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IN THE COURT OF APPEAL

CRIMINAL DIVISION

CASE NO 202102577/A3

[2021] EWCA Crim 1673



Royal Courts of Justice

Strand

London

WC2A 2LL

Tuesday 2 November 2021

LADY JUSTICE CARR DBE
MR JUSTICE JEREMY BAKER
HIS HONOUR JUDGE KATZ QC
(Sitting as a Judge of the CACD)

REGINA
V
SIMON PETER MORRISEY

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MR P WORMALD appeared on behalf of the Appellant

J U D G M E N T

LADY JUSTICE CARR:

1. This is an appeal against sentence limited to a single ground of appeal, namely that the sentencing judge failed to give sufficient credit for the appellant's guilty plea. We can take matters very shortly.
2. On 24 June 2021 the appellant appeared in custody before Cardiff Magistrates' Court and pleaded guilty to an offence of attempted burglary (of a non-dwelling, contrary to section 1(1) of the Criminal Attempts Act 1981 committed on the previous day, 23 June 2021. The offence was committed during the operational period of two suspended sentences that had earlier been imposed in the Crown Court. The appellant was committed to Cardiff Crown Court for sentencing, pursuant to section 14 of the Sentencing Act 2020 and paragraph 11(2), Schedule 16 Sentencing Act 2020.
3. On 22 July 2021 Mr Recorder Bull QC ("the Recorder") sentenced him on the offence of attempted burglary to 12 months' custody (after applying 25% credit for guilty plea). The suspended sentences were activated with reduced terms of seven and five months' imprisonment to run consecutively. The overall sentence was thus one of 24 months' imprisonment.
4. Section 72 of the Sentencing Code created by the Sentencing Act 2020 requires a court sentencing an offender who has pleaded guilty to take into account:
 - "(a) the stage in the proceedings for the offence at which the offender indicated the intention to plead guilty, and
 - (b) the circumstances in which the indication was given."
5. The Sentencing Council Guideline on Reduction in Sentence for a Guilty Plea ("the Guideline") sets out the principles to be followed in reducing the punitive aspects of a sentence by reason of a guilty plea. Clarification has been provided recently by this court in R v Plaku and others [2021] EWCA Crim 568; [2021] 4 WLR 82. There, the court emphasised amongst other things (at [6]):
 - That by section 59 of the Sentencing Code (formerly section 125 of the Coroners and Justice Act 2009) a court must follow any relevant sentencing guideline unless satisfied that it would be contrary to the interests of justice to do so;
 - That the Guideline, like section 73 of the Sentencing Code, focuses on the time when the guilty plea is indicated, not when it is entered;
 - That a clear distinction is deliberately drawn between the reduction in sentence available at the first stage of proceedings and the reduction available at any later stage.
6. As set out above, the appellant here indicated - and indeed entered - his guilty plea the day after the offence at his first appearance in the Magistrates' Court. There can be no question but that that was the first stage of the proceedings as identified in the guideline.

He was therefore entitled to a reduction of one-third, unless the court was satisfied that it would be contrary to the interests of justice to follow the Guideline.

7. The only reason that we can identify for the Recorder's decision to allow only 25% credit was that the appellant was caught "red-handed after a chase by the police". He went on to say that he was "nevertheless" prepared to give a discount of 25 per cent. This is consistent with what Mr Wormald (who appears before us, as he appeared for the appellant below) tells us: when Mr Wormald questioned the level of credit with the Recorder, the Recorder responded by saying that the prosecution case was "overwhelming".

8. The Guideline identifies the benefits of a guilty plea as follows:

That a guilty plea normally reduces the impact of the crime upon victims;
That a guilty plea saves victims and witnesses from having to testify; and
That a guilty plea is in the public interest in that it saves public time and money on investigations and trials.

The earlier the plea the greater these benefits.

9. The Guideline states in terms that those benefits apply regardless of the strength of the evidence against an offender. Thus:

"...The strength of the evidence should **not** be taken into account when determining the level of reduction."

10. The Recorder did not indicate that there was any basis on which to conclude that it would not be contrary to the interests of justice to follow the Guideline, nor can we identify any.

11. We therefore have no hesitation in concluding that the sentence of 12 months' imprisonment imposed was wrong in principle. It will be quashed. Based on a term of 16 months, one arrives at a sentence of 11 months' custody after credit of one-third. A sentence of 11 months' imprisonment will accordingly be substituted in its place. This may not be a very significant reduction from 12 months, but the appellant is entitled to it as a matter of principle. The proper application of the Guideline demands it. All other elements of the sentences remain in place, in particular the activation of the suspended sentences is not affected. The overall sentence is therefore now one of 11 months' custody, followed by 12 months' custody, with a total custodial period of 23 months.

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

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