

IN THE COURT OF APPEAL
CRIMINAL DIVISION
[2023] EWCA Crim 1168



No. 202301686 A5

Royal Courts of Justice

Thursday, 14 September 2023

Before:

LADY JUSTICE SIMLER
MRS JUSTICE MAY
MR JUSTICE CHAMBERLAIN

REX
V
SABINA ROVA

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5 New Street Square, London, EC4A 3BF
Tel: 020 7831 5627 Fax: 020 7831 7737
CACD.ACO@opus2.digital

MR E. CAREY appeared on behalf of the Appellant.

J U D G M E N T

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LADY JUSTICE SIMLER:

Introduction

- 1 This is an appeal against sentence with leave of the single judge. On 25 April 2023 the appellant, Ms Sabina Rova, was sentenced to a total of five years and eight months' imprisonment by HHJ Nicholas Rimmer in the Crown Court at Southwark for offences of two combined sets of proceedings.

- 2 The first set of proceedings comprised an offence of domestic burglary contrary to s.9(1)(b) of the Theft Act 1968 that occurred at the Hilton Park Lane Hotel on 6 July 2022 and involved the theft of jewellery belonging to a residential guest at the hotel to the value of £187,000. That resulted in a sentence of three years. There was also a fraud contrary to s.1 of the Fraud Act 2006 involving the use of that guest's bankcard to purchase trainers at Footlocker, resulting in a sentence of 20 weeks to run concurrently. The second set of proceedings comprised an offence of non-domestic burglary at Club Quarters Hotel on 21 July 2022 of approximately £536 in cash belonging to Ms dos Santos and resulted in a sentence of 12 months to run concurrently. There was also a fraud involving the use of Ms dos Santos' bankcard resulting in a sentence of 17 weeks to run concurrently. Finally, there was an offence of non-domestic burglary at the Other House Hotel on 15 September 2022 of jewellery belonging to a residential guest at that hotel to the approximate value of 203,000 euros. For that offence the appellant was sentenced to a consecutive sentence of two years and eight months.

- 3 The appellant pleaded guilty to the first set of proceedings on 29 November 2022 soon after the PTPH and was afforded credit for her guilty pleas of 25 per cent. She indicated guilty pleas to all charges in the second set of proceedings at Westminster Magistrates' Court on

23 March 2023. Those proceedings were ultimately joined with the first set of proceedings and she was afforded full credit for those pleas.

- 4 Mr Ed Carey of counsel, who appears on her behalf as he did at sentence, contends that the sentences passed by the judge were wrong in principle or manifestly excessive on three broad grounds. First, he submits that the sentencing judge took into account irrelevant or unsubstantiated matters and failed to give any or proper weight to matters that were relevant. Secondly, the culpability assessment was wrong and manifestly excessive. Thirdly, the overall sentence is manifestly excessive. It was not just and proportionate and paid insufficient regard to the principle of totality.

The Facts

- 5 The three burglaries occurred at three different hotel: the Hilton Hotel in Mayfair on 6 July 2022, the Club Quarter Hotel on 21 July and the Other House Hotel on 15 September 2022.
- 6 The Hilton Hotel burglary was charged as a domestic burglary. The victim who was resident in the room that was burgled had come to the United Kingdom for medical procedures and had been resident at the hotel for a significant period of time.
- 7 The modus operandi in relation to all three burglaries was the same. The appellant obtained work as a cleaner in high-end hotels through an employment agency. Once employed, she would steal items from rooms that she was not authorised to enter or clean, but which had been identified as potentially high-value targets with high-value jewellery within them. Having entered, she stole from the room. As we have indicated, the total value of goods stolen from the Hilton Hotel was just under £185,000, with items stolen comprising of a £52,000 watch, a necklace worth £68,000, a second watch worth £43,000, two bracelets worth £5,000 and £4,500 and a ring worth £5,000. At the time of the offence, she had been working at the Hilton Hotel for 17 days, but immediately afterwards did not return to that

work. The offence of fraud related, as we have said, to a credit card taken from the room and used then to purchase items in Oxford Street.

8 The offence on 21 July 2022 involved the theft of a bankcard and cash of around £500 in value from the room at the Club Quarters Hotel. It was charged as a non-dwelling burglary and there was, in addition, fraud by false representation relating to the use by the appellant of the bankcard.

9 The third burglary took place at the Other House Hotel on 15 September 2022 when jewellery and high-end watches valued at just over £180,000 were stolen, together with \$300 worth of cash. That offence was also charged as a non-dwelling burglary.

Sentence

10 The appellant had no previous convictions and one caution for theft in 2021. There were pre-sentence reports available to the judge and to which he referred. There were also three victim personal statements before the court from those affected by these offences and we have read those reports and statements. We have also read the letter of remorse from the appellant which was before the judge and witness statement from DC MacInnes dated 4 April 2023.

11 The judge categorised the Hilton Hotel dwelling burglary as category 1A within the Sentencing Council Guidelines because it involved a significant degree of planning and organisation (culpability A) and caused a substantial degree of loss to the victim (category 1) harm. That gave the offence a starting point of three years with a range of two to six years. The judge identified the particularly high value of the jewellery stolen and the element of breach of trust as aggravating features.

12 In terms of mitigation, the judge referred to the fact that the appellant was then 23. She was 22 at the date of the offending and was of good character. He accepted some level of

remorse. He also observed that while there were indications of a likely element of organised crime gang activity involving the appellant, possibly acting under the direction of others, there was no evidence that the appellant was herself under particular coercion, control or pressure from others. He referred to the fact that, in the interview with the pre-sentence report author, she had maintained steadfastly her denials of any coercion or pressure. The judge recognised that the appellant was the mother of two young children, then aged three and four, and that those children had been in her care but were now being cared for by the appellant's mother-in-law in Romania and had been so since her remand into custody.

13 Balancing the aggravating and mitigating features he had identified, the judge identified a notional sentence of four years before credit for the Hilton Hotel offence and then reduced that by 25 per cent, as already indicated.

14 The Other House Hotel burglary was charged and pleaded to as a non-dwelling burglary. The judge categorised this as 1A in the non-dwelling burglary guideline for similar reasons. The starting point was therefore one of two years and the range was one to five. The same aggravating and mitigating features applied. The judge indicated that the similarity of the two high-value burglaries led him to take the same notional sentence for both. He said it would be artificial to distinguish between them because they were so similar and observed that the non-dwelling offence should have been charged as a dwelling house burglary in circumstances where the person staying in that particular room of the hotel was also, in effect, a residential guest. With full credit, he identified a total sentence for the two burglary offences of five years and eight months and ordered the remaining sentences to run concurrently in order to reflect totality.

The appeal

15 Developing the three grounds of appeal both in writing and orally, Mr Carey submitted that the judge was wrong to find the appellant an enthusiastic and willing participant in these

offences. He submitted that the opposite was true and referred the court to DC MacInnes' statement which paints a picture of an organised crime group using Romanian women to execute their dishonest thieving plans. He submitted that there is no evidence that the appellant profited from the high value of the goods stolen. Indeed, the evidence suggests that stolen items were taken from her almost immediately, with her reward being simply the opportunity to use the bank cards that had been stolen. The judge, he submitted, did not give the appellant credit for her remorse and, ultimately, concluded wrongly that to find that there was evidence of organised crime group control would be sheer speculation. He submitted that the objective evidence available provided a sufficiently clear basis upon which to infer that this was the case. She was a likely domestic abuse victim of a man he described as a "tissue beggar", suggesting he too was a low-ranking individual in this chain. The fact that the appellant gave the answers she did to the pre-sentence report author was unsurprising as she was, no doubt, in fear of the consequences of admitting that she was acting under their control.

16 Furthermore, Mr Carey submitted that there was obvious and strong personal mitigation in the appellant's age and in the fact she was the primary carer, before being remanded into custody, of two young children. That would inevitably make her experience of prison particularly harsh and would have a very damaging effect on the children. The judge failed to apply the Sentencing Council Guidelines in respect of young offenders and those with caring responsibilities.

17 So far as the culpability assessment is concerned, Mr Carey submits that far from treating the element of organised crime group involvement as a mitigating factor in this case, the judge appears unreasonably to have treated it as an aggravating feature and attributed to the appellant the sophistication of the overall plan. The correct approach, he submitted, would have been to recognise her vulnerability and the fact that she was being controlled, rather than herself having any controlling or influential role. Those vulnerabilities were

likely exploited and on proper analysis, the finding of category A culpability was wrong in the circumstances and at best culpability B should have been identified.

18 The third ground was, he submitted, an independent ground. In his submission, standing back, to take a total sentence of eight years before credit for guilty pleas was, in the circumstances of this case, a manifestly excessive sentence that did not adhere faithfully to the principle of totality, regardless of how the sentence was structured. He submitted that this is a case where a significant reduction should have been made.

19 We consider these arguments in turn.

20 The appellant repeatedly denied that she was being directed or coerced when speaking to probation. Read fairly, it seems to us that the report from the officer tasked with examining her links to an organised crime group was somewhat inconclusive. The judge recognised that there may have been an element of direction or influence from others, but the appellant never said anything concrete to confirm this and while there may be understandable reasons for that, the position remained. The appellant did suggest in her police interview that she had stolen the goods from the hotels at the direction of her partner and when expressing remorse and regret, she said that she could not return the items as she had handed them over to him. However, it is fair to observe that she used the stolen credit cards for her own purposes, suggesting that she did exercise a degree of autonomy in that regard. In the absence of confirmation from her in relation to this issue, the judge cannot properly be criticised for adopting the approach that he did to this aspect of the case. He considered the issue of coercion carefully in his sentencing remarks, coming to the conclusion that it would be speculating to say that the appellant was coerced, but reflecting an element of coercion nonetheless. We agree with his conclusions.

21 Moreover, in our judgment the judge made no error in categorising the two most serious burglaries as category 1A in each of the relevant guidelines. In both cases there was

extensive planning and high-value goods were stolen. Nor do we criticise the way that the judge structured the sentences, treating the burglaries at the Hilton Hotel and the Other House Hotel as the lead offences. However, we have concluded that the notional sentences for those offences before credit were in each case too high.

22 We start with the Hilton Hotel offence and consider that a starting point of three years was one that the judge was entitled to take. Moreover, the judge was entitled to make some upward adjustment to reflect the aggravating features in this case. We consider that the high value of the jewellery stolen had already been factored into the categorisation and should not have been doubled-counted. There was, however, an element of abuse of trust arising from the employment relationship the appellant undoubtedly had with the hotels. She was trusted with keys to guest rooms and this element allowed for upward adjustment. Moreover, there might have been some justification for a small upward adjustment to reflect the associated fraud offences.

23 That said, there was powerful mitigation, as Mr Carey has submitted. The appellant was of previous good character and relatively young. She had expressed genuine remorse. There was also the feature of the particularly harsh impact of prison on her as a mother of young children from whom she had been separated from the moment she was remanded in custody. Although these matters were referred to by the judge in his sentencing remarks, we cannot see that proper allowance was made for them. In our judgment, the mitigating factors significantly outweighed the aggravating factors in this case and should have resulted in a notional sentence before credit of no more than 24 months in respect of the Hilton Hotel offence.

24 The non-dwelling burglary had a starting point of two years. The judge was wrong to treat it as a domestic burglary and we can see no justification for a starting point other than two years for that offence. In addition to the aggravating features to which we have referred in relation to the Hilton Hotel offence, it seems to us that the fact that this room was in

effect treated as the home of its occupant, is an additional aggravating feature. Again, it seems to us that the aggravating features were outweighed by the powerful mitigating features in relation to this offence too. While the judge was entitled to increase the starting point of two years he should have come down to a notional sentence before credit of no more than 18 months.

25 On this basis, we do not consider that separate criticism can be made of the judge's approach to totality. He was entitled to treat the two burglaries as the lead offences and to impose consecutive sentences reflecting the fact that two different victims on two separate occasions were affected. The judge properly catered for totality by making the sentences on the other offences concurrent and there is no basis for challenging the other sentences passed.

26 Applying credit for guilty pleas as afforded by the judge, the notional 24 month sentence for the Hilton Hotel offence is reduced to 18 months, and the 18 month sentence for the Other House Hotel offence is reduced to one of 12 months, producing a total sentence of 30 months.

27 We recognise the impact that immediate custody will continue to have on the appellant's young children, but the proper enforcement of criminal justice means that an immediate custodial sentence is in accordance with the law, pursues a legitimate aim and is proportionate on the facts of this case. We understand that proper arrangements have been made for the children's care. Having reflected on this aspect of the case, and on totality, we are satisfied that these are the shortest sentences that can properly be passed commensurate with the overall seriousness of the offending and the impact on these two children.

28 Accordingly, we allow the appeal to this extent only. We quash the sentences of three years and two years and eight months for the Hilton and Other Place Hotel burglaries. In their place, we substitute sentences of 18 months and 12 months, respectively. Those sentences

are to run consecutively. The concurrent sentences remain and are unaffected by this decision.

CERTIFICATE

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the Judgment or part thereof.

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5 New Street Square, London, EC4A 3BF
Tel: 020 7831 5627 Fax: 020 7831 7737
CACD.ACO@opus2.digital*

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