IN THE COURT OF APPEAL

CRIMINAL DIVISION

CASE NO 202100148/A3-202001783/A3

NEUTRAL CITATION NUMBER: [2021] EWCA Crim 1251

Royal Courts of Justice

Strand

London

WC2A 2LL

Thursday 29 July 2021

LORD JUSTICE HOLROYDE

MRS JUSTICE THORNTON DBE

HER HONOUR JUDGE DHIR QC

(Sitting as a Judge of the CACD)

REGINA

V

DAVID JORDAN LEADBEATER

ROMULUS BIRCEA

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MR M DACEY appeared on behalf of the Applicant Leadbeater.

MR M COGAN appeared on behalf of the Applicant Bircea.

MR W CARTER appeared on behalf of the Crown.

J U D G M E N T

1. LORD JUSTICE HOLROYDE: Each of these two cases raises an issue as to a court's power to order the disqualification from driving of an offender. For that reason, though otherwise unrelated, they have been listed for hearing together.
2. We begin by giving a brief summary of the facts of each case. For convenience only, and intending no disrespect, we shall refer to the applicants by their surnames.
3. The applicant, Leadbeater, pleaded guilty to three offences: conspiracy to rob (count 2); handling a stolen Mercedes car (count 4) and handling a stolen Transit van (count 5). He was sentenced by HHJ Gumpert in the Crown Court at Woolwich on 18 December 2020.
4. In late July 2019 Leadbeater had been seen driving the Mercedes, which had recently been stolen and fitted with false number plates. Three weeks later, in mid-August, he was seen driving the Transit, which had similarly been stolen and fitted with false plates.
5. As to count 2, Leadbeater, his co-accused and others unknown conspired to rob persons delivering cash in transit. They carefully planned and prepared the robberies. For the purposes of their reconnaissance trips and of the robberies themselves, they used vehicles (some of them stolen) which they fitted with false number plates. When carrying out the robberies they disguised themselves with balaclavas.
6. Leadbeater admitted direct involvement in three of the five substantial offences encompassed by the conspiracy. On 17 February 2020, a security guard at a bingo hall was knocked to the ground and robbed of more than £6,500. The robbers escaped in a stolen Range Rover driven by Leadbeater. On 4 March 2020, a cash-in-transit driver delivering to a post office was knocked to the ground and robbed of £22,000. One of the robbers was armed with a screwdriver. The robbers again escaped in a stolen Range Rover driven by Leadbeater. On 12 June 2020 a guard delivering cash to a different post office was attacked from behind, knocked down and robbed of £28,000. The robbers attempted to escape in a van driven by Leadbeater, who collided with a police car as he tried to get away. They were all caught.
7. Leadbeater pleaded guilty on the basis that he became involved in the conspiracy shortly before the first of those robberies, and that it was no part of the agreement that offensive weapons would be carried or used.
8. Although he was only 31 years old at the date of sentencing, Leadbeater had a very bad criminal record. He had been sentenced on 28 occasions for a total of 68 offences including driving offences and offences of burglary. At the time of these offences he was on licence from a sentence of 5 years' imprisonment for robbery, which had been imposed in June 2013 and ordered to run consecutively to a sentence of 6 years' imprisonment imposed a few weeks earlier for an offence of conspiracy to burgle dwellings. Unsurprisingly, no pre-sentence report was thought to be necessary and none is necessary now.
9. The judge found that Leadbeater had played an essential role in the preparations which had enabled the conspiracy to be successful for a time. He considered the Sentencing Council's definitive guideline for professionally-planned commercial robberies and held that the 12 June 2020 robbery, if it had stood alone, would have been a category B1 offence, with a starting point of 9 years' custody and a range from 7 to 14 years. Taking into account that this was a conspiracy, and that Leadbeater had been a direct participant in three robberies, the judge moved upwards to 13 years. He found the offending to be aggravated by Leadbeater's previous convictions, the fact that he was on licence, the use of face coverings and the dangerous driving during the attempt to escape arrest after the

12 June robbery. He also reflected the handling offences in the overall sentence. These various factors increased the total sentence to 16 years and 6 months' imprisonment, but the judge reduced that by 6 months to reflect what he regarded as the only mitigating factor, namely the particular difficulties facing prisoners during the pandemic. In that way he arrived at an overall sentence of 16 years' imprisonment. He allowed full credit for the guilty pleas. He imposed a sentence of 10 years 8 months' imprisonment on count 2, with concurrent sentences of 4 months' imprisonment on each of counts 4 and 5.

10. As to disqualification the judge at pages 7H-8H of his sentencing remarks said this:

> "In addition, under section 147 of the Powers of Criminal Courts (Sentencing) Act 2000, I consider that given your role as the designated getaway driver in the three robberies to which you admit to being a physical part, but most particularly your driving shortly before your arrest, that that driving was so dangerous that you ought to be disqualified."

11. The judge indicated that the discretionary period of disqualification he would impose was 5 years. He added, pursuant to section 35A of the Road Traffic Offenders Act 1998, an extension period of 7 years. He therefore ordered that Leadbeater be disqualified for 12 years.
12. Leadbeater's application for leave to appeal against sentence has been referred to the full court by the Registrar. We have been assisted by submissions from Mr Dacey, who represents the applicant in this court as he did below and for Mr Carter, who appears in this court for the respondent to both applications.
13. The first ground of appeal advanced on behalf of Leadbeater is that the prison sentence was wrong in principle and/or manifestly excessive in length. Mr Dacey submits that the judge was wrong to move so far upwards from the guideline starting point, and fell into the error of double counting in relation to some of the aggravating features. Mr Dacey also suggested some element of unfair disparity between the sentencing of Leadbeater and the sentencing of one of his co-accused.
14. The second ground of appeal is that the judge had no power under section 147 of the 2000 Act to disqualify Leadbeater. In the alternative to that argument, Mr Dacey submits that the discretionary period of disqualification was too long and that the extension period should have been based on one-half rather than two-thirds of the custodial term.
15. In opposing the first ground of appeal Mr Carter points out that the guideline relates to a single substantive offence. He further refers to the indication in the guideline itself that where there are multiple offences, or an offence of conspiracy to commit multiple offences of particular severity, sentences in excess 20 years "may be appropriate". Mr Carter submits that Leadbeater was involved throughout the 4 months' duration of the conspiracy, during which a total of four robberies and one attempted robbery were committed.
16. It is convenient to consider the first ground of appeal now and to postpone our consideration of Leadbeater's second ground of appeal until later in this judgment.
17. We agree with the judge that the robbery on 12 June 2020, viewed in isolation, was a category 1B offence. Leadbeater had however also been active in two further robberies

which, if viewed in isolation, would have been category 2B (with a starting point of 5 years' custody) and 1B offences respectively. By his plea Leadbeater also admitted his involvement in the wider conspiracy. He also fell to be sentenced for the earlier handling offences. The judge was right to reflect those in the overall sentence on count 2 and to impose short concurrent sentences on counts 4 and 5; but they were separate, earlier incidents and, subject to totality, could in principle have been dealt with by consecutive sentences. The judge correctly identified the aggravating factors, and we agree with him that there was no mitigation other than the point which he identified, which could carry only limited weight when a substantial sentence was necessary for such serious offending. The appellant received full credit for his guilty pleas.

18. We have considered Mr Dacey's submissions in support of this ground of appeal but we are unable to accept them. In our judgment, the total sentence of 10 years 8 months' imprisonment on count 2 was a stiff sentence but was within the range properly open to the judge. We can see no arguable basis on which it could be said that the sentence was wrong in principle or manifestly excessive.
19. We turn next to the application of Bircea, who pleaded guilty to an offence of conspiracy to rob. On 3 July 2020, in the Crown Court at Cambridge, he was sentenced by HHJ Bridge to 8 years' imprisonment and disqualified from driving for 6 years 6 months. His application for leave to appeal again sentence was refused by the single judge. It is renewed to the full court only in respect of the order for disqualification. We have heard submissions on that issue from Mr Cogan, who did not appear below and for whose assistance we are grateful, and again from Mr Carter.
20. Bircea was part of an organised crime ring who, over a period of about 6 weeks in October and November 2019, committed 41 burglaries or attempted burglaries of dwellings. The offences were committed across a wide geographical area and the conspirators frequently used two vehicles, one of which was a Mazda car registered to Bircea. Property with an aggregate monetary value approaching £250,000 was stolen and items of great sentimental value were stolen. The burglaries typically involved entry being gained by smashing a window or forcing a door. They were characterised by extensive and untidy searches, leaving homes in a state of disarray which increased the distress suffered by the victims. On more than one occasion the burglars were involved in confrontations with the unfortunate householders. Bircea was linked to 32 of the substantive offences. One of those was a burglary in which the two female residents were pushed, and one of them kicked in the stomach, as they tried to prevent the theft of their jewellery.
21. Bircea (aged 49 at the date of sentence) had no previous convictions in this country. He had however been convicted in his native Romania of offences of robbery in 2004 and fraud in 2014. He had received sentences for those offences of 8 years' imprisonment and 2 years 6 months' imprisonment respectively. He had also been convicted of an offence of theft in Germany in 2017. The judge in his sentencing remarks rightly characterised Bircea as a career criminal.
22. The judge considered the Sentencing Council's definitive guideline for burglary of dwellings and found that this was a conspiracy to commit offences falling within category 1 of that guideline, with a starting point of 3 years' custody and a range from 2 to 6 years for a single offence. He rightly noted that Bircea had admitted participation in a conspiracy going beyond the burglaries in which he had personally played a direct role.

He took into account the difficulties faced by prisoners during the pandemic. Having regard to the number of offences in which Bircea was involved, and all other relevant matters, the judge concluded that the appropriate sentence, after trial, would have been 12 years' imprisonment. He allowed full credit for the guilty plea and so imposed a sentence of 8 years' imprisonment.

23. The judge in his sentencing remarks then said at page 6C:

> "You were driving your Mazda vehicle, assisting those, and no doubt yourself, going into properties to steal and I consider, in the circumstances, I must mark this offence with a driving disqualification for a period and the shortest period that I consider appropriate is one of three years."

24. That period was extended pursuant to section 35A of the 1988 Act by 3 years 6 months, an extension which involved some generous rounding down in Bircea's favour to take account of time spent on remand in custody.
25. In the written grounds of appeal against that order for disqualification, his previous advocate submitted that the judge appeared to be purporting to make his order for disqualification pursuant to section 147 of the Powers of Criminal Courts (Sentencing) Act 2000. He submits that the judge had no power to make an order under that section. Mr Cogan has developed that point in his oral submissions to us today.
26. We now turn to consider the issues raised in relation to the orders for disqualification in these two cases. As we have said, the judge in Leadbeater's case was explicit about his reliance on section 147 of the 2000 Act. The judge in Bircea's case was less explicit, but we accept the submission that he too relied on that section.
27. So far as is material for present purposes sections 146 and 147 of the 2000 Act were in the following terms:

> "146 **Driving disqualification for any offence.**
> (1) The court by or before which a person is convicted of an offence committed after 31st December 1997 may, instead of or in addition to dealing with him in any other way, order him to be disqualified, for such period as it thinks fit, for holding or obtaining a driving licence.
> ..."
>
> "147 **Driving disqualification where vehicle used for purposes of crime.**
> (1)This section applies where a person—
> (a) is convicted before the Crown Court of an offence punishable on indictment with imprisonment for a term of two years or more; or
>
> (b) having been convicted by a magistrates' court of such an offence, is committed under section 3 above to the Crown Court for sentence
> ...

> (3)If, in a case to which this section applies by virtue of subsection (1) above, the Crown Court is satisfied that a motor vehicle was used (by the person convicted or by anyone else) for the purpose of committing, or facilitating the commission of, the offence in question, the court may order the person convicted to be disqualified, for such period as the court thinks fit, for holding or obtaining a driving licence
>
> ....
>
> (6) Facilitating the commission of an offence shall be taken for the purposes of this section to include the taking of any steps after it has been committed for the purpose of disposing of any property to which it relates or of avoiding apprehension or detection."

28. The statutory predecessors of those sections, sections 43 and 44 of the Powers of Criminal Courts Act 1993, were in materially the same terms.
29. Although we are not directly concerned with it, we note that for offences sentenced after 1st December 2020 the corresponding statutory provisions are now to be found in sections 162 to 164 of the Sentencing Code introduced by the Sentencing Act 2020. It is unnecessary for present purposes for us to consider those provisions in any detail, but we would observe that at first blush the general power of disqualification available for any offence, provided by section 163 of the Sentencing Code, seems to be in somewhat wider terms even than section 146 of the 2000 Act.
30. We have helpfully been referred by counsel to a number of cases. In R v Riley (1983) 5 Cr App R(S) 335, it was held that where an offender is convicted of conspiracy to commit an offence (in that case conspiracy to steal) the power to disqualify him from driving, under section 44 of the 1993 Act, is not available if the vehicle is used only in connection with acts done in pursuance of the conspiracy, but it may be available where the vehicle is used directly in the formation of the conspiracy itself. The appellant in that case had pleaded guilty to conspiracy to steal on a single day, an earlier charge of conspiracy to steal over a period of several days not having been pursued. He had been seen using a van to visit and inspect target properties. That was held to be use of the vehicle in pursuit of an agreement which had already been made, and an order for disqualification, under section 44 of the 1993 Act, was quashed.
31. In R v Devine (1990-91) 12 Cr App R(S) 235, the appellant pleaded guilty to conspiracy to rob. As he and his accomplice approached the target security van the police intercepted them and the appellant drove away at high speed in an attempt to evade arrest. The court drew attention to the definition of "facilitating the commission of the offence" contained in section 43(2) of the 1993 Act (materially the same as that later contained in section 147(6) of the 2000 Act) which applied to section 44. It was held that on the facts the appellant was clearly using the van for the purpose of avoiding apprehension or detention in relation to the conspiracy and his disqualification had therefore been imposed properly.
32. In R v Langley [2014] EWCA Crim 1284, the appellant was convicted of conspiracy to commit robbery. He was the getaway driver at six robberies. He was disqualified from

driving pursuant to section 147 of the 2000 Act. The court considered both Riley and Devine and noted that section 43(2) of the 1973 Act was not mentioned in the judgment in Riley. The court further noted that section 147(6) of the 2000 Act is in the same terms as section 43(2) of its statutory predecessor. The car driven by Langley was clearly used to avoid apprehension and detection after the commission of the robberies and to take the stolen property away from the scene of the crime. His disqualification was therefore appropriate.

33. The court added that in any event the Crown Court had had the power to disqualify the appellant pursuant to section 146 of the 2000 Act.
34. The generality of the power to disqualify under section 146 was similarly mentioned in R v Cox [2018] EWCA Crim 1871.
35. In R v Gorry [2019] 1 Cr App R(S) 8, the two appellants had been convicted of conspiracy to burgle and conspiracy to steal. On a number of occasions they had entered houses, stolen car keys and other items and used the stolen keys to steal the cars parked outside the houses. The judge found that the appellant, Coulson, would use his car to collect Gorry and drive to the target premises. Gorry would then drive the stolen car away followed by Coulson in his car. The judge ordered that both appellants be disqualified.
36. On appeal, a two-judge constitution of this court noted that the judge appeared to have relied on section 147(3) of the 2000 Act, though she had not identified the power which she was purporting to exercise. It was held, relying on Riley, that the judge had no power to disqualify the appellants. The only type of conspiracy for which a defendant could be disqualified, under section 147(3), was one in which the vehicle was used directly in the formation of the conspiracy itself. The mere fact that vehicles were used in acts performed in furtherance of a conspiracy were not sufficient to engage the powers in section 147.
37. Reflecting on those cases, we particularly note the absence from the report of Riley of any indication as to whether section 43(2) of the 1993 Act was considered. We recognise however that the comparative brevity of the report may disguise what could have been detailed submissions. In any event, the decision in Riley has stood for nearly 40 years, with later cases considering the limits of the principle which it establishes rather than challenging the principle itself. We therefore respectfully accept it as authority that, where an offender has been convicted of conspiracy to steal, burgle or to rob, the mere fact that he has used a vehicle in the course of some overt act, relied on as evidence of the conspiracy, would not in itself necessarily suffice to give a court power to disqualify pursuant to section 147 of the 2000 Act.
38. It is however entirely clear in our judgment that where the use of the vehicle comes within the definition of "facilitating the commission of the offence" provided by section 147(6), then the court would have power to disqualify pursuant to section 147(3). It is, in our view, important to note that the definition in section 147(6) is not limited to "a getaway driver", in the dramatic sense of that term which may be appropriate in a Hollywood film. It includes use of a vehicle simply to remove the offender from the scene of crime so as to make it less likely that he would be detected or apprehended, or to remove goods stolen in the crime.
39. We recognise that this analysis of the case law results in what may seem to be artificial distinctions, for example between use of a vehicle to drive to the scene of a burglary or

robbery committed pursuant to a conspiracy and using a vehicle to drive away from that scene. That however seems to us to be the consequence of the case law to which we have referred.

40. There can, in our view, be no doubt that by driving away the stolen cars, both the appellants in Gorry were taking steps to dispose of property to which the conspiracies related and both were therefore facilitating the commission of the conspiracies within the meaning of section 147(3) and (6). Unfortunately, however, it is clear from the report that Devine and Langley were not cited to the court by counsel for the appellants, as they plainly should have been, and the respondent was not represented. Had the court's attention been drawn to those two cases, we have no doubt that the decision would have been different. With all respect to the court, we are therefore satisfied that the decision in Gorry was made *per incuriam* and should not be followed.
41. It is important to note also the width of the power to disqualify conferred by section 146 of the 2000 Act, and now by section 163 of the Sentencing Code. In many cases of conspiracy, reliance on that section will avoid the problems which might arise if section 147 is invoked and, in particular, will avoid artificial distinctions of the kind to which we have referred. Whilst of course not purporting to make any general statement intended to cover every conceivable circumstance which may arise in the future, it does seem to us that in any case of conspiracy in which it is at least arguable that section 147 or its modern successor may apply, section 146 or its modern successor certainly will apply. Reliance on that general power may therefore be thought to be desirable, and we are bound to observe that we have been somewhat puzzled as to why it has not apparently been used more often in the past, given the difficulties which have arisen under section 147.
42. Returning to the present cases, in each of them the applicants were, on any view, using vehicles in order to commit the substantive offences encompassed by the conspiracy. It is in our judgment therefore entirely clear that the judges would have been able to use their powers under section 146 in each of the two cases, and indeed all counsel before us accepted that that was so. It is in those circumstances unnecessary for us to explore what limitations there may be on the generality of section 146 of the 2000 Act or, now, on section 163 of the Sentencing Code.
43. Finally, it must be remembered that by section 11(3) of the Criminal Appeal Act 1968, if this Court considers that an appellant should be sentenced differently for an offence for which he was dealt with by the court below, it has the power to quash any order which is the subject of the appeal and in place of it to make such order as the court thinks appropriate for the case and as the court below had power to make.
44. In the light of those reflections, we reach the following conclusions about these applicants.
45. In our judgment, Leadbeater's case is indistinguishable from Langley. Leadbeater was the getaway driver in relation to three robberies. On each occasion he used a vehicle both to remove himself and his accomplices from the scene of the crime in order to avoid their apprehension or detection and for the purpose of disposing of the stolen cash. The judge was entitled to disqualify him pursuant to section 147 of the 2000 Act.
46. The same reasoning applies, in our judgment, to Bircea: over a period of weeks he repeatedly used vehicles to drive himself and his accomplices, not only to the target premises but, importantly, away from those premises with the stolen property. He too

falls within the definition in section 147(6) of the 2000 Act of facilitating the commission of the offence in question. He too was rightly disqualified pursuant to section 147(3).

47. If in either of these cases we had come to a different conclusion about the application of section 147 of the 2000 Act, we would in any event have been satisfied that the judge had power to disqualify pursuant to section 146 of that Act and we would have exercised our power under section 11(3) of the Criminal Appeal Act 1968 accordingly. In each of these cases therefore, the point of principle raised by the applicants fails.
48. We turn, finally, to consider the challenge to the length of the disqualification imposed in Leadbeater's case. We should note that in Bircea's case it was realistically recognised that if the judge was entitled to disqualify under section 147 of the 2000 Act, there could be no challenge to the length of the order made.
49. In Leadbeater's case, we are unable to accept the submission that the discretionary period of 5 years was too long. We recognise that an unduly lengthy period of disqualification can impede the rehabilitation of an offender after he has served his prison sentence, and we have considered the submissions helpfully made to us in that regard by Mr Dacey. Leadbeater however had repeatedly committed offences relating to the use of vehicles, and at the time of these serious robberies he was already subject to a requirement that he must take and pass an extended driving test before being permitted to drive even after an earlier period of disqualification ended. In the circumstances of his case, it is in our view impossible to say that the 5-year discretionary period was manifestly excessive.
50. We accept however that the judge fell into error in basing the extension period on two-thirds of the custodial term. Where a sentence is imposed pursuant to the Release of Prisoners (Alteration of Relevant Proportion of Sentence) Order 2020, amendments to the Powers of Criminal Courts (Sentencing) Act 2000 provided in section 147A(4)(a) to (g) for a number of changes and for application to extension periods. However, as we was noted by this Court in the Attorney-General's Reference (R v Long, Bowers and Cole) [2020] EWCA Crim 1729, at paragraphs 97-101, it was clear that that statutory amendment did not cover a situation such as has arisen in Leadbeater's case. In that Attorney-General's Reference, it was submitted on behalf of the prosecution that that revealed an unintended statutory lacuna. Whether that be correct or not, we are satisfied that the same point applies in Leadbeater's case.
51. The consequence is that the judge should have based the extension period on one-half of the custodial term. We note that the risk of an inadvertent error such as occurred here is reduced now that the Sentencing Code is in force, the provisions of section 166 of that Code avoiding, we anticipate, any similar lacuna.
52. For those reasons our decisions in summary are as follows: in Leadbeater's case, we grant leave to appeal and allow the appeal to this very limited extent only. We quash the order for disqualification and substitute for it an order pursuant to section 147 of the Powers of Criminal Courts (Sentencing) Act 2000 that Leadbeater be disqualified from driving for 10 years 4 months, comprising a discretionary disqualification of 5 years and an extension period pursuant to section 35A of the Road Traffic Offenders Act 1988 of 5 years 4 months. In all other respects his sentencing remains as before.
53. In Bircea's case, we refuse the application for leave to appeal against sentence. His sentence accordingly remains as before.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

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