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No: 2019 00325 A4

IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
Strand
London, WC2A 2LL

Thursday 27 June 2019

B e f o r e:

LORD JUSTICE HADDON-CAVE

MR JUSTICE POPPLEWELL

HIS HONOUR JUDGE PATRICK FIELD QC

R E G I N A

v

MARK RIMMELL

Computer Aided Transcript of the Stenograph Notes of Epiq Europe Ltd Lower Ground, 18-22 Furnival Street, London EC4A 1JS Tel No: 020 7404 1400 Email: rcj@epiqglobal.co.uk (Official Shorthand Writers to the Court)

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Mr G Gross (a solicitor advocate) appeared on behalf of the **Appellant**

J U D G M E N T
(Approved)

1. **JUDGE PATRICK FIELD:** The appellant, Mark Rimmell, is 45 years old, and he appeals against sentence with the leave of the single judge.
2. On 18th December 2018 he pleaded guilty at the Barkingside Magistrates' Court to three offences of burglary, contrary to section 9(1) of the Theft Act 1968, and was committed to the Crown Court for sentence pursuant to section 3 of Powers of Criminal Courts (Sentencing) Act 2000. He was also committed pursuant to paragraph 11(2) of Schedule 12 to the Criminal Justice Act 2003, having been convicted of those offences during the operational period of a suspended sentence passed by the Crown Court.
3. On 2nd January 2019 he was sentenced in the Crown Court at Snaresbrook as follows: for each offence of burglary he received 28 months' imprisonment, those sentences to be served concurrently. The suspended sentence order imposed by the Crown Court at Wood Green on 13th February 2018 for the possession of a drug of Class A with intent to supply it to another was activated in part so that there was a consecutive term of 15 months' imprisonment. The total sentence was therefore 3 years and 7 months' imprisonment.
4. The facts are these. The burglaries were committed on separate occasions between 9th and 26th November 2018. They were non-domestic burglaries and they were all committed during the hours of darkness. The first was committed at the premises of Vision Consulting, Cranbrook Road in Ilford, on 9th November. The appellant gained access through an open shutter, climbed up some scaffolding and then smashed a first floor window to enter the offices. He placed a number of electrical items in a box ready to steal them, but he left them behind when an alarm was activated. He also left a sample of his DNA behind, from which he was later identified as the burglar.
5. On 20th November the appellant broke into the Ley Street Chapel in Ilford and stole an Apple Mac laptop computer and a projector valued together at £900. Books and paperwork were thrown on to the floor. He was identified from blood that was found in the kitchen at the chapel. These do not appear to have been commercial premises.
6. The third burglary took place on 26th November at the premises of Zian Stanley Ltd, again on Cranbrook Road in Ilford. He entered through a window, and then damaged the front door and a number of internal doors. The cost of repair was said to be £400. Several files and some pictures were also stolen. Once again, the appellant was identified from DNA found at the scene.
7. He was arrested and interviewed on 17th December. He answered no comment to all questions asked of him.
8. He has an extensive criminal record, starting in August 1998. There are 21 convictions for 43 separate offences, of which twenty were non-domestic burglaries and five were domestic burglaries. His last conviction for burglary was in June 2015, when he pleaded guilty to two non-domestic burglaries and a domestic burglary and asked for eight other offences to be taken into consideration.

9. When sentencing, the Recorder found that each of these three burglaries fell within category 2 of the definitive guideline. Therefore the starting point for each was 18 weeks custody, with a category range of a low level community order to 51 weeks' imprisonment. The appellant's previous convictions amounted to a statutory aggravating feature, but were sufficiently serious to justify increasing the starting point substantially above the upper limit of the category range. The fact that the burglaries were committed at night and that they formed a series of offences also amounted to aggravating features increasing the seriousness of the case. The Recorder allowed full credit for the guilty pleas before sentencing the appellant to 20 months' imprisonment on each of the burglaries. It follows that the sentence before credit for plea must have been 3 years and 6 months (42 months) for each burglary.
10. The Recorder referred in sentencing to the totality guideline. Because these were similar offences, all committed by the appellant, concurrent sentences were appropriate. However, the Recorder no doubt took account of the following guidance:

"Where concurrent sentences are to be passed the sentence should reflect the overall criminality involved. The sentence should be appropriately aggravated by the presence of the associated offences."
11. As for the suspended sentence order, the original sentence was one of 21 months' imprisonment suspended for 21 months. The Recorder concluded that it would be unjust to activate the full prison term having regard to the fact that the appellant had completed 97 out of 100 hours of unpaid work and 14 out of 30 rehabilitation activity requirement days. Accordingly, only 15 months of that sentence were activated.
12. There are four grounds of appeal:

First, that the learned Recorder erred in adopting too high a starting point and moving outside category 2 for commercial burglaries.

Second, that insufficient account was taken of the principle of totality.

Third, that the learned Recorder had not given appropriate credit to reflect that the appellant had pleaded guilty at the magistrates' court.

Fourth, the total sentence of 43 months' imprisonment was manifestly excessive.
13. We note that there is no appeal against the order in respect of the suspended sentence.
14. Mr Gross, in his clear submissions, argues that the total of 28 months for three burglaries of this type, having regard to the guidelines, was excessive. He concedes that the burglary at the Ley Street Chapel was a category 2 burglary but leaves open the question as to whether the other burglaries so qualified. He nevertheless urges us to approach this case by reference to the seriousness of these particular offences and urges us to conclude that none of them justifies moving outside the category 2 guideline in the manner in which the Recorder did.

15. The Recorder's sentencing remarks were brief. This was no doubt in part due to the limited amount of material put before him by the Crown. We note, in particular, the absence of victim personal statements, and there seems to have been no evidence about the value of the goods placed in the box at Vision Consulting, the amount of damage done at those premises or the value of the goods taken from the premises of Zian Stanley. All of this material would have assisted him in assessing the seriousness of each burglary and determining the offence category. In the event, the Recorder approached the question broadly and placed each burglary in category 2 because in each case:

"There are no factors demonstrating higher harm or greater harm or higher culpability, equally there are no factors demonstrating lower harm or lower culpability ..."

16. Although the Recorder's approach at stage 1 was, we find, unconventional, we do consider that there was a proper basis for such an assessment because there were factors that justified concluding that these were all category 2 burglaries. At Vision Consulting, there was lesser harm because nothing was stolen; but the method of entry and the organised search indicated a significant degree of organisation or planning and thus high culpability. At the Ley Street Chapel a valuable laptop was stolen. Whilst this might not have been a significant loss to a business, it certainly might have been to a chapel. Without a victim personal statement, however, the Recorder was not able to find that there was greater harm. Having said that, in the case of these premises, it may have been open to find that they were targeted as vulnerable, being a chapel, and suggesting higher culpability. In respect of the third charge, at Zian Stanley, files and pictures were stolen, but we have no idea of the value of these items or the effect their theft had on the business. The damage done to several doors, totalling £400, does not appear exceptional, thus lesser harm, but in this case higher culpability because this has the appearance of a premeditated burglary by an accomplished burglar.
17. The Recorder then concluded that the aggravating features, particularly what he described as the appellant's "myriad" of previous convictions, increased the starting point substantially above the upper end of the category range: that is, substantially above 51 weeks. What he then did, having taken into account totality, was to arrive at an overall sentence for the burglaries that was three-and-a-half times the top of the range.
18. Having due regard to the overall seriousness of these burglaries, disruptive as they undoubtedly were to the proprietors of the three premises, and to the appellant's poor record, we conclude that such an approach resulted in a sentence that was manifestly excessive. Although there were aggravating features, they did not justify such a significant move beyond the top of the range. We consider that individually each burglary warranted a sentence towards the upper end of category 2. When totality is taken into account, an appropriate sentence for all the burglaries, before credit for plea, is 2 years' imprisonment. With full credit of one-third, this is reduced to 16 months. We therefore quash the sentences of 28 months' imprisonment on each of the burglaries and substitute for them sentences of 16 months' imprisonment, which will all be

concurrent sentences. The consecutive sentence of 15 months in respect of the suspended sentence order remains unaltered. To this extent the appeal is allowed.

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

Lower Ground, 18-22 Furnival Street, London EC4A 1JS

Tel No: 020 7404 1400

Email: Rcj@epiqglobal.co.uk