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IN THE COURT OF APPEAL  
CRIMINAL DIVISION

Case No: 2021/00882/A1  
NCN: [2021] EWCA Crim 1466



Royal Courts of Justice  
The Strand  
London  
WC2A 2LL

Wednesday 6<sup>th</sup> October 2021

**LORD JUSTICE HOLROYDE**

**MR JUSTICE HOLGATE**

**MRS JUSTICE COCKERILL DBE**

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**REGINA**

**- v -**

**ZEPHON GOODMAN**

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**Mr Omran Belhadi** appeared on behalf of the Appellant

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**JUDGMENT**

Wednesday 6<sup>th</sup> October 2021

**MR JUSTICE HOLGATE:**

1. On 18<sup>th</sup> September 2020, in the Crown Court at Croydon, the appellant pleaded guilty to one count of attempted robbery, committed on 1<sup>st</sup> February 2020. On 11<sup>th</sup> November 2020, in the same court, the appellant pleaded guilty to one count of robbery, committed on 12<sup>th</sup> January 2020.
2. On 26<sup>th</sup> February 2021, the appellant was sentenced by Mr Recorder Dawson to 4 years' imprisonment for the robbery and to 3 years' imprisonment consecutive for the attempted robbery, making a total of 7 years' imprisonment. These sentences also took into account three further offences: theft of a buggy on 31<sup>st</sup> December 2019; burglary of a non-dwelling on 1<sup>st</sup> January 2020; and burglary of a dwelling on 26<sup>th</sup> January 2020. The appellant appeals against sentence with the leave of the single judge.
3. On 12<sup>th</sup> January 2020, at 3pm, Mr David Evans, a retired man, went to a cash point in Lower Addiscombe Road in Croydon to withdraw some money. Mr Evans put his card into the machine when the appellant, who was holding a screwdriver at chest height, asked him for £10. Although Mr Evans was scared by the appellant's behaviour, he refused to give him the money. At that point the appellant pushed Mr Evans out of the way, pressed the £100 slot on the cash machine and grabbed the money it provided. There followed a tussle in which Mr Evans tried to stop the appellant taking the money. Members of the public came to his assistance and £90 was recovered from the appellant. The appellant then followed Mr Evans into a park and shouted at him before he left. The police were called. The appellant was found soon afterwards and arrested. In interview, he mainly answered "no comment" to questions asked by the police. He stated that he could not remember the incident.
4. On 1<sup>st</sup> February 2020, at 11am, Mr Dominic Wyscky went to a cash point in Mitcham Road, Croydon in order to top up his gas card. Once Mr Wyscky had placed his card into the machine and entered his PIN, the appellant grabbed him and said "Give me your card and £100". Mr Wyscky refused and the appellant pushed him to the ground and punched him at least four times. The appellant left the scene. Subsequently, a witness to the offence saw the appellant walking along the street. She called the police and pointed him out to them. He was arrested. In interview, he answered "no comment" to the questions put to him.
5. In relation to the theft, the appellant stole a buggy from a lady whilst she was asleep on a bus. At around 3am the following morning, the appellant was seen to enter through the fire door of restaurant premises and stole five televisions worth £1,750 in total. On 26<sup>th</sup> January 2020, the appellant entered a dwelling and stole some coats from a room at the front.
6. The victims, Mr Evans and Mr Wyscky, were both left feeling very shocked by the robberies committed against them.
7. The appellant was born on 17<sup>th</sup> May 1985. He had 47 convictions for 90 offences spanning from 30<sup>th</sup> May 2001 to 10<sup>th</sup> December 2019. His relevant convictions included offences against the person, offences against property, and theft. He had previously committed six offences of robbery. The first was committed on 20<sup>th</sup> August 2005. In February 2006, the appellant was sentenced to a Hospital Order. In respect of the next robbery, committed on 16<sup>th</sup> November 2008, he received a community order for 12 months. He then committed a robbery and an attempted robbery on 6<sup>th</sup> October 2010, for which he was sentenced for 3 years' imprisonment. Not long after he was released from that sentence, he committed two further robberies, for which he was sentenced to 6 years' imprisonment.

8. We consider that it was unnecessary for the Recorder to have ordered a pre-sentence report, or for this court to order a pre-appeal report.

9. The Recorder's sentencing remarks were so terse that we should quote the material part in full:

"You have pleaded guilty to one offence of robbery and one offence of attempted robbery. You have also asked me to take into account numerous other offences which you have committed over the period of time. You have a very poor record of committing these offences and the only possible sentence that the court can pass upon you is one of immediate custody.

In relation to the robbery where you used a weapon to rob David Evans, the sentence of the court is one of four years' imprisonment. In relation to the attempted robbery, the sentence of the court is one of three years' imprisonment. Those two sentences will run consecutively."

10. We are grateful to Mr Omran Belhadi for his clear and succinct submissions, both in writing and orally before us this morning. In summary, he submitted, first, that the Recorder failed to give proper reasons for the sentence he passed. Secondly, the Recorder failed to identify the starting point he had assessed for the robbery. He also failed to identify what the sentence would have been after taking into account aggravating and mitigating factors, but before allowing credit for the guilty plea. By implication, he had arrived at a sentence of 6 years after trial, which was manifestly excessive. Thirdly, the Recorder failed to address or give sufficient weight to the appellant's mitigation, in particular his mental health symptoms at the time of the offending. Fourthly, the Recorder failed to reflect the impact of the Covid-19 pandemic in the total length of the sentence passed.

### **Discussion**

11. Plainly, the sentencing remarks failed to provide any proper reasoning to support the sentence imposed by the Recorder (see, for example, *R v Chin-Charles* [2019] 1 WLR 5921 and *R v Hacatorogolu* [2015] 2 Cr App R(S) 67). They did not identify the sentencing category into which each offence fell in accordance with the relevant guidelines, the starting point and range, the fact that adjustments had been made for aggravating and mitigating factors, and the credit allowed for guilty pleas.

12. Whilst appropriate brevity is commendable, the sentencing remarks in this case were wholly inadequate. However, that of itself would not result in the appeal being successful. The issue for this court remains whether either or both of the sentences imposed were manifestly excessive.

13. We agree that the robbery and the attempted robbery both fell into category 2B. In the case of the robbery, a weapon was produced; and the force used in the attempted robbery was more than minimal. It is not suggested that any mental health issues were linked to the commission of the offences. The starting point was 4 years' custody, within a range of 3 to 6 years, although the fact that the offence committed on 1<sup>st</sup> February 2020 was an attempt required a downwards adjustment.

14. There is no dispute that consecutive sentences were appropriate, so long as the totality principle was respected. The fact that the Recorder imposed a sentence of 3 years'

imprisonment for the attempted robbery, as compared to 4 years for the completed offence suggests that he did not take totality into account. He certainly did not refer to the principle.

15. The offences which the appellant asked to be taken into account were aggravating features. The domestic burglary fell into category 2, with a starting point of 1 year, within a range of a high level community order to 2 years' custody. The non-domestic burglary fell within category 2, with a starting point of 18 weeks' custody, within a range from a low level community order to 51 weeks' custody. The theft fell within category 4C, with a starting point of a band B fine. The appellant was entitled to credit for admitting these additional offences at an early stage. On the other hand, the appellant's previous offending, particularly for a number of robberies, was a serious additional aggravating factor.

16. As for mental health issues, the appellant has a history of paranoid schizophrenia. On 17<sup>th</sup> January 2020, he was admitted to hospital because of the risk he posed to others, and the risk of a deterioration in his mental health. We understand that he was released before he committed the attempted robbery on 1<sup>st</sup> February. He was homeless at that time. With regard to the guideline dealing with mental disorders, this was a case where immediate custody was inevitable, but some reduction in length of sentence was called for.

17. With regard to the effect of the pandemic, in *R v Lockley* [2021] EWCA Crim 1296 at [44] it was indicated that the more serious the offending and the longer the sentence of imprisonment, so any deduction for the effect of the pandemic on conditions of imprisonment tends to diminish. In our judgment, this factor attracts little weight in the present case.

18. Having considered all these factors, in our judgment the appropriate sentence, before credit for the guilty plea, for the overall criminality involved in the robbery, the attempted robbery and the offences taken into consideration was 7½ years' imprisonment.

19. We accept Mr Belhadi's submission that the appellant was entitled to full credit for his guilty pleas, having carefully reviewed the court logs to understand the procedural sequence which was followed.

20. Accordingly, we quash the sentences imposed and substitute a term of 3 years' imprisonment for the robbery and a consecutive term of 2 years' imprisonment for the attempted robbery, making an overall term of 5 years' imprisonment. To that extent only this appeal is allowed.

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