

Neutral citation number:[2019] EWCA Crim 1647

No: 201901255/A2

IN THE COURT OF APPEAL

CRIMINAL DIVISION

Royal Courts of Justice

Strand

London, WC2A 2LL

Tuesday 20 August 2019

B e f o r e:

LADY JUSTICE RAFFERTY DBE

MR JUSTICE JEREMY BAKER

MRS JUSTICE McGOWAN DBE

R E G I N A

v

DANNY REX ROSS

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)

This transcript is Crown Copyright. It may not be reproduced in whole or in part other than in accordance with relevant licence or with the express consent of the Authority. All rights are reserved.

WARNING: Reporting restrictions may apply to the contents transcribed in this document, particularly if the case concerned a sexual offence or involved a child. Reporting restrictions prohibit the publication of the applicable information to the public or any section of the public, in writing, in a broadcast or by means of the internet, including social media. Anyone who receives a copy of this transcript is responsible in law for making sure that applicable restrictions are not breached. A person who breaches a reporting restriction is liable to a fine and/or imprisonment. For guidance on whether reporting restrictions apply, and to what information, ask at the court office or take legal advice.

Mr J Maloney appeared on behalf of the **Appellant**

J U D G M E N T

(Approved)

1. LADY JUSTICE RAFFERTY: Danny Rex Ross on 18 February 2019, having pleaded guilty before magistrates, was committed for sentence to the Crown Court pursuant to the powers within section 3 of the Powers of Criminal Courts (Sentencing) Act 2000 and on 7 March 2019 in the Crown Court sitting at Gloucester was sentenced for five offences of theft, contrary to sections 1 and 7 of the Theft Act 1968, to four months' imprisonment; for six offences of breach of a Criminal Behaviour Order, contrary to section 30 of the Anti-social Behaviour (Crime and Policing) Act 2014, 28 months' imprisonment, all terms concurrent *inter se*. Having committed an offence during the 12-month operational period of a suspended sentence of 12 weeks' imprisonment, imposed on 30 January 2019 by the magistrates, for attempted theft, theft and breach of a Criminal Behaviour Order, that suspended sentence was activated to the extent of two months' imprisonment to run consecutively. The total loss of liberty was 30 months' imprisonment. He appeals against sentence by leave of the single judge.

2. The appellant was subject to a Criminal Behaviour Order prohibiting him from entering various retail premises in Gloucestershire. All the occasions with which the court dealt, all in breach of the order, were all during February 2019. In Marks & Spencer he realised he had been noticed holding a packet of steaks and put them back on the shelf before he left (offence 5). In Budgens he put meat to the value of just under £58 into his rucksack (offences 1 and 2). On a separate occasion in Budgens, trying to cover his face with a carrier bag, putting meat inside his bag, as he was asked he put back four packets of sirloin steak. In Marks and Spencer, about to put biscuits into his rucksack, he realised he had been noticed and returned the biscuits and some alcohol to the shelf (offences 3, 4, 6 and 10). In Tesco Extra, six bottles of gin and further items which he had put into his rucksack whilst hidden prompted a member of staff to tell him to empty it, he pulled out the gin bottles, a packet of crisps and a half eaten doughnut. With remarkable joined-up thinking, to line the bag so as to try and prevent the alarms from going off he used foil he had liberated from the shop whilst in there. Finally, in Waitrose he had taken gin and toothbrush heads. He was arrested nearby. The goods to a total of just shy of £260 were recovered (offences 7, 8, 9 and 11).

3. In interview he conceded the thefts but denied knowledge of the Criminal Behaviour Order. He admitted breach of the suspended sentence and of the Criminal Behaviour Order.

4. Sentencing him, the judge explained that he was not unsympathetic to the double tragedy of the appellant's parents. Each had been a heroin addict, each had died, the appellant's father in front of him. There was no want of effort on the part of the criminal justice system to try and help him master (*sic*) his drug problem, as his previous experiences showed. There was a limit to the compassion of the system and there was now no option but custody because of the scale of his offending and, so shortly after it was put in place, breach of the order in a sequence of thieving, sometimes twice on the same day. He had an extraordinary record for someone so relatively young. Until he addressed the tragedies in his life he would remain a significant risk. He secured one-third credit for his plea of guilty, his only mitigation. In guidelines prepared by the Sentencing Council for breach of court orders this matter sat within Category 1A, a persistent breach so soon in place, the starting point two years, the range one to four. Aggravating the matter were his previous convictions, that the breach was so shortly following the order, his history of disobedience to court orders and that the breaches were themselves further offences. The starting point went up to three-and-a-half years. Credit for plea reduced it to 28 months. For each offence of theft a sentence of four months had been reduced from six months. All matters were concurrent and concurrent to the breach because they formed part of the offending pattern and had already been taken into account in increasing the starting point. The suspended sentence was activated, but, bearing in mind the principle of

totality, only as to two months. It was not practical to suspend the entire term given the appellant's history and immediate custody was the only option.

5. Twenty-five at sentence, born on 9 July 1993, he had 42 convictions between 2009 and 2019, including 62 for theft and kindred offences. He also had a history littered with breaches of court orders.

6. The grounds upon which he relies are that the judge made insufficient allowance for his age and his mitigation, and that the starting point adopted for the breach offences was too high.

7. The Sentencing Council points out that harm is to be assessed by the weighing of all factors in the case. Here, the persistence and shamelessness of the breaches viewed through the lens of yet another breach, that of the January 2019 order, for which imprisonment had been suspended, amply illustrates why in our judgment the matter was positioned appropriately. That disposes of ground 2.

8. As to ground 1, that there was insufficient allowance for age and mitigation, these structured sentencing remarks are unimpeachable. The appellant's age and his mitigation were amply reflected. The appeal is dismissed.

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

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

Tel No: 020 7404 1400 Email: rcj@epiqglobal.co.uk

Crown copyright