

Neutral Citation Number: [2019] EWCA Crim 1821

No: 201902907/A2-201903495/A2
IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
Strand
London, WC2A 2LL

Wednesday, 16 October 2019

B e f o r e:

LORD JUSTICE SIMON

MRS JUSTICE COCKERILL DBE

HIS HONOUR JUDGE BATE
(Sitting as a Judge of the CACD)

R E G I N A

v

LYALL ARNOLD
BRADLEY JORDAN TAYLOR

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 Mann appeared on behalf of the **Appellant Arnold**
Ms A O'Mara appeared on behalf of the **Applicant Taylor**

J U D G M E N T

1. MRS JUSTICE COCKERILL: On 29 July 2019, in the Crown Court at Warwick before His Honour Judge Lockhart QC, the appellant Lyall Arnold, and the applicant, Bradley Taylor, changed their pleas to guilty for the offence of attempted burglary (dwelling) contrary to section 1(1) of the Criminal Attempts Act 1981. On the same day Lyall Arnold was sentenced to 18 months' imprisonment and a victim surcharge order of £140 and Bradley Taylor to 27 months' imprisonment and a victim surcharge order of £170. Count 1, conspiracy to commit burglary with intent to steal, contrary to section 1(1) of the Criminal Law Act 1997, was ordered to lie on the file on the usual terms.
2. The facts underpinning this case are simple. On 2 August 2017, at around 10.30 pm, Sarah Parker and her family retired to their bed in their home in Colesill in Warwickshire. The house was locked and secure. On the drive of the address was an Audi A3 car with an approximate value of £25,000. A neighbour became aware of a car outside the property at about 4.10 am and watched as what he described as two youths, one of whom was the appellant, Lyall Arnold, and the other the applicant, Bradley Taylor, left that car and approached Sarah Parker's home. The police were alerted and attended shortly thereafter.
3. By this stage the appellant and the applicant had made off from the scene. The Parker family were first awoken by the police, who inspected the address and found the door handle to the garage had been broken and there had been damage to the door handle of the rear door that led to the house. The inference drawn, as the Judge noted in sentencing, was that Arnold and Taylor had been involved in a serious attempt to go into the home of others to steal car keys and make off with the car.
4. In sentencing, the Judge reminded himself that this had been an attempt rather than a full offence. The factors indicating greater harm were the fact that the offence had been planned and it had been theft or damage of property causing a serious degree of loss (that is the plan to take the car). The occupier had been at home during the commission of the offence. There were factors indicating higher culpability too, namely there had been a significant degree of planning, going equipped and being part of a group or gang. The starting point in the Judge's view was therefore 3 years' imprisonment with a sentencing range of between 2 years' imprisonment and 6 years' imprisonment. The offence had occurred at night, which was a factor which increased the seriousness. The Judge then considered the factors which related to each defendant.
5. In relation to Lyall Arnold, the Judge noted that he had limited previous convictions, that is a single offence of cannabis possession, was 21 years and lived at home. He had been in employment until very recently.
6. The Judge reminded himself of the delay: there had been a 13-month delay between the

incident and the matter coming to trial. He concluded that had the appellant Lyall Arnold had a trial, the appropriate sentence would have been one of 20 months' imprisonment. The judge allowed a 10% reduction for plea, which brought the sentence down to 18 months' imprisonment. He considered whether that sentence could be suspended but concluded:

- i. "... it would never be appropriate... for this type of burglary, with this type of potential damage and this type of upset to be remarked by a suspended sentence."

7. The sentence for the appellant, Lyall Arnold, was therefore a sentence of 18 months' imprisonment.
8. The applicant, Bradley Taylor, was also 21 years of age but had a significantly more extensive record of previous convictions: two robberies sentenced together in 2014 and a handling stolen goods and dangerous driving conviction, for which he had been sentenced to 9 months' imprisonment. That meant that he had three convictions for theft-related offences. He noted that Bradley Taylor had done well whilst on home detention curfew and on licence with the most recent matter. He had been assessed as suitable for a course under the Employment Training and Education System and hoped to become a railway engineer. Again, the Judge took the view that the offence was so serious that it had to be marked by custody. He concluded that the least sentence that could have been passed after a trial was a sentence of 30 months' imprisonment. The Judge gave the applicant 10% credit. That resulted in the sentence of 27 months.
9. For this hearing today the Single Judge has given leave to appeal Lyall Arnold's sentence. Bradley Taylor's application for an extension of time and for leave to appeal was referred with that appeal given the nexus between the cases.
10. Before us today Mr Mann has appeared for Lyall Arnold, arguing in summary that while the starting point was correct and 18 months was warranted, given all the mitigation identified the learned Judge should have concluded that the sentence could and should be suspended. In not doing so, he failed to apply the relevant guideline which flags mitigation and prospects of rehabilitation as indicators for suspending a sentence. He has argued that there is no principle of law or policy which requires this sort of offence to result in a custodial sentence. He noted that there was a suggestion of a rehabilitation requirement in the form of unpaid work and a tagged curfew at the time of trial but submitted that, if the court was with him in his submissions, there should be no requirements on the suspended sentence given the period of time spent in custody.
11. Acting for Bradley Taylor, Ms O'Mara contended in essence that there was good basis for an extension of time, in that there had been incorrect prison details given to those

representing Bradley Taylor and there were then personal reasons on the part of the legal team which led to the late application. She also prayed very much in aid the fact that because of the 13 months' delay, Bradley Taylor had had a shot across the bows (in terms of a short period of imprisonment) and the pre-sentence report made clear the progress which he had made and that this had been effectively a turning point for him. Against that background she submitted that the starting point of 30 months was too high, given that the previous convictions prior to the one which resulted in imprisonment were minimal and had been revoked in the interests of justice given his good progress. On that basis she submitted that the Judge should have imposed a sentence of 2 years or less and could and should have suspended it. There has also been a certain amount of reliance on the disparity in sentences; which was a factor also flagged by the Registrar of Criminal Appeals in the reference to this court.

12. We are grateful to both counsel for their clear and focused submissions, by which we have been very much assisted.
13. We conclude that there is no reason in principle why an offence of this sort requires an immediate custodial sentence. Although the sentencing guideline does particularly direct judicial attention to the possibility of suspension in cases falling within Categories 2 and 3, and that it flags this specifically, does not mean that in an appropriate case within Category 1 suspension may not, in some circumstances, be appropriate.
14. Looking then at the relevant portions of the Guideline on the Imposition of Community and Custodial Sentences and focusing on Lyall Arnold's position, he has an assessed low risk of further offending and realistic prospects of rehabilitation, as well as the personal mitigation which has been offered both in the grounds of appeal and orally today, in particular as to his personal circumstances.
15. In the light of those factors we conclude that there is no reason why his sentence could not and should not be suspended. Therefore, we will allow his appeal on the basis that the sentence imposed will be a sentence of 18 months' imprisonment suspended for an operational period of 18 months. We impose no rehabilitation activity requirement given the timeline in this case.
16. That leaves the question of the 27-month custodial sentence imposed on Bradley Taylor. So far as this is concerned, the starting point for the offence must logically have been the same figure for both defendants before personal factors fell to be considered. The Judge's reasoning suggests that his starting point for a sentence for this offence, before those personal factors, would have been somewhere in the region of 27 months. For this, in the case of Lyall Arnold, he made deductions for delay and personal mitigation to reach a figure of 21 months.

17. Assuming that same starting figure for Bradley Taylor, it seems to us that the question of delay was, as Ms O'Mara has so eloquently submitted this morning, of unusual significance in this case. Otherwise his personal mitigation was of a similar order to that of Lyall Arnold. But much turned in his case on the previous convictions. Against that background the unexplained delay of 13 months between the prompt arrest and interview of these two men and the issue of the postal requisition summoning them to their first appearance at the Magistrates looms large. This sort of delay is undesirable in all cases and for all sorts of reasons. But the present case is one where it may be taken to be of particular significance. Because of that delay, two things happened. Firstly, Bradley Taylor had one more relevant conviction than he would have had, had the matter progressed expeditiously. Secondly, because of that he had experienced custody and had as a result of that, shown every sign of being deterred from further offending by that very salutary experience.
18. That however cannot do away with the question of his previous convictions. Previous convictions are assumed to be a serious aggravating factor because they demonstrate a propensity to commit such acts and may be said to negate a suggestion of rehabilitation. On the papers in front of the Judge, Bradley Taylor had three such convictions. Here is where the timeline provides a complication, intersecting with the issue of delay. It may therefore be said that the better course would be to sentence with very light regard to that final conviction or allow extra mitigation arising from the delay to balance that factor.
19. It seems to us in those circumstances that the judge was certainly required to count those older convictions but there would be a case for not counting the more recent conviction or resting on it very lightly. As far as the older convictions were concerned, there was the factor that the sentence imposed on those had effectively been suspended for his good progress.
20. Looking at the matter overall therefore, there would certainly be good reason, because of the existence of those two convictions alone, to make Bradley Taylor's sentence higher than that of Lyall Arnold; and we would say at least 3 to 6 months higher. That is the inescapable consequence of Bradley Taylor's past actions. But we are not persuaded that his previous record of convictions could fairly account for that uplift of 9 months. In those circumstances, we conclude that the most severe appropriate sentence, bearing in mind the status of the offence as an attempt, would have been one that came some way below the 30-month mark and should not have been more than 6 months longer than that imposed on Lyall Arnold. At most therefore the sentence, after reduction for plea, should have been 24 months. On that basis Bradley Taylor's sentence would have been 2 years and would have been properly susceptible of being suspended.
21. Turning to consider that question of suspension, similar reasons to those which operate

for Lyall Arnold apply also to Bradley Taylor and we take the view that his sentence could and should have been suspended for those reasons.

22. We therefore propose to grant the extension of time and leave in this case and to quash the sentence imposed. Instead we impose a sentence of 2 years' imprisonment suspended, with an operational period of 18 months. Again, given the time spent in prison we are not minded to impose any rehabilitation activity requirement or community requirement. To that extent the appeal succeeds.

23. Both Lyall Arnold and Bradley Taylor will need to be advised that if in the operational period of a sentence they commit any offence or fail to meet with their supervising probation officer, they will be brought back to the Crown Court and it is likely that this sentence will be brought into operation. In the event of activation of the suspended sentence, the time that they have spent in custody between sentence and appeal today will be certified – and that is agreed as being 79 days for both.

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