

Neutral Citation No. [2019] EWCA Crim 1549

2019/01681/A4

IN THE COURT OF APPEAL

CRIMINAL DIVISION

Royal Courts of Justice

The Strand

London

WC2A 2LL

Thursday 29th August 2019

B e f o r e:

LORD JUSTICE SIMON

MR JUSTICE JEREMY BAKER

and

MR JUSTICE FREEDMAN

R E G I N A

- v -

KYLE JOHN BUCKNALL

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

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Mr C Blatchford appeared on behalf of the Appellant

A P P R O V E D J U D G M E N T

Thursday 29th August 2019

LORD JUSTICE SIMON: I shall ask Mr Justice Jeremy Baker to give the judgment of the court.

MR JUSTICE JEREMY BAKER:

1. On 8th April 2019, in the Crown Court at Leeds, the appellant, who is 27 years of age, changed his plea to guilty in respect of four offences on indictment and was sentenced as follows:

- i. count 1, driving whilst disqualified, 3 months' imprisonment;
- ii. count 2, driving whilst disqualified, 3 months' imprisonment;
- iii. count 4, aggravated vehicle taking, 10 months' imprisonment; and

iv. count 6, attempted burglary of a dwelling, 20 months' imprisonment.

2. The sentences on counts 1, 2 and 6 were ordered to run concurrently with one another; the sentence on count 4 was ordered to run consecutively, resulting in a total sentence of two and a half years' imprisonment. The appellant was disqualified from driving for 39 months on count 4, comprising a discretionary period of two years and an "extension period" of fifteen months.

3. The appellant appeals against sentence with the leave of the single judge.

Offences

4. Counts 1, 2 and 4 all concerned the appellant's driving of a Jeep Renegade motor vehicle which had been stolen from outside a dwelling on 13th November 2018 in the course of a domestic burglary.

5. The appellant was first seen driving the vehicle by the police on 11th December 2018 (count 1) along Roundhay Road in Leeds, by which time the Jeep was displaying false registration plates. The police, who were in an unmarked vehicle, followed the Jeep for a distance, during the course of which they suspected from the manner of his driving that the appellant was aware that they were following him. At one point, the appellant performed a three-point turn in the road and then accelerated at speed towards the police vehicle before steering away from them and driving off.

6. The next occasion was on 23rd December 2018 (count 2). Police officers saw the appellant driving the Jeep along Scott Hall Grove in Leeds. On this occasion the Jeep was displaying another set of false registration plates, and there was a passenger in the Jeep which was driven away.

7. The third and final occasion was on 5th January 2019 (count 4) when police officers saw the appellant driving the Jeep on Cranmer Bank in Leeds. Once again, the Jeep was displaying yet another set of false registration plates. Two police vehicles which were present at the location sought to box in the Jeep in order to prevent the appellant from driving away. However, the appellant rammed one of the police vehicles, mounted the kerb and drove through a small gap between another parked vehicle and a hedge. The Jeep was then driven through a pedestrian entrance way and across a section of grass at about 40mph before getting away. The Jeep was later found parked about 50 metres from the appellant's home. The keys to his home were found inside it.

8. Count 6 involved an attempt to enter a dwelling on Kingfield Mount in Leeds, where a Mercedes motor vehicle was parked outside. The incident occurred in the afternoon of 6th January 2019. The occupier and his two young children were inside when they heard the sound of someone trying the front door. When the occupier went to investigate, he found no one present. However, when he looked at footage from the closed-circuit television equipment he had installed at the premises, he saw the appellant's figure approach the front door and try the handle, before walking off across his garden. As a result of this offence, the occupier has spent around £600 on extra security equipment in order to protect his home.

9. The appellant was arrested on 13th January 2019. When he was interviewed, he denied all of the offences.

The appellant

10. The appellant has an extensive history of previous offending over the last sixteen years for a variety of offences, including six separate court appearances for domestic burglary. He has also been convicted of robbery

and driving offences.

Sentencing remarks

11. In the course of his sentencing remarks, the judge indicated that, due to the timing of his pleas of guilty, which were entered between the date of the plea and trial preparation hearing and trial, he would afford the appellant a discount of one-sixth. He described the appellant as having a dreadful antecedent history for burglary and concluded that he was a committed burglar. In respect of the attempted burglary, the judge determined that, prior to the discount for the guilty plea, the period of custody would have been 24 months, which he reduced by one-sixth to 20 months' imprisonment.

Grounds of appeal

12. In his Grounds of Appeal and orally today, Mr Blatchford argues: firstly, that bearing in mind the history of the proceedings, the discount for the guilty plea is insufficient; and secondly, that the term of custody for the attempted burglary is excessive.

Discussion

13. In so far as the attempted burglary is concerned, although we envisage that the appellant planned the offence, we accept that the planning was not of the nature and degree to indicate higher culpability. However, in relation to harm, not only was the occupier at home at the time – as indeed were his two young children – but even if it could not have been established that the target of the burglary was the stealing of the Mercedes motor car parked outside, we consider that there was a significant degree of loss to the owner by reason of the extra security equipment which was acquired to protect his home. In these circumstances, we consider that, as a full offence of burglary, the circumstances giving rise to count 6 would have justified a sentence at the upper end of the range for a category 2 offence under the relevant sentencing guidelines, namely, two years' imprisonment.

14. It was, of course, necessary for the judge to acknowledge that he was dealing with an inchoate offence, but he was also entitled to reflect the significantly aggravating factor of the appellant's repeated offending, especially for domestic burglary. Having carried out that balancing exercise, we are satisfied that, prior to the discount to reflect the timing of the plea of guilty, the judge was justified in selecting a period of two years' imprisonment in respect of the attempted burglary.

15. Turning to the discount for the guilty plea, we understand that the appellant's first appearance at the magistrates' court took place on 14th January 2019, when he was committed for trial to the Crown Court. The plea and trial preparation hearing took place on 11th February 2019, when the appellant pleaded not guilty and the matter was listed for trial on 9th July.

16. In the meantime, the prosecution were ordered to serve any forensic evidence and dashcam material by 4th March 2019. This order was not complied with, and those representing the appellant had the matter listed for non-compliance on more than one occasion. We accept that there may well have been informal discussions between the prosecution and those representing the appellant after the plea and trial preparation hearing and the compliance hearings relating to pleas of guilty which may be acceptable to the prosecution. However, the reality was that there was no forensic or dashcam material, and it was only shortly before 8th April 2019 that those representing the appellant had the case listed for mention, with an indication that the appellant would be entering pleas of guilty.

17. It is clear that full credit for a guilty plea is only provided to those who indicate that they will plead guilty at the first available opportunity. In the present case, the appellant denied the offences in interview. He did not indicate a guilty plea at the magistrates' court and he pleaded not guilty at the plea and trial preparation hearing, when the matter was listed for trial. Therefore, it is clear that not only was the appellant not entitled to full credit for the timing of his pleas of guilty, but nor was he entitled to the type of reduced credit which may be afforded to pleas of guilty entered at the plea and trial preparation hearing. Accordingly, the determination of the amount of credit was very much a matter of assessment for the sentencing judge, mindful of the ever-decreasing amount of credit (normally down to ten per cent) for guilty pleas entered at the commencement of the trial.

18. In our judgment, although the type of informal discussions which took place in the present case are to be encouraged, they will not be sufficient to trigger the obtaining of credit for any subsequent guilty pleas by an offender, unless and until the offender has indicated to the prosecution and the court his intention to plead guilty. This was not done in this case until shortly before 8th April 2019. In the circumstances, we see no reason to interfere with the judge's determination that, given the history of the proceedings, this only entitled the appellant to a limited degree of credit for his guilty pleas.

Conclusion

19. Accordingly, although we are grateful to Mr Blatchford for his assistance in the appeal, for the reasons we have provided the appeal is dismissed. We would only add that in relation to the order for disqualification, in addition to the discretionary period of 2 years, the appropriate order ought to have been expressed as an extension period of 5 months and an uplift of 10 months respectively under sections 35A and 35B of the Road Traffic Offenders Act 1988.

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

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