehicles in total. Those vehicles had been stolen on a variety of different dates covering for the period on the indictment, that is to say between November 2014 and February 2016.

7. The appellant was interviewed by the police on 12 February, the day of the raid. He provided a prepared statement. In the course of that he stated that he had worked at the unit and that he had been paid £250 a week to work on engines and gearboxes. At that stage he denied that he knew the vehicles he had been working on had been stolen. The appellant thereafter answered "no comment" to any questions that were asked of him, as he did for the large part in a subsequent interview.

8. In the second interview, when he had been asked where he thought the vehicles had come from, he said: "I ask no questions, tell no lies. I don't answer no questions". He acknowledged that he, on occasion, held keys to the unit and there was advanced subsequently a valuation of the stolen car parts of around £13,000.

9. A basis of plea was put forward by the appellant and commented on in the course of the preparation of the case for sentencing by the Crown. The detailed comments are known to the appellant himself and it may not be necessary to outline all of them for the purpose of this appeal. It was acknowledged that he did not rent or acquire the unit. That was done by another man with a different physical description. A number of people were involved

with and had access to the unit, as police surveillance revealed. The Crown had no evidence to contradict the propositions that this appellant brought no stolen vehicles or parts to the unit, and that he was employed to go there from time to time, beginning in November 2015 not earlier. He was never told that the car parts in the unit were stolen, although he must have realised that to be the case. The comment by the Crown on that aspect was that common sense inference was, that particularly given this appellant's background that it cannot have been long for that realisation to emerge in his mind.

10. The car parts were all used. There was no evidence that the appellant had handled any of the intact vehicles. In comment on that the Crown submitted to the court that it was inconceivable that at least some of the stolen vehicles from which the car parts were taken would not have been cut up on the site given the presence of the cutting tools that would have been needed to undertake that process.

11. The Crown did not seek to challenge the valuation of £13,000 for the stolen parts. Nor did they seek to challenge the level of payment for the work that he had done.

12. Additional important factors affecting the sentence in this case were twofold. Firstly, that the cars from which these parts had been removed, taking them together, represented something like £136,000 worth of stolen car and secondly, it was established in the course of the investigation that in at least one of the instances this was not car theft but a robbery with the driver of the car being torn from the car seat itself whilst the vehicle was taken.

13. The appellant's record indicates very significant past offending. He in total has nine convictions on six separate dates of conviction and amongst those there is a significant conviction for conspiracy to handle stolen goods, namely stolen car parts for which he was

initially before the court in September 2013 and then on 6 December 2013 he was sentenced to 30 months' imprisonment. It is clear that within a short period little more than a year after the expiry of that sentence his engagement with this offending must have begun.

14. A pre-sentence report was prepared for the court. In the course of the preparation of that report, this appellant denied that he knew the car parts were stolen - a point of course belied by his subsequent plea. He told the probation officer that he was working there one to two days a week and so the remuneration of £250 a week was for one or two days' work, a fact which underscores the obvious conclusion that his reward was above the level to be expected from legitimate work. He supported his current wife and child and his former wife and two children. He was said to have had a very high likelihood of re-conviction within 2 years. The view was that he would comply with any community penalty, if that was appropriate. He had done so in the past.

15. That was really how the report was left before the sentencing judge. He also had the benefit of a character reference from his brother.

16. In passing sentence, the judge indicated that she would give 10% credit for a late plea of guilty. The facts of the offending were outlined including the important circumstances of the lockup which we have already mentioned. The judge concluded that this was indeed a sophisticated and professional operation for theft, handling and reuse of cars and parts. The basis of plea was accepted for the purpose of sentence and therefore he fell to be sentenced as a hired hand albeit inevitably a knowledgeable and experienced one. The judge then considered the relevant guidelines for the offences of handling stolen goods. She said this:

i. "The reality is, looking at the Sentencing Council's Definitive Guideline for Offences of Handling Stolen Goods, that this is an offence, before I consider any of the aggravating or mitigating features, that falls more comfortably, whatever the role either of you played in it, within category A. This was, undoubtedly, a professional and sophisticated offence, operating over a period of time.

ii. But I acknowledge that in assessing the right starting point, either within that category or either side of it, I must look to your specific function in relation to the unit itself and, albeit that there does not appear to be a great deal to choose between you, it is acknowledged by the Crown that you, Mr Khan, have by your basis of plea reduced your responsibility for the unit. Accordingly, you fall to be sentenced at a marginally lower level of culpability than your co-accused. I accept that in category 2, as culpability A to B determines, the starting point for the offending must be measured by the value of the goods, which is well towards the bottom end of the table which allows consideration for the court in many and various cases.

iii. That said, I should tell you straightaway before I move to consider Mr Gilbert's indictment from Wolverhampton [that being a reference to the other offending for which he fell to be sentenced], that I take the view that having considered the Guideline with care, most specifically, as I shall come to in a moment, the aggravating features and your respective positions before the court in terms of your responsibility for your actions, that both of you have committed offences so serious that only an immediate custodial sentence can suffice in recognition of that seriousness and in punishment for it.

iv. I have considered, of course, both the Guidelines in relation to passing of custodial and community penalties, and, as I shall come on to detail in due course, Mr Gilbert, the Guideline concerning totality. I have indicated to you both that your only real mitigation, for which you will receive the credit that I identified, is your guilty plea."

17. A little later she continued in relation to this appellant as follows:

> i. "... I will deal with you, Imran Khan, first. Mr Khan, for the offence of conspiracy to handle stolen goods, in my view, as I have indicated, this is an offence that was professional and sophisticated and falls more comfortably into the top category of offences of its type in the Sentencing Council's Definitive Guideline. But I have taken account of your role in that enterprise as detailed in your basis of plea and reduced what I would otherwise have thought the appropriate sentence accordingly. But, by the same token, I am bound to reflect your relevant previous conviction and I do so by arriving at the sentences then which I will reduce by the plea of guilty that you entered before the court on the day of your trial.
>
> ii. The sentence of the court would have been one of 3 years' imprisonment. It is reduced by your plea of guilty to a sentence of two-years-and-eight-months' imprisonment."

18. Mr Singh, in his customary direct and eloquent fashion, has addressed the court clearly. He suggests that the case was a category 2 case within the guidelines, with a culpability B. That as a hired hand the starting point of 12 months, that is in the middle of the range of 26 weeks to 18 months for that categorisation was appropriate. He accepts that there was some aggravation derived from the number of vehicles taken from domestic burglaries and from the previous convictions. But he advances mitigation, he says, which consists in large measure of interlocking factors. Firstly, there was a very considerable delay (of around 3 years) between the arrest in February 2016 and bringing this matter to sentence and much of that delay was undoubtedly the fault of the Crown. There were disclosure

problems: at one stage, the appellant was told he would not be proceeded against and it was following resolution of those problems and a restarting of proceedings that the matter was brought to court.

19. In that period, Mr Singh emphasises, that the appellant had began his life again, that he had started a legitimate business. He had restarted his family life. His father had died and he had responsibilities which were considerable in relation to his mother and a sister who has particular needs, and he had not re-offended. All of those matters should have sounded in mitigation and the judge of course indicated, as we have made clear, that the only mitigation was for the plea.

20. We have considered those submissions with care. We (if one likes to put it) re-analyse this offending as follows. Beginning with harm, this was a category 1 case. The value was within the high value category (more than £10,000) and it is undoubtedly the case that there was significant additional harm to the victims or others. The particular instance here being that there was a robbery which gave rise to the possession of one of the cars. As Mr Singh has acknowledged in the course of submissions, the handler takes the risk of the harm that has been caused to obtain the stolen goods with which he deals.

21. The culpability here, in our view, was capable of being high culpability. This was a professional and sophisticated offence, although the role filled by this appellant was as a hired hand. That was accepted, therefore that must be the faithful bases of sentence. His background is of someone who has done this professionally before. So by making some allowance for those two factors on culpability, it seems to us that a starting point of 3 years was entirely appropriate.

22. We consider that the aggravating features we have spoken of are bound to be brought to bear. We consider that the judge therefore, had she only been drawn to mitigate the sentence by reference to plea, would have been fully entitled to pass the sentence which she did sentence. But we think there is force in the one submission that Mr Singh has made, namely that she gave no reduction for the personal mitigation consisting of very considerable delay, not the fault of the appellant and for the fact that he had not re-offended for a period and had very considerable genuine responsibilities.

23. For those reasons only, we quash the sentence passed and substitute a sentence of 2 years and 2 months for the sentence of 2 years and 8 months passed by the judge.

24. To that extent the appeal succeeds.

25. MR SINGH: May I just clarify this for the purpose of the note in due course if ever it comes to that. The vehicles and it is actually in the indictment the total value of all the vehicles was £136,000 not 250.... I know it is said that in the pre-sentence and it might be an error somewhere along the way.

26. Just one other matter, and it makes no difference at all to the decision, but the robbery was of a man not a woman from the motor vehicle.

27. LORD JUSTICE IRWIN: That too is in the papers. I do not think that makes any difference at all.

28. MR SINGH: With the defendant listening...

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