Neutral Citation Number: [2020] EWCA Crim 354

Case No: 201903448 A1

IN THE COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM THE CROWN COURT AT GLOUCESTER

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 11/03/2020

Before:

LORD JUSTICE SIMON

MRS JUSTICE CUTTS DBE

and

MRS JUSTICE EADY DBE

- -

Between:

Regina

- and –

Daniel Harvey

- -
- -

Mr Robyn Rowland appeared on behalf of the **Appellant**

Mr Julian Kesner appeared on behalf of the **Crown**

Hearing date: 5th February 2020

- -

Judgment Approved by the court for handing down

Mrs Justice Cutts DBE :

Introduction

1. This is an application for permission to appeal against sentence which has been referred to the Full Court by the Registrar. We grant leave.

2. On dates between 9th August 2018 and 1st August 2019 this appellant, now aged 38 years, pleaded guilty at Cheltenham Magistrates Court to one offence of fraud by false representation contrary to section 1(2) of the Fraud Act 2006, fourteen offences of theft contrary to section 1 of the Theft Act 1968 (all were offences of shoplifting), one offence of using a vehicle without insurance contrary to section 143 of the Road Traffic Act 1988 and one offence of driving without a licence contrary to section 87 of that same Act. He accepted that these offences were committed in the course of a community order imposed on 26th June 2018 for two offences of theft by shoplifting.

3. On 1st August 2019 all matters were committed to the crown court for sentence under section 3 of the Powers of the Criminal Courts (Sentencing) Act 2000.

4. On 20th August 2019 in the Crown Court at Gloucester, the appellant was sentenced to a total term of 45 months imprisonment as set out in the table below.

Committal no.	Offence	Convicted or pleaded guilty	Sentence	Consecutive or Concurrent
S2019025 6	Fraud by false representation on 5.6.18	Pleaded guilty on 19.9.18	9 months	
S2019026 2	Shop theft from Aldi on 25.6.18 – meat products, value unknown	Charged on 13.7.18 Pleaded guilty on 9.8.18	9 months	Concurrent with 0256
S2019025 9	Shop theft from BP Garage on 5.7.18 – champagne, value £74	Charged on 30.11.18 Pleaded guilty on 1.8.19	15 months	Concurrent with 0254
S2019025 4	Shop theft from H Samuel on 16-17.7.18 – value £1,098	Charged on 14.9.18 Pleaded guilty on 18.2.19	15 months	Consecutive to 0256
S2019025 7	1. Shop theft from Majestic Wines on 23.8.18 – value £181.64 2. Shop theft from service station on 28.8.18 – alcohol, value unknown	Charged on 21.11.18 Pleaded guilty on 9.5.19	15 months each	Concurrent with 0254
S2018025 8	Driving without insurance – 13.9.18 Driving without a licence – 13.9.18	Pleaded guilty on 18.2.19	No sep. penalty; licence endorsed with 6 points; disqualificatio	

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S2019026 1	1. Shop theft from Savers on 10.9.18 – perfume, value £99.96 2. Shop theft from Boots on 10.9.18 – perfume, value £112 3. Shop theft from Boots on 12.11.18 – perfume, value £1,220.96 4. Shop theft from Boots on 19.11.18 – perfume, value £45 5. Shop theft from Asda on 30.11.18 – toys, value £120.67	Charged on 7.5.19 Pleaded guilty on 1.8.19	18 months each	Concurrent with each other but consecutive to 0254
S2019026 0	1. Shop theft from Co-Op on 16.10.18 – alcohol, value £126 2. Shop theft from Co-Op on 22.11.18 – alcohol, value £340	Charged on 30.4.19 Pleaded guilty on 1.8.19	18 months each	Concurrent with 0261
S2019025 3	Shop theft from Boots on 21.11.18 – value £263.90	Charged on 15.3.19 Pleaded guilty on 2.5.19	18 months	Concurrent with 0261
S2019025 5	Shop theft from Lloyds Pharmacy on 28.11.18 – value £98 Breach of community order imposed on 26.6.18 for two offences of theft (value £182.76 + value unknown)	Charged on 5.2.19 Pleaded guilty on 9.5.19	18 months Order revoked; resentenced to 3 months each, concurrent	Concurrent With 0261 Consecutive to 0261

It was thought at the sentencing hearing that the penalty points imposed on the driving offences took the total number of points on the appellant's licence to over 12. He was disqualified from driving for 18 months under section 35 of the Road Traffic Offenders Act with an uplift of 22½ months under section 35B of the same Act. His total period of disqualification in consequence was 40½ months. The DVLA subsequently reported that the points imposed did not in fact take the total number of points on the appellant's licence to over 12. The case was relisted at the crown court and the error corrected under the slip rule by the removal of the disqualification. The ultimate sentence on the driving matters was one of 6 penalty points.

The shoplifting offences

Low-value shoplifting offences

5. An issue has arisen as to whether any of the theft offences for which the appellant was sentenced represented low-value shoplifting offences under section 22A of the

Magistrates Court Act 1980. If they did, they were summary only offences and the sentencing powers of the crown court were confined to those of the magistrates' court.

6. Section 22A was inserted into the Magistrates Courts Act 1980 by section 176 of the Anti-social, Crime and Policing Act 2014. It provides:

> (1) Low-value shoplifting is triable only summarily.
> (2) But where a person accused of low-value shoplifting is aged 18 or over, and appears or is brought before the court before the summary trial of the offence begins, the court must give the person the opportunity of electing to be tried by the Crown Court for the offence and, if the person elects to be so tried—
> (a) subsection (1) does not apply, and
> (b) the court must proceed in relation to the offence in accordance with section 51(1) of the Crime and Disorder Act 1998.
> (3) Low-value shoplifting" means an offence under section 1 of the Theft Act 1968 in circumstances where—
> (a) the value of the stolen goods does not exceed £200,
> (b) the goods were being offered for sale in a shop or any other premises, stall, vehicle or place from which there is carried on a trade or business, and
> (c) at the time of the offence, the person accused of low-value shoplifting was, or was purporting to be, a customer or potential customer of the person offering the goods for sale.
> (4) For the purposes of subsection (3)(a)—
> (a) the value of the stolen goods is the price at which they were being offered for sale at the time of the offence, and
> (b) where the accused is charged on the same occasion with two or more offences of low-value shoplifting, the reference to the value involved has effect as if it were a reference to the aggregate of the values involved.
> (5) A person guilty of low-value shoplifting is liable on summary conviction to—
> (a) imprisonment for a period not exceeding 51 weeks (or 6 months, if the offence was committed before the commencement of section 281(4) and (5) of the Criminal Justice Act 2003),
> (b) a fine, or
> (c) both.
> (6) A person convicted of low-value shoplifting by a magistrates' court may not appeal to the Crown Court against the conviction on the ground that the convicting court was mistaken as to whether the offence was one of low-value shoplifting.
> (7) For the purposes of this section, any reference to low-value shoplifting includes aiding, abetting, counselling or procuring the commission of low-value shoplifting.

7. In this case the appellant did not elect trial by the crown court for any of the theft matters. The justices accepted jurisdiction and the appellant, on several different appearances at the magistrates' court, pleaded guilty to them all. On 1st August 2019, all matters were consolidated and committed to the crown court for sentence pursuant to s.3 of the Powers of the Criminal Courts Act 2000, as the justices were of the opinion that their sentencing powers were insufficient. This power is only available for either-way offences. It is common ground that any summary only matter should have been committed not under s.3 but under s.6 of the Act.

8. As can be seen from the table above, this appellant committed the shoplifting offences on fourteen different days between 24th June and 1st December 2018. The prosecution instituted criminal proceedings against him in relation to them by way of eight separate postal requisitions pursuant to s.29 of the Criminal Justice Act 2003; some concerned only one offence, others up to five offences. The appellant pleaded guilty to all offences contained within each postal requisition at the same appearance at the magistrates' court. On 1st August 2019, the day he was committed to the crown court for sentence, he pleaded guilty to eight offences of shoplifting charged in three separate postal requisitions.

Aggregation

9. The judge's sentencing powers depended on the value of the shoplifting offences. As to value, the provisions of section 22A(3)(a) and (4)(b) are relevant. It is possible for there to be aggregation of values where two or more offences are charged on the same occasion. Those two or more offences must be offences of low-value shoplifting, as subsection 4(b) states.

10. It is necessary therefore to consider which values could properly be aggregated in this case. This turns on the meaning of "charged on the same occasion" as required by section 22A(4)(b).

11. Mr Kesner, who appears for the respondent as he did in the court below, submits that this phrase is capable of two possible interpretations. The first is a literal one – that the values of low-value shoplifting offences can be aggregated if the accused is charged with them by the police on the same occasion. In the context of this case that would mean the values of such offences could be aggregated only if they were contained in the same postal requisition. The second possible interpretation is that the values of such offences can be aggregated by reference to the date that the accused appears at the magistrates' court. On this interpretation the values of low-value offences could be aggregated notwithstanding that they were not charged within the same postal requisition.

12. As Mr Kesner observes, the second proposition is supported by the interpretation given to this provision by the guidance for police in England and Wales issued by the Home Office in June 2014 entitled "*Guidance. Implementing section 176 of the Anti-social Behaviour, Crime and Policing Act 2014: Low-value shoplifting*." At paragraph 1, the document states that the guidance is intended primarily for the police but will also be of interest to retailers, the Crown Prosecution Service, Magistracy, Her Majesty's Courts and Tribunal Service and criminal defence lawyers. At paragraph 17 it states:

> "'charged on the same occasion' means appearing before a magistrates' court to answer those charges. Where offences occur separately, the relevant point to consider whether the £200 value is exceeded is not necessarily when the police are charging the suspect, it is when that accused person appears or is brought before a magistrates' court. This includes where their case is brought to court following a guilty plea by post."

13. Notwithstanding this guidance, however, Mr Kesner contends that the former interpretation is the correct one. He submits that, if Parliament had intended the first appearance or the date of the guilty plea at the magistrates' court to be the relevant date, it would have said so rather than using the phrase "charged on the same occasion". He argues that this literal interpretation has the benefit of certainty. An accused may appear a number of times at the magistrates' court before allocation is decided; there could be room for confusion if the phrase is interpreted by reference to plea or appearance at that court.

14. For the appellant, Mr Rowland did not contend otherwise but maintained an essentially neutral position. He directed his arguments on this appeal towards the length of sentence, to which we shall in due course come.

Our decision on aggregation

15. We have given the matter careful consideration and have come to the conclusion that "charged on the same occasion" should be construed as referring to when the accused appears before the magistrates' court to answer the charges. We have so decided for two reasons. The first relates to the use of the same phrase in section 22(11) of the Magistrates Courts Act 1980 and the second to a purposive interpretation of section 22A itself.

Section 22(11) of the Magistrates Courts Act 1980

16. By s.22 of the Magistrates Courts Act 1980, certain triable either way offences are to be tried summarily if the value involved is small. The offences concerned are set out in Schedule 2 of the Act and include offences under s.1 of the Criminal Damage Act 1971 and s.12A of the Theft Act 1968 (aggravated vehicle taking where there is no allegation under subsection (1)(b) other than of damage whether to a motor vehicle or other property or both). S.22(11) (a) states:

> "Where –
> (a) the accused is charged on the same occasion with two or more scheduled offences and it appears to the court that they constitute or form part of a series of two or more offences of the same or a similar character; …
> this section shall have effect as if any reference in it to the value involved were a reference to the aggregate of the values involved."

17. The learned editors of *Blackstones Criminal Practice* recognise that this section could be construed in one of two ways: either to mean being charged at the police station, or appearing before a magistrates' court to answer charges. Recognising that there are a number of ways in which an accused may be brought before a magistrates' court, including by summons, they say this:

> "It is submitted that the latter interpretation is to be preferred, since there can be no reason of policy why allocation should depend on the method of commencing proceedings. A further question arises of whether s.22(11) extends to cases where the accused originally stands charged with only one offence but

> further charges are added prior to allocation; again, it is submitted that s.22(11) ought to apply (otherwise for example, the prosecution might artificially deprive an accused of the right to trial on indictment by initially only bringing one charge even though they already have the evidence to found further charges)."

18. Guidance issued on s.22(11) by the Crown Prosecution Service in its *Code for Crown Prosecutors* adopts a similar approach by saying:

> "'Charged on the same occasion' means being put to the defendant in court on the same occasion. Otherwise charges initiated by summons would be excluded, as would an attempt by the prosecution to avoid election for trial by bringing the defendant to court on different dates for each offence."

19. Thus, both the editors of *Blackstones* and the *CPS Code* identify policy concerns that, firstly, allocation should not depend on the means by which proceedings are instituted and, secondly, that the accused should not be deprived of the right to elect trial on indictment through the artificial manipulation of the charging procedure by the prosecution. We consider them right so to do and right, therefore, in construing "charged on the same occasion" as meaning appearing at the magistrates' court to answer the charges.

20. We consider there to be a similar policy concern in relation to s.22A(4)(b) – that sentencing powers for a spree of low-value shoplifting should not depend on the means by which proceedings are instituted. In our judgment, there is also a need to adopt a consistent interpretation of "charged on the same occasion" in both s.22(11) and s.22A(4)(b) of the same Act.

The purpose of s.22A Magistrates Courts Act 1980.

21. We have also, in construing the meaning of s.22A(4)(b), considered the purpose of the legislation. We are assisted in this regard by Explanatory Note 96 to the Anti-social, Crime and Policing Act 2014, which indicates that the intended focus of s.176 of the Act was "minor offences of shoplifting", which are to be treated as summary only for most purposes.

22. In our judgment, by enacting s.22A(4)(b), Parliament intended that multiple offences of shoplifting, each involving theft of property worth less than £200, should no longer be seen as minor. The value of the offences should be assessed cumulatively and, if when taken cumulatively the value is over £200, each becomes an either-way offence with a consequent increase in the court's sentencing powers.

23. We can see no reason why, in such circumstances, the aggregate value should be assessed only by reference to when an accused is notified of the charges. Were that to be the case the justices, by way of example, would be required to treat nine offences of low-value shoplifting, committed by an accused on consecutive days but charged in nine separate postal requisitions, as individual summary offences even where he pleaded guilty to them all on the same day. That, in our judgment, would be to defeat the purpose of the Act. We are assisted in this view by the Home Office Guidance to which we have already referred.

24. We recognise that, as in the instant case, an accused may appear at the magistrates' court on a number of different occasions to answer charges for multiple low-value shoplifting offences. We do not, however, accept the respondent's submission that to construe s.22A(4)(b) in this way would lead to unnecessary uncertainty. We consider that, adopting a consistent approach with that taken in relation to s.22(11) of the Act, if an accused appears in the magistrates' court in respect of a shop-lifting offence then, for the purposes of s.22A(4)(b) he or she continues to appear in answer to that charge until the moment of allocation.

The present case

25. We turn to the offences in the present case. Adopting this approach only one of the shop-lifting offences was summary only and that was the theft from Aldi on 25th June 2018 contained in case number S20190262. All other shoplifting offences, either of themselves or by reason of the aggregation of the values of those charged on the same occasion, were triable either way.

26. It follows that the justices correctly committed all theft offences, save for the Aldi theft, under s.3 of the Powers of the Criminal Courts (Sentencing) Act 2000 and that the sentences passed upon them by the judge were lawful. Whether the overall sentence of 45 months imprisonment was manifestly excessive is a question to which we shortly turn.

27. The justices also committed the Aldi theft (S20190262) and the two driving offences (S20180258) to the crown court under s.3. This was in error. As these were summary only offences the power to commit them to the crown court is that conferred not by s.3 but by s.6 of the Act. Errors of this nature have previously been considered by this Court in *R v Ayhan [2012] 2 Cr App R (S) 37* and more recently in *R v Luff [2013] EWCA Crim 1958*. In the former case Lord Judge CJ, having reviewed the relevant authorities, stated that:

> "…the correct approach to issues like these was to examine the question whether the magistrates court was vested with the necessary jurisdiction to commit to the Crown Court. If it was, then an omission from, or an inaccuracy in, the Memorandum of Conviction about the statutory powers which were exercised, or which were available to be exercised, did not affect the validity of the committal."

28. In light of this decision, followed in the case of *Luff*, we consider the proper approach to the present case is as follows. The justices had the power to commit these offences to the crown court under s.6 of the Act and should have been advised to use it. They could not have committed under s.3 because they had no such jurisdiction. The reference to s.3 was therefore a mistake and the committal should be treated as having been under s. 6. The committal is thereby valid. A consequence of this is that, by s.7 of the Act, the judge's sentencing powers in relation to these offences were confined to those of the magistrates' court. The sentence of 9 months imprisonment imposed for the Aldi theft was therefore unlawful. We will return to this matter.

The total sentence

29. We now turn to consider the appellant's submission that the overall sentence imposed by the judge was manifestly excessive.

The facts

30. We deal with the facts of the offences in the order they appear in the table above.

31. S20190256 – fraud by false representation. The appellant committed this offence on 5th June 2018 with a female co-defendant. She had taken into a store one of its own-label carrier bags in which she had placed an item of clothing. The appellant took the bag to the cashier with an old unrelated receipt and requested a refund. When it was not given, he became aggressive and threatened staff. This offence was committed whilst on bail.

32. Turning to the committal numbered S20190262 – this concerned the theft by shoplifting on 25th June 2018 of meat from Aldi in Cheltenham of a value unknown. The appellant had placed the meat and three bottles of gin into a shoulder holdall and made his way to the till to pay for a few items but not those in the holdall. He was challenged and removed a bottle of gin. When challenged again he removed the other two bottles of gin. He left the store without paying for the meat. This offence was committed whilst on bail.

33. Committal numbered S20190259 - this involved the theft by shoplifting on 5th July 2018 of two bottles of champagne valued at £74 at BP Garage, Tewkesbury. After filling his car with petrol, the appellant went to the garage shop with a woman, where each put bottles of champagne into their respective shoulder bags. The appellant put two further bottles of champagne in a basket and went to pay for them and the fuel. His card was declined. Although this is a low-value shoplifting offence the value of the property taken should be aggregated with the low-value offences in S20190261 and the Co-Op theft in S20190260, making it an either way offence.

34. Committal S20190254 – this concerned the theft of jewellery from H Samuels in Cheltenham on 17th July 2018 valued at £1,098. The appellant waited until the shop assistants were distracted by other customers. He then opened a door to a glass display and took two gold necklaces, concealing them in the front of his trousers. This offence was committed on bail. By reason of its value it was an offence triable either way.

35. Committal numbered S20190257 – this was in relation to two offences of shoplifting, which were committed on separate days close together in time. The first, on 23rd August 2018, involved the theft of three bottles of alcohol from Majestic Wine in Cirencester, valued collectively at £181.64. Five days later, on 28th August 2018, the appellant stole eight bottles of spirits valued collectively at £380 from a service station on the M5. He was on bail at the time of these offences. The later offence, by reason of its value, is an either way offence. The value of the former should be aggregated with the offence in S20190255. Each thereby is no longer an offence of low-value and triable either way.

36. Committal S20190261 – this concerned five shoplifting offences which were committed on four separate days in November 2018. On 10th September the appellant first stole perfume valued at £99.96 from Savers in Pershore, Worcestershire. Later

that day he stole perfume valued at £112 from Boots in Malvern, Worcestershire. On 12th November 2018, with his partner, her 15 year old daughter and his mother, acting under his direction, the appellant stole perfume from Boots in Malvern valued at £1220.96. On 19th November 2018 he stole perfume from Boots in Evesham valued at £45. On 30th November 2018 he stole toys valued at £120.67 from Asda in Pershore. The offence on the 12th November is not a low-value offence as the value is too high. The aggregate of the other offending nonetheless exceeds £200 and the offences, taken together and with the offence in S20190259 and the Co-Op theft in S20190260, are therefore triable either way.

37. Committal S20190260 – this concerns two offences of shoplifting committed by the appellant on separate dates. The first occurred on 16th October 2018 when the appellant stole four bottles of whiskey valued collectively at £126 from Co-Op at Cirencester services. On 22nd November 2018, with his partner, her 15-year old daughter and a 14-year old youth, the appellant stole twelve bottles of alcohol valued at £240. This second offence, by reason of its value, is not a low-value shoplifting offence. The value of the property stolen from the Co-Op, in aggregate with the offence in S20190259 and all offences bar the theft from Boots on 12th November 2018 in S20190261, means that it is not a low-value offence and triable either way.

38. Committal S20190253 - this concerns the theft on 21st November 2018, when the appellant, together with his partner and her daughter, stole perfume and food from Boots valued at £263.90. By reason of the value this offence is triable either way.

39. Committal S20190255 - this concerns the theft on 28th November 2018 of perfume valued at £148 from Lloyds Pharmacy in Cheltenham. The appellant placed these down his trousers. He became aggressive when challenged, going behind the till area. Once the value is aggregated with that of the theft from Majestic Wines in S20190257 it is not a low-value offence and triable either way.

Sentence

40. The appellant had previously been before the criminal courts on 45 occasions for 127 offences; 65 of these were for theft and kindred offences. He had been sentenced to various custodial and non-custodial disposals, these included community orders with drug rehabilitation and other programme requirements.

41. In his sentencing remarks, the judge observed that the total loss in relation to all the offences exceeded £4,122 and the appellant had committed theft from retailers with a brazen and resolute persistence. He identified the relevant Sentencing Council Guideline as being that relating to theft from a shop or stall, but concluded that the appellant's offending fell outside those guidelines by reason of its scale, persistence and value, which he described as far greater than normal for shoplifting. He took the following aggravating features into account in reaching the appropriate sentence. That the thefts were planned, involving a number of shops in a wide geographical area. The appellant had appropriately sized bags to conceal items and a vehicle to transport the stolen goods; items were targeted with many, in shoplifting terms, of high value. Many offences were part of a team effort with his partner. On more than one occasion children were used to assist in the thefts, with the appellant playing a directing and leading role. The use of threats on occasions, when challenged by staff. The appellant's previous convictions.

42. The judge further observed that none of the variety of sentences previously imposed had any rehabilitative or deterrent effect on the appellant's offending behaviour. Indeed, the first offence set out in this judgment was committed two days after he had appeared in the Magistrates Court for two offences of shoplifting.

43. In the judge's view there was little by way of mitigation, save for the appellant's guilty pleas at the first opportunity for which he afforded him full credit.

44. In coming to his final sentence, the judge said he had regard to totality but the sentence imposed had to reflect the collective gravity and criminality of the offending. He structured his sentence by separating the offending into three batches. First, he imposed concurrent sentences of 9 months' imprisonment for the two offences in committals 0256 and 0262. Next, for the offences in committals numbered 0259, 0254 and 0257 (which were in breach of the community order imposed on 26th June), he sentenced the appellant to 15 months imprisonment on each offence concurrent inter se, but consecutive to the sentence for the first batch. For all other offences, in committals numbered 0261, 0260, 0253 and 0255, the appellant was sentenced to 18 months' imprisonment on each offence, concurrent inter se, but consecutive to the other sentences imposed. The judge also revoked the existing community order and re-sentenced the appellant to 3 months imprisonment, also consecutive to the other terms imposed. In this way he came to the total term of 45 months' imprisonment.

45. The sentence for the driving offences, once corrected was 6 penalty points.

The appeal

46. The appellant appeals his sentence on the grounds, firstly, that the sentence imposed on the low-value offence was wrong in law in that it exceeded the maximum penalty available to the judge and, secondly, that, whilst a sentence outside of the guidelines for shop theft was justified, the total sentence imposed (which amounted to 68 months before credit for plea) was manifestly excessive.

Conclusion

47. This was prolific offending over a five-month period, with many aggravating features, as identified by the judge. As is rightly conceded by Mr Rowland, the totality and nature of the offending, together with the appellant's appalling criminal record, called for a substantial sentence outside the relevant sentencing guidelines. We consider, however, that there is merit in Mr Rowland's submission that the judge, in coming to his overall sentence, adopted too high a starting point before credit for plea and failed to have sufficient regard to the principle of totality. Although serious examples of their kind, these were shoplifting offences. The resulting total sentence is, therefore, manifestly excessive.

48. We consider that, after credit for the appellant's guilty pleas, the appropriate total sentence in this case is one of 30 months' imprisonment. We give effect to this conclusion by frontloading the sentence to reflect the totality of the offending onto the theft from H Samuel (Committal 0254). We quash the sentence of 15 months' imprisonment imposed for that offence and substitute it with one of 30 months' imprisonment.

49. As we have indicated, the sentence of 9 months' imprisonment imposed by the judge for the Aldi offence (committal 0262) was unlawful. We therefore allow the appeal on this matter, quash the sentence of 9 months' imprisonment and, with credit for plea, substitute a sentence of 4 months' imprisonment, this to run concurrently with the other terms imposed.

50. All sentences are to run concurrently with each other resulting in a total overall sentence of 30 months imprisonment. In so directing we exercise our powers under section 11(3) of the Criminal Appeals Act 1968. Thus, although we have increased the sentence for the H Samuel theft, taking the case as a whole the Appellant's sentence has been reduced. He has not, therefore, been dealt with more severely on appeal than he was dealt with in the court below.

51. To that extent this appeal is allowed.