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IN THE COURT OF APPEAL

CRIMINAL DIVISION

[2020] EWCA Crim 1085



No. 201904631 A3

Royal Courts of Justice

Thursday, 23 July 2020

Before:

LORD JUSTICE HCKINBOTTOM
MR JUSTICE SPENCER
HER HONOUR JUDGE MOLYNEUX

REGINA

V

KALAN DILLON ALEXANDER WILLIAMSON

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MR O. KIRK appeared on behalf of the Appellant.

The Crown were not represented.

J U D G M E N T

MR JUSTICE SPENCER:

- 1 This is a renewed application for leave to appeal against sentence following refusal by the single judge. An extension of time of 35 days is required for the renewal. We grant that extension because it is plain that there was a postal delay or a postal failure leading to late receipt of the single judge's decision which was no fault of the applicant or his solicitors.
- 2 On 28 November 2019 in the Crown Court at Southampton the applicant, who is now 28 years of age, was sentenced by HHJ Parker QC to a term of 16 years and 10 months' imprisonment, having pleaded guilty that day to an offence of conspiracy to rob. There was a concurrent sentence of three months' imprisonment for an offence of failing to surrender to custody, contrary to s.6 of the Bail Act 1976.
- 3 We are grateful to Mr Kirk for his written oral submissions. The grounds of appeal are, first, that the applicant's sentence was manifestly excessive because there was an unfair disparity between his sentence and the sentences imposed on two of his co-defendants, and second, that the judge failed to give sufficient credit for the applicant's guilty plea.
- 4 For present purposes the facts may be stated quite shortly. The conspiracy to rob involved a very serious and well-planned, armed robbery of a jeweller's shop in Bournemouth on 14 March 2019. There were seven co-defendants in total, five of whom, along with this applicant, were involved in the execution of the robbery.
- 5 The robbers travelled down to Bournemouth from London by car. Three stolen mopeds had previously been delivered to a safe-house in the Bournemouth area. There had been careful surveillance of the shop. At around noon on 14 March the six robbers arrived at the shop on the three stolen mopeds. They were wearing crash helmets and face coverings. One of the mopeds was driven through the glass front door of the shop, deliberately creating terror. One of the robbers, Ingram, stood outside the shop and threatened the store's security guard with a Samurai sword, saying he would kill him and take his head off. Another robber, standing outside the shop, Sharif, had a bottle of ammonia which he used to threaten members of the public.
- 6 The applicant was one of the two robbers who then went into the shop. The other was Ford. They smashed glass display cabinets with a sledgehammer and stole jewellery and watches which they put into sports bags they had with them for the purpose. The value of the jewellery and watches stolen was some £620,000. The robbers made off on the mopeds. They were pursued by police officers. There was a chase through the streets of Bournemouth.
- 7 None of the robbers were apprehended at that stage, but by 11 April the police had identified the principal offenders and arrests were made of all but this applicant. He was not spoken to by the police until 21 June. He had been on licence from a sentence of imprisonment for domestic burglary and had been recalled to prison to serve the remainder of that sentence. Like his co-accused, when he was interviewed by the police he made no comment.
- 8 Owing, it seems, to a misunderstanding, the applicant remained in prison simply to continue serving out the rest of his existing sentence, rather than being remanded in custody for the robbery as well offence. It was when he was released from serving the balance of the earlier sentence that he was served with a requisition to appear at Poole Magistrates' Court on 5 July 2019 to face this charge of conspiracy to rob. He failed to appear, and a warrant was issued for his arrest. That gave rise to the Bail Act offence.

- 9 Meanwhile, his co-accused had all been sent to the Crown Court for trial. Three were convicted after trial. The other three pleaded guilty at different stages, as we shall explain shortly in a little more detail.
- 10 The applicant was eventually arrested on the bench warrant on 31 October, and on 2 November he appeared before the Magistrates' Court. He was sent to the Crown Court for trial in respect of the conspiracy to rob, to appear for his plea and trial preparation hearing (PTPH) on 28 November. The magistrates also committed him to the Crown Court in respect of the Bail Act offence with which he had been charged. The date of his appearance in the Crown Court, 28 November, was the same date as the sentencing hearing for the co-accused.
- 11 The applicant duly appeared at the Crown Court on 28 November via a prison video link, and pleaded guilty. The court proceeded to sentence him immediately after sentencing the other six defendants.
- 12 It was common ground at the sentencing hearing that for the six defendants who physically took part in the robbery this was a Category 1A offence under the Sentencing Council Guideline for professionally planned commercial robberies. The starting point under the Guideline was 16 years' custody, with a range up to 20 years. In respect of four of the six robbers, the judge considered that the appropriate sentence after trial for this serious armed robbery conspiracy was 18 years. That was the sentence the judge passed on the defendant Oriba, who was convicted after trial.
- 13 The remaining five robbers, including the applicant, had pleaded guilty at varying stages. In respect of the defendant Ford, who entered the shop with the applicant, and Ingram, who threatened the security guard with the Samurai sword, the judge gave full credit of one-third for their guilty pleas. Their provisional sentences of 18 years after trial were reduced accordingly: Ford to 12 years; Ingram to 11 years. The lower figure in Ingram's case arose because he had been recalled to serve an earlier sentence, which made some adjustment necessary.
- 14 In the case of the applicant, who like Ford, was one of those who entered the shop and carried out the robbery, the judge, likewise, took a provisional sentence of 18 years. However, he considered that a reduction of only 10 per cent was appropriate for the applicant's guilty plea, which came so late in the day as he had absconded. We shall return to the question of credit.
- 15 The two co-defendants with whom there is said to be an unfair disparity of sentence were Sharif and Gregg-Ball. Sharif was the defendant who stood outside the shop threatening members of the public with the bottle of ammonia. There had been an issue as to his fitness to plead. The judge had himself conducted a hearing a week or so earlier and found Sharif fit to plead. The judge allowed him 20 per cent credit for his plea. Because of special mitigation in his case, principally relating to his psychiatric problems, the judge considered that a provisional sentence of 16 years was appropriate in his case. With 20 per cent credit for plea, his sentence was, therefore, 12 years, 10 months.
- 16 Gregg-Ball indicated his guilty plea a few weeks before trial and was also afforded 20 per cent credit. In his case as well the judge considered that the appropriate provisional sentence was 16 years. This reflected the later stage at which he joined the conspiracy and his somewhat lesser role and his personal mitigation. His sentence, like Sharif's, was therefore 12 years, 10 months.
- 17 For completeness, we should add that the other two conspirators were in a different position

altogether. McLaughlin had provided the safe-house for the mopeds. He was convicted after a trial and sentenced to eight years' imprisonment. The defendant Sophie Rivers was Sharif's girlfriend. She had provided assistance to him in the conspiracy. She too was convicted after a trial. Her sentence was six years.

- 18 The applicant had a long record of offences of dishonesty. In 2013 he was sentenced to a total of four years, eight months' detention, on a guilty plea, for two separate offences of conspiracy to burgle dwellings. In December 2015 he was sentenced to a further term of four and a half years' imprisonment for a domestic burglary and for handling stolen goods. Most recently, in February 2017, for a further domestic burglary and aggravated vehicle taking, he was sentenced to a further term of twelve months' imprisonment, consecutive to the sentence he was already serving. He was on licence from this sentence at the time of the armed robbery, and it was this sentence he was recalled to prison to serve.
- 19 In his sentencing remarks the judge rightly emphasised the very serious impact of the offence on this family-run jeweller's business which had been targeted. There had been a highly organised plan in which the applicant had played a leading role. The appropriate sentence after trial would have been 18 years. The judge said the question was how much credit he should get for his guilty plea. The judge said it could not be the case that, having evaded justice by being on the run until after the trial concluded, he should have full credit for his guilty plea. It was questionable, the judge said, whether he should have any credit at all, but perhaps a little leniently, he was going to give him 10 per cent credit, which is the credit he would have received had he pleaded guilty on the first day of the trial.
- 20 Although no-one seems to have spotted this until we pointed it out during the course of argument this morning, the Judge's arithmetic in applying the 10 per cent discount was in error. Ten per cent of 18 years would be a discount of 22 months, reducing the sentence from 18 years to 16 years, 2 months, rather than 16 years, 10 months. In respect of the Bail Act offence the judge said that because this had already been reflected in the loss of credit for plea, there would be a concurrent sentence of 3 months.
- 21 On behalf of the applicant, Mr Kirk submits that there is an unfair disparity between the applicant's sentence and those of his co-accused. Only Oriba, who had a trial, received a sentence greater than the applicant's. The focus in the grounds of appeal is on the comparison with the sentences of Sharif and Gregg-Ball. In his oral submissions Mr Kirk had developed this argument, pointing out, as is the case, that those two defendants had previous convictions for armed robbery. He submits that this should have ensured that the applicant was not dealt with more harshly than they were.
- 22 As to credit for the guilty plea, Mr Kirk submits the Judge's approach was wrong in principle. There was a separate offence of absconding which carries a maximum of 12 months' imprisonment. It would have been proper to impose a consecutive sentence for the Bail Act offence, but the applicant should not have been deprived of reasonable credit for his guilty plea. He was sent to the Crown Court for trial and entered his plea of guilty at the PTPH hearing. Ordinarily, he would have been entitled to 25 per cent credit. Mr Kirk reminds us in his written submissions that s.144 of the Criminal Justice Act 2003 provides that the court must take into account the stage in the proceedings for the offence at which the offender indicated his intention to plead guilty and the circumstances in which the indication was given. This, Mr Kirk submits, is not a situation covered by the guideline on reduction of sentence for a guilty plea, but he emphasises that there was never any question here of the applicant having a trial. Indeed, he points out that if the applicant had elected trial, it is very unlikely his trial would have taken place even by now, in view of the pandemic.

- 23 We have considered all these submissions carefully. We are quite satisfied that there is no unfair disparity, even arguably, between the applicant's sentence and the sentences of Sharif and Gregg-Ball. It is well established on the authorities that there will be no unfairness if the disparity is explained, for example, by the availability of special mitigation for one defendant rather than another, or by a difference in the level of their culpability. The judge explained clearly in his sentencing remarks why he was taking a lower provisional sentence of 16 years in the cases of Sharif and Gregg-Ball, rather than 18 years in the case of the applicant and the other robbers.
- 24 In relation to Sharif, the judge was satisfied that he suffered from a serious learning disability which impaired his cognitive ability and to that extent reduced his culpability. The judge was well able to assess that from the fitness to plead hearing. There were psychiatric reports in the case of Sharif, and also references from prison and letters from his family which described his lack of maturity and lack of understanding. The Judge recognised that Sharif had very substantial disadvantages which were not his fault and went some way to explain, while in no way to excuse, his offending. The judge acknowledged that Sharif had a bad record, including convictions for robbery and possession of an imitation firearm, for which he had been sentenced to a total of six years' imprisonment in 2011. But for the mitigation of his learning disability, his previous convictions might have justified an increase to 20 years as a provisional sentence. His guilty plea had been tendered almost immediately after he was found fit to stand trial, so credit of 20 per cent was appropriate.
- 25 In relation to Gregg-Ball, the judge considered that there was no need to increase the provisional sentence beyond the starting point of 16 years under the guideline. Although his basis of plea suggested he was a late entrant to the conspiracy and only a getaway driver, the judge did not regard that as justifying any lower level of responsibility; it remained a Category 1A offence. It was, however, possible to conclude that Gregg-Ball had become involved at a later stage than the others. There was also impressive personal mitigation in his case that he was taking steps to turn his life around. Gregg-Ball had indicated his plea two to three weeks before trial and was entitled to 20 per cent credit.
- 26 Whilst Gregg-Ball, in particular, may have been fortunate to receive a lighter sentence than most of the other robbers, that does not in itself afford a ground of appeal to this applicant. 18 years was the provisional sentence in the applicant's case and 18 years was the provisional sentence in the case of three of the other robbers. It is not remotely arguable that 18 years for this applicant was manifestly excessive or wrong in principle.
- 27 As to credit for plea, although it is technically correct that the applicant entered his guilty plea at his own PTPH hearing, where normally 25 per cent credit would be allowed, that ignores the reality of this case. The focus in s.144 of the 2003 Act and in the Sentencing Council Guideline is the stage at which the defendant indicates a guilty plea in the proceedings against him. Here, those proceedings began with the requisition served in July 2019 requiring him to appear at the magistrates' court to answer the charge of conspiracy to rob. He failed to appear to answer that charge and went on the run. It was not until the end of October 2019 that he was arrested on the bench warrant. We can see no error of principle in confining the applicant's credit for plea to 10 per cent in these circumstances.
- 28 Our researches have discovered only one reported case where a similar situation has arisen, though not identical: *R v Ward* [2014] EWCA Crim 2667; [2014] 1 Cr App R (S) 74. There the defendant was sentenced for dangerous driving and separate offences of threatening

behaviour and criminal damage. He had been bailed after arrest for the dangerous driving in September 2011 but failed to answer his police bail. In January 2013 he was arrested for criminal damage and threatening behaviour. It was discovered that he had failed to answer his bail for the dangerous driving, but he was bailed again. His PCMH in the Crown Court was listed in April 2013 but he failed to appear, claiming he had insufficient funds to get to court. He was arrested a few days later and arrangements were made for all matters to be dealt with together in the Crown Court the following week. The judge gave the appellant some credit for his guilty plea, but reduced it considerably because of his absconding, allowing only twelve and a half per cent credit, that is to say, half of the credit he would otherwise have been entitled to under the Sentencing Council Guideline then in force. The sentence for the dangerous driving was 21 months' imprisonment. No separate penalty was imposed for the Bail Act offence. This court held on appeal that the judge was entitled to take into account the defendant's failures to comply with the criminal justice process, in giving a lesser reduction. At para.12 of the judgment the court said:

"[...] [counsel] submits that this appellant effectively pleaded guilty to what would have been a hearing to fix a trial date. By his own plea he curtailed the need for that to take place because he pleaded guilty on that occasion. However, there is no doubt in our mind that the Guidelines are based on the usual procedural timetable and that this appellant effectively torpedoed that timetable by his own actions in failing to answer to bail and to surrender to custody when required to do so. Why should he benefit from the recommended reduction when by his actions he had delayed the criminal justice process for over a year? In our judgment, there is nothing at all wrong with the discount that the sentencing judge made for the guilty plea."

- 29 There can be no hard and fast rule as to the correct approach in a situation such as this. It will depend on the circumstances of the individual case, applying s.144 of the Criminal Justice Act 2003. There will be some cases where it is appropriate to allow significant credit for plea in relation to the substantive offence, and to pass a consecutive sentence for the Bail Act offence. But in other cases the approach of the judge here, and the judge in *Ward*, will be just and proportionate, remembering always that if the absconding is reflected in a reduction in credit for plea there should be no additional penalty for the Bail Act offence, if there is one.
- 30 Here, the applicant had sought to evade justice altogether. There can be no complaint that his very belated and enforced engagement with the trial process resulted in only very limited credit for his plea, equivalent to that which he would have received had he pleaded on the first day of the trial. The second ground of appeal is therefore not arguable.
- 31 That leaves the question of the judge's arithmetical error. It made a difference of eight months. Normally, this court would not interfere with a sentence of 16 years plus by reducing it by as little as eight months. However, the applicant is entitled to that reduction here in order to give effect to the sentence which the judge intended to pass.
- 32 We therefore grant leave to appeal. We quash the sentence of sixteen years, ten months' imprisonment, and we substitute a sentence of sixteen years, two months' imprisonment. The concurrent sentence of three months for the Bail Act offence remains in place. To that very limited extent the appeal is allowed.

CERTIFICATE

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