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IN THE COURT OF APPEAL

CRIMINAL DIVISION

ON APPEAL FROM THE CROWN COURT AT BOLTON

HER HONOUR JUDGE HUDSON 06KK0475224

CASE NO 202403645/A5

Royal Courts of Justice
Strand
London
WC2A 2LL

Thursday 21 November 2024

Before:

LORD JUSTICE SINGH

MRS JUSTICE McGOWAN

MR JUSTICE SWIFT

REX

V

VINCENT PLACE

Computer Aided Transcript of Epiq Europe Ltd,
Lower Ground, 46 Chancery Lane, London WC2A 1JE
Tel No: 020 7404 1400; Email: rcj@epiglobal.co.uk (Official Shorthand Writers to the Court)

MR J BOWKER appeared on behalf of the Applicant.

J U D G M E N T
(Approved)

LORD JUSTICE SINGH:

Introduction

1. On 5 July 2024, having pleaded guilty before Wigan Magistrates' Court, the applicant was committed for sentence, pursuant to section 14 of the Sentencing Act 2020, in respect of two offences of breach of a criminal behaviour order and possession of a bladed article and, pursuant to section 20 of the same Act, in respect of one offence of theft. On 2 August 2024, in the Crown Court at Bolton, the applicant (then aged 42) was sentenced by HHJ Hudson in the following way. On the first matter, an offence of theft, to which he had pleaded guilty, the sentence was 2 months' imprisonment made concurrent. On the second matter, breach of a criminal behaviour order, contrary to section 339 of the Sentencing Act, there was a sentence of 2 months' imprisonment made concurrent. On the third matter, breach of a criminal behaviour order, there was a sentence of 12 months' imprisonment made concurrent. On the fourth matter, possession of a bladed article in a public place, contrary to section 139 of the Criminal Justice Act 1988, there was a sentence of 8 months' imprisonment but this was made consecutive. Accordingly, that made a total sentence of 20 months' imprisonment. The appropriate statutory victim surcharge was imposed and an order was made for forfeiture and destruction of the knife. This was an offence of having an article with a blade or point in a public place, to which the mandatory minimum term provisions of section 315 of the Sentencing Act 2020 applied. He had been convicted of at least one relevant offence on earlier occasions. In accordance with section 315(3), the judge was obliged to impose an appropriate custodial sentence of at least 6 months.
2. The present application has been referred to the Full Court by the single judge because a

substantial extension of time of 42 days is required.

3. The facts can be summarised briefly for present purposes. The applicant was made subject to a criminal behaviour order on 27 June 2024. The order prohibited the applicant from entering any retail store in Bolton town centre. On 2 July 2024, a CCTV operator (Mr Carter) observed the applicant entering a Morrison's store at 11.30 in breach of the order. Two days later, on 4 July, Mr Carter saw the applicant entering the Poundland store in Victoria Square at 10.17 before leaving 2 minutes later. Police were informed and an officer attended and located the applicant at a nearby One Stop shop. The applicant admitted being in possession of a kitchen knife and needles. He was searched and was also found in possession of a bottle of perfume which he had concealed in his underwear and a plastic bag, with four Peter Cook saucepans inside. CCTV from Poundland showed that he had stolen the items from there.

The Sentencing Process

4. The applicant had 55 convictions for 116 offences spanning the period from February 2006 to June 2024. His relevant convictions included 73 theft and kindred offences and six offensive weapon offences. We should note that the Crown Court sentenced the applicant without a pre-sentence report. We confirm that such a report is not necessary (see section 33 of the Sentencing Act 2020).
5. In her sentencing remarks, the judge said that the most serious offence before her was that of possession of a bladed article. This fell into category 2A by reference to the Definitive Guideline but the applicant had five previous weapons offences and these

matters were committed under a post-sentence supervision and while he was subject to a criminal behaviour order. The judge said that the applicant had “a horrific record including numerous dishonesty offences and prolific shoplifting”.

6. Turning to the criminal behaviour order breaches, the judge took the view that these fell into category 3B for the offence on 2 July 2024 and category 2B for the offence on 4 July. She took the view that the offence of theft fell into category 3A. The judge said that she would give full credit for the guilty pleas. Nevertheless, she did not consider that the sentence could be anything other than one of immediate custody because the applicant was simply not able to co-operate with the Probation Service for any length of time. The judge imposed a sentence of 12 months’ custody in relation to the breach of the criminal behaviour order on 4 July and made the sentences concurrent, save for the sentence of 8 months in respect of the bladed article offence. Since that was made consecutive, as we have said, that made a total sentence of 20 months in custody.

Application for extension of time

7. We have seen the application to apply out of time; an extension of 42 days is required. The defendant telephoned the office of his solicitors on 8 October 2024, asking for an update on his appeal. A paralegal stated that his appeal had not been submitted. He told the defendant that they had written to him on 12 August 2024, after his sentence, advising him that they believed he had grounds to appeal and asking him to confirm that he wished them to submit an appeal on his behalf. However, they had never heard back. The defendant said he had written immediately after receiving that letter and knew that they had received the letter as they had actioned another request made by him in that letter.

8. After further investigation, it was established that the solicitors had received a returned client satisfaction form. On the back of the form he had written a request to contact a different solicitor dealing with a probate matter. Although the applicant had not explicitly stated in his letter that he wished to appeal, he did reference getting out of prison sooner than his original sentence if his appeal was successful. Unfortunately, this was not handed to a solicitor to deal with and was not therefore actioned. His appeal was not submitted when the defendant had implied that he wished to appeal. Following the conversation on 8 October and because he advised that he had always wished to appeal, the solicitors completed the appeal form and they say they did so as expediently as possible.

9. We are not particularly impressed with the reasons in support of the application but nevertheless we consider that the applicant should not suffer an injustice in the circumstances of this case where he had, so far as he was aware, instructed his solicitors to appeal on his behalf and in light of the view to which we have come on the merits of this application.

Grounds of Appeal

10. On behalf of the applicant, Mr Bowker advances two grounds of appeal. First, he submits that the sentence of 12 months' custody imposed in relation to the breach of the criminal behaviour order on 4 July was wrong in principle and has resulted in a sentence that was manifestly excessive. Secondly, he submits that the total sentence of 20 months' custody failed properly to reflect the principle of totality and resulted in a sentence that

was wrong in principle and manifestly excessive.

11. It is accepted that the court was justified in imposing an immediate custodial sentence and in making an upward adjustment from the starting point. It could not be criticised if it had taken the top of the sentencing range as its notional sentence after trial. However, Mr Bowker submits that the court went significantly above the range for the breach of a criminal behaviour order on 4 July. Having determined that the case fell into category 2B, with a starting point of 12 weeks' custody and a range up to 12 months' custody, the court failed to justify the decision to impose a notional sentence of 18 months before the application of credit for guilty pleas. Mr Bowker also submits that, if the offence of possession of a bladed article were taken in isolation, the notional starting point of 12 months' custody could not be criticised. However, given that the offence occurred on the same date as the breach of the criminal behaviour order and given the ultimate motive of both offences was to steal items in order to generate funds for the applicant, the court failed properly to reflect the totality of the offending by imposing the two sentences consecutively to each other but without substantial reduction.

12. In conclusion, Mr Bowker submits that the notional starting point of 30 months' imprisonment, before the discount for guilty pleas for these four offences, was manifestly excessive. We consider that both grounds of appeal have force. We therefore grant leave to appeal and proceed to consider the appeal on its merits.

The Appeal

13. In our judgment, there was nothing wrong in principle in making the two relevant

sentences consecutive but the principle of totality did require some adjustment in order to reflect the overall gravity of the offending. We also consider that although the appellant was rightly described as “a menace” in the light of his persistent criminal history, the notional sentence for the breach of the criminal behaviour order on 4 July 2024 should not have been higher than the top of the range for a category 2B offence. Accordingly, the sentence for that, after taking account of the guilty plea, should have been one of 8 months’ imprisonment. If that were simply added to the 8 months which was in principle appropriate for the offence of possession of a bladed article, that would result in a total sentence of 16 months’ imprisonment.

14. Having regard to the principle of totality, we consider that an appropriate sentence in this case in total would be one of 15 months’ imprisonment. Accordingly, we will quash the sentence for the breach of the criminal behaviour order on 4 July 2024 and substitute a sentence of 7 months’ imprisonment for that offence. No other adjustment is required to the sentences.

Conclusion

15. For the reasons we have given, this appeal is allowed to the extent that the total sentence is reduced to 15 months’ imprisonment. That consists of a sentence still of 8 months’ imprisonment in respect of the possession of a bladed article matter and a sentence of 7 months’ imprisonment for the offence of breach of the criminal behaviour order on 4 July 2024.

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Lower Ground, 46 Chancery Lane, London WC2A 1JE

Tel No: 020 7404 1400

Email: rcj@epiqglobal.co.uk