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IN THE COURT OF APPEAL

CRIMINAL DIVISION

**[2023] EWCA Crim 1321**



No. 202203199 A4

Royal Courts of Justice

Wednesday, 25 October 2023

Before:

LORD JUSTICE WILLIAM DAVIS  
MR JUSTICE GARNHAM  
HER HONOUR JUDGE DE BERTODANO

REX

V

(1) SHANE JONIE PARKER  
(2) WAYNE PARKER

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Transcript prepared from digital audio by  
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MR G GOODWILL appeared on behalf of the Appellants.

THE CROWN was not represented.

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**J U D G M E N T**



MR JUSTICE GARNHAM:

- 1 On 13 June 2022 in the Crown Court at Chelmsford, the first appellant, Shane Parker, pleaded guilty to count 2 on the indictment, conspiracy to commit burglary of non-dwellings. He also changed his plea to guilty to count 1, conspiracy to commit burglary of dwellings, and count 4, arson, being reckless as to whether or not life was endangered. Count 3, aggravated burglary, was ordered to lay on the file against him on the usual terms.
- 2 On 17 June 2022 at the same court, Wayne Parker, the second appellant, pleaded guilty to conspiracy to commit burglary of non-dwellings (count 1). On 13 October 2022 he changed his plea to guilty on count 2, conspiracy to commit burglary of dwellings; count 3, the aggravated burglary, was ordered to lie on the file on the usual terms.
- 3 On 18 October 2022 at the same court before HHJ Morgan, the first appellant was sentenced to a sentence of 16 years' imprisonment on count 1, 5 years concurrent on count 2 and two years concurrent on count 4. The second appellant was sentenced to 13 years 6 months' imprisonment on count 1 and 10 years concurrent on count 2.
- 4 A co-accused of the first appellant, Jamie Parker, pleaded guilty to counts 1, 2 and 4 and was sentenced to 7 years 6 months' imprisonment, and another, Denny Johnson, pleaded guilty to counts 1, 2 and 4 and was sentenced to 6 years. A third, James Hamilton, pleaded guilty to counts 1, 2 and 4, as well as count 5 (theft) and count 6 (dangerous driving) and was sentenced to 8 years' imprisonment.
- 5 Both appellants renew their applications for leave to appeal against sentence after refusal by the single judge. Counsel Mr Glen Goodwill, appeared on behalf of both.
- 6 The facts can be summarised shortly. Shortly after midnight on 7 January 2022 the appellants and their co-defendants burgled a branch of the Co-op in Braintree. They used a stolen Ford Transit to reverse into the shop's shutters, destroying the front entrance. That gave them access to the ATM at the front of the shop. Buildings straps were wrapped around the ATM and the van was used to dragged it out of the store. The ATM was carried away in stolen vehicles – an Audi S4 and a Volkswagen Golf. A week later a burglary the group had planned at another branch of the Co-op was aborted when they realised they were being watched by the police. The stolen Volkswagen Golf was torched in consequence. The transit van was abandoned at the scene and the group made off to another location where they dismantled the ATM and took the cash from inside the machine. The cash taken totalled £14,590.
- 7 The Audi was fitted with false plates but had also been fitted with a SIM card and the telematics showed that it activated a mast at Colm at about half-past midnight, having been in range of it at around the time of the burglary. The remains of the ATM were discovered at 6.20 a.m. the following day and the stolen cash was never recovered.
- 8 The Audi S4 used in the raid had been stolen following a burglary at the home of Mr John Baron in Black Notley. It took place at 9.45 p.m. on 2 January 2022. The complainant answered his doorbell and was confronted by four men at his front door. The men pushed him to the floor and demanded his car keys. They said he would be killed if he did not comply with their demands and he was also threatened with a crowbar.
- 9 The lead intruder was Wayne Parker. The gang stole the keys from the complainant's bedroom. The complainant recognised Wayne Parker because he had knocked at the

complainant's door three nights earlier, asking for a light for his cigarette, and the complainant was able to pick out Mr Parker during the identification procedure.

- 10 Wayne Parker's reconnaissance of the complainant's address on 3 September 2021 coincided with the police seizing a similar stolen S4 from a caravan site, known as the Sandy Acres site, earlier that day. The vehicle had been parked next to van of the appellant, Shane Parker. It had been stolen following a burglary in October 2021 and its recovery sparked a quest for a replacement amongst the appellants and their group. DNA from both the appellants was found in the Audi.
  - 11 The Volkswagen Golf used during the burglary of the Co-op store was stolen from the address of Ms Clare May, in Royston in Hertfordshire at around 9.50 p.m. on 5 January 2022. That complainant had heard aggressive banging and kicking on her door and saw three men on her doorstep through the frosted glass. She did not open the door but asked them what they wanted. She asked if they wanted her car keys and they told her that they did. The complainant threw the group the keys, and one of the men, seeing that the complainant was holding her phone, threatened to shoot her if she called the police. One of the men then drove the Volkswagen away and the others jumped in a second vehicle. A neighbour described the second car as a dark saloon and CCTV footage from a nearby address showed the shape of the stolen Audi S4. Sixteen minutes later CCTV footage from a garage forecourt showed the Volkswagen displayed different plates, the original plates having been removed from the front of the car and the false plates placed on the dashboard under the windscreen.
  - 12 The Ford Transit van used in the ram-raid was stolen the following evening, 6 January 2022 from the driveway of a man called Andrew Stocks in Braintree. It was stolen at about 11:00pm and the burglary at the Co-op occurred around an hour later.
  - 13 The Crown Court sentenced the appellants without reports. We agree with the judge that reports were not necessary before him. They are not necessary now.
  - 14 The judge said that each defendant played a role
- “... in what were professionally planned and executed offences -- planning in the sense that houses were identified, as I have indicated, because the motor vehicles which were required by you to attend those premises and make use of them as get-away vehicles. They were generally high-powered vehicles of significant value.”
- 15 He said that the two complainants were threatened with serious violence, in one instance to be killed and in the other to be shot. Applying the guidelines, he said that both conspiracies to burgle dwellings and non-dwellings were high culpability offences causing high level harm.
  - 16 As to count 1 he said he adopted the guidelines as it applies to domestic burglaries, but noted that there were significant features which aggravated the offence and features which would apply had this been an aggravated burglary. He said:

“Although I am not sentencing you for an aggravated burglary, it is conceded on behalf of those defendants who have pleaded to count 1 and who were charged with the aggravated burglary, that those features can be properly taken into account by this court. The reality is that for a single burglary under the guidelines, the starting point in

these circumstances in the top category would be one of three years with a range up to six but I am not dealing with you for a single burglary.”

- 17 In relation to the commercial premises, he said the starting point for a single offence would be 2 years, with a range of 1 to 5. He added:

“But again I am not dealing with you for a single offence of that kind and nor am I blind to the aggravating features that I have outlined which apply to that subsidiary offence, and of course you, Wayne Parker, and you, Shane Parker, have similar previous convictions.”

- 18 In relation to the arson count the judge said:

“I have to bear in mind the overall totality because it is inextricably linked to counts 1 and 2 and the events that unfolded in relation to the Co-op theft of the ATM and your being spooked as you made your way to another commercial burglary.”

- 19 As to credit for plea, the judge said:

“I have come to a total sentence and I have then reduced the sentence in each case to reflect credit. It is not a precise arithmetical exercise but where a credit of a third, or 25 per cent or indeed ...10 per cent is merited, I have done my best to balance the figures.”

- 20 In sentencing Wayne Parker, the judge said count 1 would have attracted a sentence after trial of approximately 13 years. Count 2 would have attracted a sentence of around 6 years. He said the sentence on count 1, commensurate with the overall offending and taking into account credit for a plea, would be 13 years and 6 months. In relation to count 2, he imposed, as we have said, a concurrent sentence of five years. As for Shane Parker, on count 1 he passed a sentence, which he described as commensurate with the overall offending, of 14 years and he made the other sentences concurrent, as we have explained.
- 21 On the appellants’ behalf, Mr Goodwill advances in essence seven grounds of appeal. First, he says that having pleaded guilty to conspiracy to burgle and not guilty to aggravated burglary, both appellants were in fact sentenced as if they had pleaded guilty to the latter. Second, they were sentenced using the wrong guidelines. Third, they were given much harder sentences than their co-defendants. Fourth, they received maximum sentences or virtually maximum sentences. Fifth, they received either no or inadequate reduction for their guilty pleas. Sixth, they received either no or inadequate reductions in sentence under the totality principle. Seventh, they received no credit for the fact that they were family men with partners and young children, and would miss being involved in their children’s lives for significant periods of time.
- 22 Mr Goodwill expanded on all those grounds in his oral submissions and added that the appellants had used their time in prison to improve themselves and had shown some genuine remorse.
- 23 We see no merit at all in the second, third, fifth or seventh grounds as they apply to either appellant. The judge made clear that he was using the guidelines for dwelling house burglaries and commercial burglaries. He accurately described the parts played by all the defendants in this offending and was entitled to identify the fact that these two appellants

had committed similar offences in the past as serious aggravating factors. He carefully reflected on the different levels of credit for guilty pleas. He had proper regard to the appellants' personal mitigation, such as it was.

- 24 However, in our judgment there is merit in grounds 1, 4 and 6. As the single judge observed, although the appellants did not plead guilty to count 3, the aggravated burglary, it was expressly accepted that the facts of that count formed part of the circumstances of count 1, the conspiracy to commit domestic burglaries. The seriousness of this conspiracy and the right level of sentence depended on all the relevant circumstances, and in this instance those included the events concerning count 3. However, the sentences to be imposed were sentences for conspiracy to burgle, not aggravated burglary, and the maximum sentence for the former offence was 14 years. This offending by each appellant fell at or very near the top of the appropriate level for conspiracy to burgle, but it could not be placed beyond that maximum.
- 25 Furthermore, as the judge recognised, there had to be appropriate credit for the guilty pleas. There were not pleas for the entirety of the offending until very late in the day and the appropriate reduction for a plea was therefore 10 per cent, but in our judgment it was an error of principle to adopt as the starting point before deduction for plea a figure that must have exceeded the statutory maximum for the offence.
- 26 In our judgement the appropriate sentence before deduction of the plea in the case of Shane Parker was 14 years. Allowing a deduction of a little over 10 per cent, produces a sentence of 12 years 6 months. In Wayne Parker's case, the appropriate sentence before deduction of plea was 13 years and 6 months. Allowing a deduction of a little over 10 per cent produces a sentence of 12 years. To that extent these appeals are allowed.

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**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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This transcript has been approved by the Judge.