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IN THE COURT OF APPEAL

CRIMINAL DIVISION

NCN: [2020] EWCA Crim 1340

CASE NO 202001690/A1

Royal Courts of Justice

Strand

London

WC2A 2LL

Friday 18 September 2020

Before:

LORD JUSTICE SINGH

MRS JUSTICE WHIPPLE DBE

MRS JUSTICE MOULDER DBE

REGINA

V

VARINDER SINGH CHANA

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MS S POWIS appeared on behalf of the Appellant.

J U D G M E N T

MRS JUSTICE WHIPPLE: On 16 April 2020, in the Crown Court at Wolverhampton, the appellant pleaded guilty to two offences of domestic burglary. On 4 June 2020 he was sentenced in the same court by HHJ Campbell to a period of 5 years and 2 months' imprisonment for each burglary to be served concurrently.

He now appeals against that sentence with the leave of the single judge.

The facts, in brief, are these. The two offences of burglary had taken place within minutes of each other on 11 February 2020. At 12.36 pm on that day the appellant was seen on CCTV to drive his BMW motor vehicle into the car park of property known as The Haven. This was an estate of sheltered housing for senior citizens and those with mobility problems. The appellant went to the door of No 27 The Haven and knocked on that door. The occupier of that property, named Mr Cartwright, was 80 years old. He answered the door. The appellant introduced himself as someone who was there to do work on the electricity supply and Mr Cartwright let the appellant into the property. The appellant asked Mr Cartwright to make him a cup of tea and while Mr Cartwright was in the kitchen the appellant stole £40 from his wallet along with a bankcard. Once Mr Cartwright returned from the kitchen the appellant had left the property. Mr Cartwright realised that money and a bankcard had been taken and immediately called the bank to cancel the card (count 1).

When the appellant left Mr Cartwright's property he knocked on No 28 and the occupant of that property, a Ms Smith, who was 67 years age, answered the door. The appellant made the same excuse to gain access to Ms Smith's property and although she initially hesitated to let the appellant in, she eventually did let him in because the appellant stated there would be consequences if she did not. Once inside No 28 the appellant once again asked for a hot drink and once the drink had been made the appellant made his excuses and left the

property. Subsequently Ms Smith discovered that her handbag had been tampered with and £190 in cash had been stolen (count 2).

The matter was reported to the site office and the police were contacted. The appellant was thereafter traced as the registered keeper of the vehicle that had been seen on CCTV pulling into the car park of The Haven. He was arrested on 12 February 2020. In interview he denied committing the offences. He admitted being present at The Haven but denied taking anything and went "no comment" in interview.

In passing sentence the judge remarked that the appellant had not pleaded guilty to the two offences of burglary at the plea and trial preparation hearing on 12 March but had subsequently changed his pleas to guilty a month or so later on 16 April after a trial date had been set for 10 August 2020. The judge further remarked that the offences had been a targeted and cynical series of offences on vulnerable members of the community, who had been a very easy target for the appellant to approach in a plainly directed and targeted manner. The judge then outlined the facts of the case.

She read the victim impact statement of Ms Smith, which described the appellant's offending as "a despicable act" and what the appellant had taken had been a significant amount of money from Ms Smith. The judge said that the offences breached the security and the trust of the people whom the appellant had offended against and the judge concurred that the offences had been undermining and despicable.

The judge had been informed that the offences had been committed out of desperation by the appellant due to his addiction to Class A drugs but the appellant had been well clothed and had been driving a BMW when the offences had been committed and had taken £190 belonging to Ms Smith which was a lot of money for her. That made the appellant's submission of desperation a bit difficult for the judge to accept. The appellant's

antecedent history (which included 29 convictions for 51 offences) was very poor and included numerous offences of dishonesty. The judge accepted that the appellant's drug taking underpinned his offending and the loss of the appellant's grandfather may have impinged on the appellant's resilience. However, the judge had to look at the offending in the context of the sentencing guidelines. The offending plainly involved greater harm and culpability was also high. The victims had been deliberately targeted and the judge had no doubt that the appellant deliberately targeted them as it would have been easy to extract money from them.

She said the offending was aggravated by the appellant's previous convictions and the judge had also taken into account that there had been two offences. Therefore although the starting point may be 3 years' imprisonment in relation to category 1 offending for one offence, that did not take into account the aggravation and the judge had to consider that in relation to the appellant's antecedent record. She would allow 20% credit for guilty pleas which was appropriate given the timing. The offences were very serious offences and the appropriate sentence after a trial would have been one of 6 years and 6 months' imprisonment. Allowing credit of 20% brought those sentences down to 5 years and 2 months on each count concurrent and that was the sentence she imposed.

In grounds of appeal Ms Powis, who represented the appellant at the sentencing hearing as she did before us, argues that the judge's starting point for sentence was just too high, when considering the level of harm and the appellant's mitigation which included the fact that he had not been convicted since 2010. In consequence, she submits that the sentences of 5 years and 2 months' imprisonment were manifestly excessive because they were towards the top end of category 1 which is normally reserved for the most serious type of dwelling house burglaries, for example night-time burglaries in occupied dwellings. We thank

Ms Powis for her succinct submissions today in advancing these grounds before us.

In our judgment, this was plainly offending which fell within category 1 of the guideline. This was greater harm, given that the occupiers were at home. The money stolen from the victims, especially the second victim (Ms Smith) was a lot to them, as Ms Smith had made clear in her victim impact statement. Culpability was high. These were distraction burglaries, targeted at elderly people, living in a sheltered community and the appellant plainly regarded them as easy targets.

The category 1 starting point is 3 years within a range of 2 to 6 years. In our judgment, the judge was justified in approaching sentence on the basis that the starting point should be increased to reflect two aggravating features in particular: the fact that there were two offences not one and the existence of significant previous convictions on the part of the appellant. However, in our judgment, the judge also had to reflect the totality in the sentence that she passed.

We accept and confirm our view that this was really serious offending of a nature that targeted elderly and frail individuals. There was significant aggravation in the form of the appellant's previous convictions. He was 35 at sentence and had 29 convictions for 51 offences spanning the period from 2000 to 2010. Those convictions included 21 of theft and kindred offences but it is right to point out that there had been a period from 2010 where no offences were recorded, that being after a sentence of 3 years' imprisonment was imposed in May 2010 - that sentence itself being for another dwelling-house burglary.

We note that his offending was connected with his long-term addiction to Class A drugs and connected also with personal difficulties suffered by the appellant. Those factors were taken into account by the judge. However, we have stood back from this sentence and asked ourselves whether the sentence passed reflected totality. Taking all factors into

account, we conclude that the notional sentence after trial of six-and-a-half years imposed by the judge was too high. It was more than twice the category starting point. We, were we to undertake the sentencing exercise ourselves, would arrive at a sentence after the trial of around about five-and-a-half years. From that we deduct 20% credit for the guilty plea to arrive at a resulting sentence of 52 months. We therefore quash the sentence of 5 years and 2 months which was imposed by the judge and we substitute therefore a sentence of 52 months or 4 years and 4 months.

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