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NCN: [2021] EWCA Crim 1247  
IN THE COURT OF APPEAL  
CRIMINAL DIVISION



Case No: 2021/01578/A1

Royal Courts of Justice  
The Strand  
London  
WC2A 2LL

Thursday 5<sup>th</sup> August 2021

**B e f o r e :**

**LADY JUSTICE CARR DBE**

**MR JUSTICE GOSS**

**MR JUSTICE KNOWLES**

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**R E G I N A**

**- v -**

**SCOTT JAMIE SIMPSON**

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**Miss H Williams** appeared on behalf of the Appellant

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

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Thursday 5<sup>th</sup> August 2021

**LADY JUSTICE CARR:**

**Introduction**

1. This is an appeal by the appellant, now aged 25, against the sentence imposed on him on 29<sup>th</sup> April 2021 by Mr Recorder Lamb of 32 months' imprisonment following his earlier guilty plea to a single count of burglary of a dwelling house, contrary to section 9(1)(b) of the Theft Act 1968.

**The Facts**

2. On the evening of 8<sup>th</sup> February 2020, Adele Marsden was at home with a friend. The appellant knocked at the door. Although he was known to Ms Marsden, he was not a friend. The appellant said that he had popped round en route to another friend. He asked what Ms Marsden was doing that night. She said that she was going out with some girlfriends. The appellant stayed about five minutes before leaving. Next a Mr Cardwell (“Cardwell”), who was again known to Ms Marsden, knocked on the door and asked to borrow some deodorant, before also leaving. Ms Marsden then went out to collect a friend, returning home at around 8.30pm.

3. The appellant and Cardwell came back. Ms Marsden was now drinking with her friends. Both men went into the kitchen. They appeared to have dirt and blood on their hands and were given wipes in order to clean themselves. Ms Marsden and her friends then left for their night out at around 9.30pm.

4. When Ms Marsden returned at around 5.30am the following morning, she noticed that the side gate to her property was open and that the lights were on in her living room. Once inside her house she saw that her child's quad bike had been moved, and there was a T-shirt in the

hallway which she recognised as the one having been worn by the appellant earlier. There were bandages in the sink with blood on them. The back door had been damaged and its window smashed with a crowbar that had been left on the side. Bleach had been poured all over the kitchen, as well as all over the floor in the children's toy room. A number of items had been stolen, including two PlayStation 4s, along with a Nintendo Switch, two tablets, an iPhone 5, a Fitbit, medication and some £170 in cash.

5. Ms Marsden put out a post on social media asking for help from the local community. She was then contacted by the appellant's mother who believed that she had found some of the stolen items in her son's property. These were the Nintendo Switch, a PlayStation 4 console and some of the games.

6. The appellant himself then contacted Ms Marsden on social media to apologise for what he had done. He said that he was embarrassed and ashamed of himself and offered to pay for any damage "plus more". Ms Marsden was then contacted by a friend who had inadvertently bought some of the stolen items from Cardwell; he subsequently returned those items to her.

7. The appellant was arrested on 7<sup>th</sup> March 2020. He answered "No comment" to all questions put to him.

8. The appellant had 18 convictions for 37 offences which spanned between September 2010 and January 2021. His relevant convictions included 15 for theft and kindred offences. He was, in fact, already a serving prisoner when convicted for the index offence, having been sentenced to 27 months' imprisonment at Preston Crown Court on 13<sup>th</sup> January 2021 for another dwelling house burglary.

9. Ms Marsden had been, understandably, very badly affected by this incident, as had her

children. She had had to have time off work; she was struggling with anxiety and also financially due to the cost of redecoration.

### **Sentence**

10. Considering the Sentencing Council Guideline for Burglary Offences (“the Burglary Guideline”), the Recorder placed the harm in category 1. There had been factors of theft and damage, which had caused a significant degree of loss to Ms Marsden, soiling of the property, and trauma to Ms Marsden beyond that which would normally be anticipated. He found culpability to be higher. The appellant had acted in concert with another and, he said, there had been a targeting of the premises involved – targeting because of the vulnerability of Ms Marsden and the premises themselves. The appellant had known that the premises would be unoccupied and, as a result, undefended. All of this placed the offending into the highest category.

11. The appellant had a poor record and had already been serving a sentence for a dwelling house burglary. Due to his mitigation, including letters showing engagement in prison and remorse, the Recorder decided that he would make the sentence concurrent with the appellant's current term, and he gave full credit for the appellant's guilty plea. The Recorder went on:

"Had you been convicted following trial I conclude that the appropriate sentence in your case would have been four years' imprisonment. The reason that I elevate from the starting point in the guideline for an offence of this nature is because of your previous convictions and because of the nature of the targeting and soiling which I have heard about."

The Recorder said that he made due allowance for the fact of conditions in custody during the pandemic, and went on to sentence the appellant to 32 months' imprisonment after credit for his guilty plea.

### **Grounds of Appeal**

12. Miss Williams, for the appellant, takes no issue with the Recorder's categorisation of this offending as category 1. However, she submits that the Recorder erred in going above the starting point of three years on the basis that Ms Marsden was vulnerable: there was no evidence to this effect; nor was it a submission made on behalf of the prosecution. Secondly, the Recorder erred in finding that the fact that the premises were empty was an aggravating factor and therefore wrong to depart from the starting point on that basis. In short, the Recorder erred in finding that there had been any targeting here. Furthermore, he double counted the factors of targeting and soiling when he treated them as aggravating features.

### **Discussion and Analysis**

13. Like the Recorder, we do not consider that a pre-sentence report was necessary. There is rightly no challenge to the categorisation of this offending as category 1 in the Burglary Guideline. As for harm, there was theft and damage which caused a significant degree of loss. There was soiling of property - it was a particularly nasty type of soiling involving the use of bleach being poured over children's toys.

14. As for culpability, the appellant was a member of a group and went equipped for burglary, in the form of a crowbar. This categorisation is so, ignoring the question of whether or not there was deliberate targeting in the sense envisaged in the Burglary Guideline, either because Ms Marsden was vulnerable or because the premises were empty. The starting point was, therefore, three years' custody.

15. It is unclear to us from the sentencing remarks precisely what role the question of targeting played in the Recorder's analysis; but, on any view, the Recorder was entitled to take into

account at some stage in the sentencing process the appellant's troubling behaviour in scoping the property before the burglary under the pretence of being a friendly visitor and exploring whether it would be empty, as in due course he learned that it would be. This was part and parcel of the appellant's overall criminality, and in particular part of the planning.

16. Thus, putting aside any question of targeting, the Recorder was entitled to elevate the starting point of three years to take account of the following aggravating factors: the appellant's previous convictions; he was subject to a community order at the time of the offence; there was a degree of planning; the offence was committed at night and at a time when the appellant was under the influence of drugs. These matters all justified a notional term before mitigation of well over four years' custody.

16. Against that, there was relevant mitigation in the shape of remorse and the appellant's immediate apology (although it was of course proffered only after he had been caught out). He had made progress in custody. The Recorder took account of the conditions in prison due to the Covid-19 pandemic.

17. In all the circumstances we are not persuaded that a term of four years' custody, before full credit for the guilty plea, was manifestly excessive. This is so particularly in circumstances where the sentence was ordered to run concurrently with the previous sentence of 27 months. It is to be remembered that that sentence had been imposed for a subsequent domestic burglary, committed whilst the appellant was on bail for this offence.

18. For all these reasons the appeal will be dismissed.

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