

Regina
v
Sam Mark Oliver

Court of Appeal Criminal Division

[2019] EWCA Crim 1391

Before: Mr Justice Nicol His Honour Judge Patrick Field QC (Sitting as a Judge of the CACD)

Friday, 12 July 2019

Representation

Mr B Thomas appeared on behalf of the Appellant.

Judgment

Mr Justice Nicol:

1. This is an appeal against sentence with the permission of the single judge.

2. In the Crown Court at Leeds the applicant faced one charge of handling stolen goods contrary to section 22(1) of the Theft Act 1968 . He originally pleaded not guilty to that count. On the day of trial he changed his plea to guilty. On 8 March 2019 he was sentenced by His Honour Judge James Spencer QC to two-and-a-half years' imprisonment. He was ordered to pay £790 towards the costs of the prosecution which matched the amount that had been found on him at the time of his arrest.

3. The facts of the offence were as follows. Overnight on 27 November 2017 a Volkswagen Golf, valued at £32,000, was stolen during the course of a house burglary. The occupants were at home in bed in Kirkheaton near Huddersfield. The only item taken from the house were the car keys. The car was then driven away.

4. A week later, on 4 December 2017, a police officer saw the stolen vehicle with false plates being driven on the M62 towards Leeds. They followed the car. When required to stop, it did. The appellant was the sole occupant. The vehicle was searched and in the boot of the vehicle were three other sets of false numberplates. The appellant told the police it was not his car and he was driving it from Oldham to Leeds for someone else but he would not tell the police who that person was. He was searched and in his possession there was £790 in cash which, as we have said, was seized by the police.

5. He was taken to Huddersfield police station and interviewed. He gave a prepared statement in which he said that the Golf did not belong to him and he had been told to drive it from Oldham to Leeds. Again, he was not prepared to tell the police where he had got it from or where he was taking it to. He said the money in his wallet was to buy carpets. He was pressed in interview by the police to name the source of the car and its destination but he continued to decline to do so.

6. The applicant was born on 17 October 1989, so he was 29 at the time of sentence. He had been convicted on six occasions of a total of 12 offences. Notably these included a previous offence of handling in 2015, for which he received a community order. In 2011 he had been sentenced to 8 weeks' imprisonment for battery.

7. In passing sentence, the judge said that the appellant had said that he had been driving the car for someone else and he had previous convictions for similar offending. It was impossible to suspend the sentence. At the age of 29 he understood things better than a teenager and it was a cynical involvement in crime for acquisitive reasons. The judge said that the appellant was entitled to 10% credit for his late guilty plea. Rounding up his sentence led to a term of imprisonment of 30 months.

8. Before the sentencing judge there had been discussions about where this offence fitted in the Sentencing Council's Guideline on Handling Offences. Category 2 is for high value goods worth between £10,000 and £100,000. The value of the car was put at £32,000 and so on value it was within category 2. The Sentencing Council then says that the court should assess culpability. There is high culpability if, among other things, the defendant was in possession of very recently stolen goods from a domestic burglary. It seems clear that this is what the judge had in mind.

9. The judge did not specify what the sentence would have been after trial, but since he did say he would give the appellant 10% credit for his plea he must have had in mind a sentence after trial of about 33 months, which is 3 months short of the recommended starting point of 3 years for a category 2A offence.

10. On the appellant's behalf Mr Thomas submits that this sentence was manifestly excessive. The car had been found in the appellant's possession a week after the burglary. That could not be described as very (our emphasis) recent possession. Rather, the appellant's culpability should have been assessed as "medium" which would have meant that the starting point was 1 year and the range up to 18 months. It was also material, Mr Thomas submitted, that the precise charge against the appellant was "assisting in the realisation of stolen goods". Even if the judge was entitled to regard this as a higher culpability case, greater allowance should have been made for the fact that the car came towards the bottom of the category 2 bracket.

11. Mr Thomas also argues that the sentence was manifestly excessive because of the appellant's personal mitigation. He had a 4-year-old daughter and his partner was expecting another child in July 2019. The appellant's father had also died recently. He had a good work ethic and had completed his unpaid work requirement from a previous sentence. The offence had been committed in December 2017 and he had not been convicted of any offence since. None of this mitigation had been mentioned by the judge.

12. In our judgment, none of Mr Thomas' submissions are sound. First, the judge was entitled to conclude that the appellant's possession of the car only a week after the burglary constituted very recent possession for the purposes of the guidelines.

13. It should not be forgotten that the car was found to have false number-plates and there were three further sets of false plates in the boot of the car. That reinforced the judge's conclusion about the close connection between the burglary and the handling. Alternatively, it showed that this was "a professional and sophisticated offence" which is another marker of higher culpability.

14. Mr Thomas argues that it could not be established that the appellant knew about the plates in the boot of the car. But we do not consider that that argument is sustainable. He was driving the car in the boot of which these additional plates were found.

15. Alternatively again, significant additional harm can be taken into account and the judge could have regarded this as such because the goods were taken from a domestic burglary. Such harm can move a sentence into a different category range. With respect to Mr Thomas, we see no significance in the particular form which this handling took. It is just one of a number of ways in which this particular offence can be committed.

16. It is right that the value of the car was below half of the range which category 2 is intended to cover. That was one aspect of the mitigation. There were the other mitigating factors to which Mr Thomas referred. On the other hand, there were the aggravating features, notably the appellant's previous convictions including the previous conviction for handling.

17. Taking all of these matters together, we do not think that a sentence of 33 months after trial would have been manifestly excessive. Quite rightly Mr Thomas takes no issue with the allowance of 10% credit for the appellant's plea of guilty.

18. For all of these reasons, this appeal is dismissed.