

[2019] EWCA Crim 1420
No: 2019 00711/A2
IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
Strand
London, WC2A 2LL

Friday 19 July 2019

B e f o r e:

LORD JUSTICE MALES

MR JUSTICE JAY

MR JUSTICE EDIS

R E G I N A

v

CHARLES FREDERICK MATTHEWS

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(Official Shorthand Writers to the Court)

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Mr Martin Bromley-Martin QC & Mr Peter Caldwell appeared on behalf of the Appellant

J U D G M E N T
(As approved)

1. **MR JUSTICE JAY:** On 11th January 2019, in the Crown Court at Southwark, the appellant was convicted of the offence of handling stolen goods. On 25th January, before the trial judge, Her Honour Judge Korner QC, he was sentenced to a term of imprisonment of 4-and-a-half years. He was also disqualified under the Company Directors Disqualification Act 1986 for a period of 10 years. He appeals against sentence with leave.
2. The facts are that over the Bank Holiday weekend of 28th to 31st August 2010 there was a burglary at a high end jewellery store called Chatila in Bond Street in which £40 million worth of jewellery in an office safe was targeted. The burglars were unable to gain access to the safe but stole approximately £1 million worth of jewellery and precious stones from display cases in the showroom. That burglary was carried out by individuals including Jones, who later carried out the burglary of Hatton Garden Safe Deposit Ltd in April 2015 using similar methods.
3. Police searched the appellant's business premises, a scrap metal dealers firm called London City Metals, in Factory Road, E16 on 5th August 2015. Hidden behind a removable ceiling tile in the appellant's office was a plastic bag containing fifty diamonds, two emeralds and a jewel-encrusted bangle. The bangle was a unique item and was positively identified as being stolen from Chatila. The emeralds matched exactly two that were set in a pair of earrings stolen from the same shop. The diamonds were highly consistent in size, colour and clarity with those present upon items such as watches, earrings and pendants stolen from Chatila. The appellant's fingerprint was on a plastic grip-sealed bag containing one of the emeralds. Also in the appellant's office were a magnifying glass used to examine jewellery, known as a 'jeweller's loop', and a gemologist's testing kit.
4. The value of the jewellery found at the appellant's premises was put in the region of £82,000. In evidence the appellant said that he had acquired the jewellery at end of 2014.
5. He was aged 55 at sentence. He had twelve convictions spanning 1979 to 2017. His relevant convictions included handling in 1979 and 1996, and fraudulent evasion of Value Added Tax in 1996.
6. In a pre-sentence report, the appellant was assessed as a low likelihood of reoffending over the next 2 years and a low risk of harm to children, partners, public, staff and himself. He was suitable for unpaid work and could be suitably managed in the community.
7. In her sentencing remarks the judge stated that the relevance of the facts of the burglary to the appellant's sentence were that it was a high value burglary committed by professionals. Burglaries such as these were only committed on the basis that the burglars knew that there were persons that were willing to purchase such high value stolen property. It was unclear from the evidence whether it was the appellant's family friend Perkins or an intermediary who had sold the jewellery to the appellant or that he knew exactly where it had come from. However, it must have been clear to him from the nature of the items themselves that they came from jewellers of some kind.

8. The judge took the view that the appellant could be described as a *professional handler* for the purposes of the guidelines, to which we will be coming in a moment, in the sense that he was known to be willing to purchase goods of such high value. He bought these items in part - just over one-tenth of the total quantity stolen; he had equipment in his office designed for the valuation of jewellery; his previous convictions for handling and fraud, although a long time ago, were in themselves aggravating features.
9. The judge summarised the parties' submissions as to the Sentencing Council's Definitive Guideline, and we have had the benefit of reviewing the entirety of the transcript. In respect of the Sentencing Guidelines, the prosecution stated that the appellant came within the category of high culpability, in that the underlying offence of burglary was professionally planned and well executed with the deliberate targeting of high value jewellers, that the jewellery received was also of high value and that the appellant had previous convictions for dishonesty. In respect of harm, there was no dispute that the value brought it within category 2. On the highest category of culpability the starting point was 3 years, with a range of 18 months to 4 years.
10. The prosecution sought the appellant's disqualification as a director as he was convicted of an offence in connection with his management of London City Metals; that was where the jewellery was hidden, where the equipment in order to test the jewellery was kept, and, on the appellant's own account, was where he had large sums of cash.
11. It was submitted on the appellant's behalf that the category of culpability was medium, in that there was no evidence that the appellant had advance knowledge of the underlying offence and that there was insufficient evidence to conclude that Perkins took part in the burglary or that the appellant received jewellery from him. More importantly, it was submitted that the case did not engage the fourth bullet point within high culpability category A, namely *professional and sophisticated offence*.
12. The case of R v Webbe [2001] EWCA Crim 1217 was considered. For the reasons set out, in particular the professional nature of the offence and the value of the items, the judge found that the offence came within the top category of culpability.
13. The mitigation put forward on the appellant's behalf is threefold: first, that his lifestyle had completely changed since this offence was committed; secondly, he had been donating large amounts of money to charity, and there was evidence supporting this; thirdly, the illness of his stepdaughter, about which there was also available evidence. Also urged on his behalf was the delay between the charge and his eventual conviction. It was accepted that there was a delay in charging and the first trial was aborted because of the editing of tapes; the matter was then further delayed by the ill-health and subsequent death of Perkins; then finally the appellant wished to obtain the services of Mr Bromley-Martin QC. The delay was not caused by any fault on the appellant's part. Accordingly an allowance, amounting to a reduction of 6 months, was made.
14. The judge said that this was a most serious offence of handling which took it marginally outside the sentencing range. The judge took the view that the prosecution were correct in

saying that the offence was connected to the appellant's management of the company and ordered the appellant to be disqualified as a director for a period of 10 years.

15. There are two grounds of appeal. First, the sentence was manifestly excessive in all the circumstances: in particular, the judge erred in failing properly to apply the relevant Sentencing Council guideline and in failing to inform counsel that she intended to depart from it. The second ground of appeal is that it was wrong to impose an order disqualifying the appellant as a company director for a period of 10 years or at all: such an order was wrong in principle and on any view manifestly excessive in duration.
16. In developing these grounds both in writing and orally Mr Bromley-Martin QC made the following submissions. In relation to the facts of the case, he emphasised that there was no evidence that the appellant had advance notice of the original theft or that he had been in recent possession of the items in question.
17. In terms of the Sentencing Council's Guidelines for Handling Offences (see page 15 and following of the Theft Guideline) it was submitted that high culpability category A did not apply because, in particular, this was not a professional and sophisticated offence and no other category was applicable. In short:

"The professional character of the offence must imply that the offender is engaged in handling stolen goods as their occupational livelihood or that the offence is committed by someone applying the same techniques as a professional handler of stolen property."
18. What the judge did, according to this submission, was effectively to confuse the professional character of the burglary with the nature of the appellant's actions and also in essence to double count the value of the goods and allow that consideration to infiltrate consideration of culpability. Mr Bromley-Martin accepted that this was a category B medium culpability case.
19. As for harm, this was undoubtedly category 2: the bracket here was £10,000 to £100,000, but there was no significant additional harm.
20. Mr Bromley-Martin accepted that his client's previous convictions were an aggravating factor, but he pointed out that they were stale.
21. On the other hand, in addition to the delay factor, which the judge did recognise, there was considerable personal mitigation to which insufficient weight was given. The daughter of his partner is significantly dependent on him for care and support, and she suffers from a particular condition said to derive from and be exacerbated by separation anxiety. Secondly, there is evidence of substantial charitable giving over the years, which outweighed any profit or likely advantage from this offence. Finally, the appellant sold his business in 2017 and has relocated.

22. On the basis of the guidelines: for a category 2A case the starting point is 3 years' imprisonment, with a range up to 4 years; for a category B case - which it was Mr Bromley-Martin's primary submission the instant case fell - the upper end of the range is 18 months. In any event the sentence of 4-and-a-half years was above the judge's category range, and her adjusted starting point, it is said, must have been in the order of up to 6 years before account was taken of the personal mitigation. The judge did not explain why she did not apply the guideline, nor did she indicate to counsel her provisional intention to do so.
23. As for the 10 year disqualification as a company director, Mr Bromley-Martin's headline submission is that there was no or no sufficient evidence that the appellant had in any way abused his status as a director of a company or of any connection between his conduct and the management of a company.
24. We have carefully considered these submissions. There was no evidence that the appellant made the handling of stolen goods his livelihood and his relevant convictions were stale. On the other hand, it is an irresistible inference that: (1) the appellant was aware in general terms of the source of these high value items; (2) that his supplier knew that he was sort of person he could go to and that the appellant would be prepared to buy them at (presumably) a substantial sum; and (3) that the appellant himself calculated that he would and could make a profit. The paraphernalia found at his premises strongly supports this last inference. Furthermore, we do not underestimate the difficulties that exist in selling items such as this on the market without the risk of apprehension. In our judgment, this also had all the hallmarks of being a sophisticated offence in addition to being a professional one. Overall we are driven to conclude that this was a high culpability case category A.
25. In terms of harm, it was at the higher end of category 2. On a direct application of the guidelines for a category 2A case the range was up to 4 years. The judge did not explain why this case fell into a higher category, nor did she give counsel the opportunity to address her provisional view; but it is the first point which is undoubtedly the stronger. In reality, there were no relevant factors in play which might have taken this case above the 4 years for a category 2A case. Going outside the category range in these circumstances led to the imposition of a sentence which was wrong in principle as well as being manifestly excessive.
26. The available mitigation, including the delay, clearly carried some weight. On the other hand, there were additional aggravating features, given the appellant's relevant previous convictions and the factor mentioned at page 19 of the guideline - the seriousness of the underlying offence. Balancing the aggravating and mitigating factors here should, in our view, have led to the imposition of a sentence towards the top of the category range but not at the very top. In our view the right sentence here is one of 3-and-a-half years' imprisonment.
27. On the disqualification issue we accept Mr Bromley-Martin's submission that there was no connection between the offence and the appellant's activities as a company director, nor

was there any evidence that he had abused his position in that regard. The fact that the items were hidden on company premises does not constitute the relevant nexus.

28. Accordingly, this appeal is allowed to the extent that a sentence of 3-and-a-half years' imprisonment is substituted for the judge's sentence and the disqualification order must be quashed.

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

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