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IN THE COURT OF APPEAL  
CRIMINAL DIVISION



NCN Number: [2022] EWCA Crim 1368

CASE NO 202200894/A3

Royal Courts of Justice  
Strand  
London  
WC2A 2LL

Tuesday 11 October 2022

Before:

LADY JUSTICE WHIPPLE DBE  
MRS JUSTICE MCGOWAN DBE  
MRS JUSTICE HILL DBE

REX  
V  
SEAN O'SULLIVAN

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MR A ROXBOROUGH appeared on behalf of the Appellant

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**J U D G M E N T**  
(Approved)

MRS JUSTICE HILL:

**Introduction**

1. This is an appeal against sentence brought by leave of the single judge.
2. On 28 February 2022 in the Crown Court at Manchester Minshull Street, the appellant Sean O'Sullivan, then aged 47, was sentenced to eight years' imprisonment for conspiracy to burgle a dwelling, contrary to section 1(1) of the Criminal Law Act 1977. On the same date he was also sentenced to one year's imprisonment for burglary of a dwelling, contrary to section 9(1)(b) of the Theft Act 1968 and nine months' imprisonment for dangerous driving, contrary to section 2 of the Road Traffic Act 1988. Both of these sentences were ordered to run concurrently with the sentence on the conspiracy count.
3. The appellant was also disqualified from driving for four years and six months, a 12 month discretionary period, an uplift of three years and six months and until an extended retest is passed. Further counts of handling stolen goods and conspiracy to burgle were ordered to lie on the file against him in the usual terms.
4. In giving leave the single judge indicated that a very substantial prison sentence was clearly appropriate for the appellant, but that it was "just" arguable that the sentence imposed was sufficiently high to be seen as manifestly excessive. We have been greatly assisted by Mr Roxborough's submissions.

**The facts of the appellant's offending**

**The Manchester indictment**

5. The appellant had been convicted of the conspiracy to burgle count on 19 March 2020 after a trial in the Crown Court at Manchester Minshull Street. The conviction related to a conspiracy to burgle four dwelling houses between 21 January 2019 and 10 March 2019. The appellant and his co-defendant Farrell were initially linked to the burglaries by

property taken from the burglaries being recovered from their home address. This led to cell site evidence which was consistent with their mobile phones being in the vicinity of the burgled properties at the relevant times. Automatic number plate recognition ("ANPR") evidence was also obtained.

*The first burglary*

6. On 22 January 2019 the occupiers of a property in Bury, Mr and Mrs Swithenby, were abroad on holiday. Between 6.30 am and 5.45 pm on that date burglars entered the property by forcing a kitchen window and then ransacked the property. A blue Volkswagen Tiguan valued at £12,000 was stolen from the adjoining locked garage. A neighbour saw that car leave the property at around 4.00 pm. Telephone evidence showed mobile phone usage by the appellant and Farrell consistent with them making a journey from Farrell's home to the burgled property and back between 1.30 and 3.30 pm on 22 January 2019.
7. On 27 March 2019 police officers visited Farrell's home address in Rochdale and recovered a key for the Tiguan hidden in the kitchen and a pair of Ray Bans and a tracking device from that vehicle which were hidden, together with a large number of crowbars, in a child's cot.
8. A search of the appellant's home address in Rochdale discovered the VW Tiguan and the gardening tool from Mr Swithenby's house in a locked garage at the rear of the premises. Inside the car officers found a black Balaclava, gloves and numerous tools including a lump hammer, a screwdriver and bolt cutters.
9. A victim impact statement from Mr Swithenby was before the sentencing judge. He described how he and his wife had been away on a holiday of a lifetime in South America at the time the burglary occurred, which had been discovered by their daughter. He

described her distress at what she had found, compounded by issues she has with her confidence. He said that he and his wife found that listening to how distressed she was from so far away on holiday difficult to bear. The burglary occurred five days into their three-week holiday and ruined it.

10. Mr Swithenby said that the burglars had left the house in a “real mess” and that “nearly every drawer had been opened and the contents emptied out”. He explained how on their return from holiday it had taken him and his wife several days to work out exactly what had been stolen. He listed some 18 items of jewellery that had been stolen from the house. This included a watch which had been given to his mother in 1950 on her 21st birthday. A series of items had been stolen from within the Tiguan, as well as the Tiguan itself. The gardening tool we have mentioned had been stolen from the garage, as well as a set of keys for the house, meaning that the locks had to be replaced.
11. He also described the massive upheaval the burglary had caused to their lives as they had to deal with the bank and the insurance company. Overall he said it was a deeply distressing event which he doubts he will ever fully recover from.

#### *The second burglary*

12. On 18 February 2019 a burglary took place in Halifax. The occupiers, Mr and Mrs Barker, were not at home. Entry was gained by smashing a rear glass patio door. The burglars took a large quantity of jewellery and other items. Two motor vehicles with keys, a white VW Polo and a white Vauxhall Mokka valued at £25,000, were also stolen. The keys for a third vehicle, Mr Barker's Jaguar, were also stolen. Telephone and ANPR evidence showed the stolen VW Tiguan being used to drive to the burglary scene and cell site evidence put the appellant and Farrell at the address at the time of the burglary. ANPR showed the two stolen cars travelling away from Halifax towards Rochdale.

Mobile data indicated that the appellant and Farrell returned to that address later that day, possibly to look for the Jaguar. Cell site evidence showed that the appellant returned every day for 10 days looking to steal the Jaguar whilst still in possession of its key.

13. The VW Polo was recovered from Farrell's home address on 2 March. The key to the Mokka was found in a child's cot at Farrell's house on 27 March. A search of the appellant's home on 15 May uncovered the Jaguar key. The Mokka was recovered on 9 June 2019 after a high-speed pursuit in the Shaw area of Oldham. The vehicle was eventually found abandoned with false number plates.
14. Victim impact statements were provided by both Mr and Mrs Barker. They explained how they had also been on holiday when the burglary occurred. They had had to return home to deal with the aftermath. Mr Barker said that as well as the financial cost he and his family had suffered sleepless nights since the burglary. He explained how the property stolen had been collected over a lifetime and some of it was of great sentimental value which rendered it irreplaceable. Mrs Barker said she had been prescribed antidepressants to deal with the stress and anxiety of the burglary and returned to work on a phased basis as she struggled to maintain normality. She was still taking the medication and feeling very anxious about the security of the house when she gave her statement in April 2020, over a year after the burglary.

#### *The third burglary*

15. This took place at an address in Bury at 8.30 pm on 22 February 2019. The occupier, Mr Ratcliffe, and his family were away for the night. The burglars smashed a key safe to gain access to the key and entered the property. They made an untidy search of the upstairs bedroom which activated the house alarm. A neighbour looked out of her bedroom window and saw two males run towards Mr Ratcliffe's Jaguar XK which was

parked on the driveway. The men got in the vehicle and drove off. The vehicle, worth £25,000, was stolen along with numerous items including jewellery belonging to Mr Ratcliffe's late mother, including diamond stud earrings and a wedding band. CCTV from a nearby house showed a Vauxhall Mokka (probably the one stolen from Ravenstone Drive) and a small Jeep stopping opposite the address prior to the burglary taking place. Mobile phone evidence put the appellant and Farrell in the vicinity at the relevant time. The police found a jewellery box containing the stolen jewellery and the key for the Jaguar at the appellant's home address.

16. A victim impact statement was provided by Mr Ratcliffe. He said that the incident had left his family, including two young children, feeling extremely concerned, uncomfortable and vulnerable within their own home. The children had wanted to sleep with their parents at night rather than be alone as they were scared that the intruders might return.

#### *The fourth burglary*

17. This took place on 9 March 2019 in Shaw, Greater Manchester, at around 7.45 pm. Entry was gained via a smashed patio door. The owners, Mr and Mrs Royales were away on holiday. Upon their return they found the keys to his vehicles, a Vauxhall Insignia and a Vauxhall Astra, had been stolen along with keys to the house. Cell site evidence was consistent with the appellant and Farrell being in the location at the relevant time. The keys to the Insignia and Astra were later found at the appellant's home address.
18. A victim impact statement was provided by Mr Royales. He explained that the burglary had had an effect on his holiday and that initially he was concerned that he was being targeted, but that concern had settled. He had become more security conscious since the incident and it had caused him extensive inconvenience with regards to insurance and

replacing the locks.

### The Burnley indictment

19. The appellant's other two convictions for burglary of a dwelling and dangerous driving arose because on 29 March 2021 in the Crown Court at Burnley the appellant, then aged 46, had changed his pleas to these charges to guilty.
20. The facts of the burglary offence were as follows. On 30 October 2018 a Mr Torz had witnessed a number of males acting suspiciously at the home of his neighbour, Mr Pervez. Mr Torz noticed a white VW Golf with four occupants parked outside his neighbour's property. Three people got out of the car and walked up the neighbour's drive. They were all wearing beanie hats and dark clothing. One of the males was carrying a plastic bin liner. Less than five minutes later the three males returned to the VW Golf. They got into the car and quickly drove away. Mr Torz noted the vehicle registration number.
21. Five minutes later Mr Torz saw his neighbour return with her daughter and then her husband returned followed by the police. Mr Torz spoke to the police and told them what he had seen. A large amount of Asian gold jewellery and around £3,000 had been stolen from the upstairs rear bedroom, along with a make-up set.
22. A victim impact statement was provided by Mr Pervez. He described how after the burglary he and his family felt very anxious, struggled to sleep and woke with any noise coming from outside. They did not want to leave the house without having someone home and so did not go out as a family for two months as they feared a burglary might happen again.
23. Details of the Golf seen by Mr Torz were circulated by the police. Officers became aware that the vehicle had triggered an ANPR camera and a pursuit began. The driver of

the Golf (the appellant) pulled away from the following police vehicle and headed into oncoming traffic which had to brake sharply in order to avoid a collision. The officer in pursuit illuminated his lights. During the pursuit the Golf mounted the pavement, causing pedestrians to have to jump out of the way. Concerned for the safety of members of the public the officer abandoned pursuit of the vehicle. He saw a man who had exited the Golf running away. The officer, with his police dog, searched for the man and eventually the appellant was located and detained. A witness had seen him place something in a nearby bin which officers found to be a rubber mask and a radio handset. The Golf was confirmed to have previously been stolen. A radio handset, a ratchet and a sledgehammer were found in the vehicle.

### **The appellant**

24. The appellant was aged 47 at the date of sentence. He had 33 convictions for 125 offences spanning from 1985 to 2009. His juvenile offences included multiple offences of dwelling and non-dwelling burglary, theft, handling and driving offences. In 1996 he was sentenced to four months' imprisonment for attempted burglary. In 1997 he was sentenced to 30 months' imprisonment for dwelling burglary and handling stolen goods. In 2002 he was sentenced to four years' imprisonment for three offences of dwelling burglary, eight offences of handling stolen goods, driving offences and possessing class A drugs. His most recent conviction was in 2009 when he was sentenced to 90 months' imprisonment for two offences of possessing a handgun.
25. A pre-sentence report was prepared in relation to the Manchester offence. The writer noted that the appellant maintained his denial of the conspiracy charge, albeit accepting that he was guilty of handling stolen goods. The writer concluded that there was a 65 per cent likelihood that someone with his profile would be convicted again within



two years. Taking all the factors into account the appellant was assessed as at medium risk of re-conviction.

26. The writer of the report noted, and this has been pressed in submissions before us this morning, that the appellant had been offence-free for 10 years, expressing the view that the index offence was not a return to offending behaviour but rather a “one-off relapse due to poor decision-making skills”.

### **Wayne Farrell's offending**

27. We set out the details of this as it is necessary in order to understand the argument about disparity advanced by the appellant.

28. Farrell was convicted of the same offence of conspiracy to burgle as the appellant. He also pleaded guilty to a count of conspiracy to receive stolen goods. The appellant had originally been jointly charged with this offence with Farrell but the jury was discharged from reaching a verdict on it as it was an alternative offence of the conspiracy count of which he was convicted.

29. Farrell also pleaded guilty to a further count of conspiracy to commit burglary and nine further offences of burglary, theft, going equipped and handling stolen goods with which he was indicted alone or with other co-defendants but not the appellant.

30. The burglaries had taken place on 30 January and 19 July 2019 and again involved the owners being absent. Items to the value of £6,000 together with an Audi A3 valued at £21,000 and a Land Rover Freelander valued at £17,000 were stolen in the first of these burglaries. Jewellery and other items including cameras, a tablet and a sat nav were stolen, along with two cars (a Vauxhall Mokka and a Mercedes) valued at £14,500 each were stolen in the second.

31. In respect of the offence of going equipped for burglary and handling stolen goods, on 5

September 2019 Sussex Police were on evening patrol when they became aware of a white VW Transporter camper van parked in a lay-by. They had received reports of such a vehicle behaving suspiciously. Officers went to speak to the occupants who were Farrell and two other males. A search of the vehicle uncovered equipment that could be used in car theft or burglaries, including a sledgehammer, a jamming device, masks, hi-vis coats, hard hats, lanyards, industrial gloves, a knife, Balaclavas and a key to the Audi stolen on 30 January 2019, as well as cloned number plates. Parked next to the camper van was a Renault Master van on cloned plates that had been stolen in Bolton 10 months earlier. Farrell and the other occupants of the van were arrested.

32. The offences of handling stolen goods arose because the day after Farrell's arrest in Sussex his home address was searched. Officers recovered several sets of car keys and number plates. Of those, two sets of keys and one set of number plates were identified as having been stolen. In addition, on 16 September Farrell was arrested at a petrol station driving a stolen Ford Transit van which had false plates. It had been stolen in Rochdale two weeks earlier.

33. Farrell was sentenced to nine years and six months' imprisonment on the conspiracy to burgle charge with no separate penalty or concurrent sentences of imprisonment for the other offences, such that his total sentence was nine years and six months' imprisonment.

#### **The judge's sentencing remarks**

34. In passing sentence the judge described the burglaries within the conspiracy count as “all very serious” with “similar hallmarks, mostly owners on holiday returning to find ransacked properties with items including sentimental jewellery that had been inherited and the family car stolen”. She noted the distress and harm caused to the owners.

Further, the burglaries were “planned”. The appellant and Farrell had “targeted premises

as suitable, travelling some distance to get there”. It was “clear that [they] had a ready market to dispose of the stolen property”. Both men had been found in possession of a kit necessary to carry out these offences.

35. The judge concluded that each of the offences individually would have fallen within Category 1 of the relevant sentencing guideline in place at the time. She noted that although the appellant had a job and an income, he was “topping-up” his income through burglary. She observed that both men had families. However, her view was that “...the only real mitigation was totality”, although she did indicate that she was giving a reduction for the delay before the sentencing hearing and for the Covid conditions of imprisonment. She gave the appellant 10 per cent credit for his plea to the Burnley burglary and the dangerous driving offence.

### **The submissions on appeal**

36. On behalf of the appellant Mr Roxborough accepts that under the relevant guideline the starting point for a single offence of burglary would be three years' imprisonment with a range of two to six years and that there would need to be an uplift to reflect the fact that the judge was sentencing for multiple offences, albeit this would be mitigated by the principle of totality.
37. However, he challenges a number of aspects of the judge's approach. He submits that the judge adopted too high a starting point for sentence such that totality was insufficiently reflected. He relies on the personal mitigation and says that insufficient regard has been given for that. He also argues that there was an unfair disparity between the appellant and Farrell who fell to be sentenced for more extensive offending than the appellant.

### **Discussion and conclusions**

38. We have considered all these submissions carefully. As we have indicated,

Mr Roxborough accepts that any one of the burglaries involved in the conspiracy or the Burnley burglary would have justified a starting point of sentencing for three years. This was because they involved a significant degree of planning or organisation and so fell within Category A or high for culpability in the relevant sentencing guideline. They also variously involved a significant degree of loss, both economic and personal to the victims and the ransacking of property and so fell within Category 1 for harm. However this starting point was inevitably aggravated as it had to be under the guideline, by the appellant's previous convictions which were extensive. In our view this would properly have taken the likely starting point for each offence, if sentenced separately, to over three years.

39. In our view the judge was entitled not to find the “gap in offending” argument advanced by the appellant very persuasive. She was entitled to take the view that the totality of the offending before the court did not reflect a one-off lapse: rather the Burnley offence had taken place on 30 October 2018 and the conspiracy ran from at least 21 January 2019 to 10 March 2019. In our view the judge was entitled to regard this as persistent offending over several months.

40. In sentencing him for the conspiracy, the judge had to reflect all four burglaries within the conspiracy, as well as the Burnley burglary and the dangerous driving. This was to ensure that the overall sentence imposed reflected all the offending before the court.

41. Having read her sentencing remarks we are quite satisfied she took into account all the personal mitigation that had been advanced on behalf of the appellant.

42. We do not find the disparity argument compelling. Mr Roxborough rightly accepts that each case turns on its own facts and while Farrell did have more offending for which he fell to be sentenced, he was to be afforded greater credit for the pleas he had entered for

several of those offences and he did receive a markedly longer sentence to reflect the overall offending. Simply by way of example we also note that his previous convictions were not as extensive as the appellant and he was younger.

43. However the central issue for us is whether a custodial term of eight years for this appellant was manifestly excessive to reflect all the offending before the court. In light of the factors we have set out we do not consider that it was. It follows that the appeal is dismissed.

### **Further matters**

44. We turn now to two further matters that have helpfully been raised by the Registrar.

### **Time spent on curfew**

45. In relation to the conspiracy to burgle charge it appears that the appellant spent 711 days on bail subject to a qualifying curfew. In sentencing, the judge stated that the appellant's curfew days would count in full towards the sentence. She did not specify in open court the actual number of days which should count towards the sentence. However she made this clear on the order for imprisonment which reflected that under section 325 of the Sentencing Act 2022, she had directed that 356 days would count towards sentence. She therefore intended that he would receive full credit for half the time spent under curfew without any reduction in respect to steps two or three of the formula set out in the legislation.

46. In accordance with the guidance of this court given in R v Hoggard [2014] 1 Cr.App.R (S) 42 and R v Cox [2019] 4 WLR 88, we confirm for the purposes of section 240A of the Criminal Justice Act and section 325 of the Sentencing Act 2020 that the judge directed that 356 days should count towards the appellant's sentence.

### **Disqualification from driving**

47. Disqualification from driving for a period of not less than 12 months, in the absence of special reasons, is obligatory under section 34 of the Road Traffic Offenders Act 1988 for various offences including dangerous driving, contrary to section 2 of the Road Traffic Act 1988. Sections 35A and 35B of the Road Traffic Offenders Act 1988 require the court to extend the period of driving disqualification to ensure that a person who is also sentenced to custody does not serve all or part of their disqualification while in custody.
48. In this case the judge stated that the discretionary period of disqualification was 12 months, along with an additional combined extension and uplift period of three-and-a-half years, i.e. 42 months. Given the sentence on the dangerous driving, the mandatory section 35A(4) extension period would be four-and-a-half months. To give effect to the judge's intended overall disqualification period, the section 35B uplift would be 37½ months.
49. To comply with R v Needham and others [2016] 1 WLR 4449 we clarify that in this case (i) the discretionary period of the appellant's disqualification is 12 months; (ii) the extension period under section 35A was four-and-a-half months; and (iii) the uplift to the discretionary period pursuant to section 35B was 37½ 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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