

**WARNING: reporting restrictions may apply to the contents transcribed in this document, particularly if the case concerned a sexual offence or involved a child. Reporting restrictions prohibit the publication of the applicable information to the public or any section of the public, in writing, in a broadcast or by means of the internet, including social media. Anyone who receives a copy of this transcript is responsible in law for making sure that applicable restrictions are not breached. A person who breaches a reporting restriction is liable to a fine and/or imprisonment. For guidance on whether reporting restrictions apply, and to what information, ask at the court office or take legal advice.**

**This Transcript is Crown Copyright. It may not be reproduced in whole or in part other than in accordance with relevant licence or with the express consent of the Authority. All rights are reserved.**

IN THE COURT OF APPEAL

CRIMINAL DIVISION

[2021] EWCA Crim 1794



No. 202101443 A2

Royal Courts of Justice

Tuesday, 2 November 2021

Before:

LORD JUSTICE POPPLEWELL

MR JUSTICE SPENCER

HIS HONOUR JUDGE KEARL QC RECORDER OF LEEDS

REGINA

V

ZACHARY ISMAIL CAPEL

---

Computer-aided Transcript prepared from the Stenographic Notes of  
Opus 2 International Ltd.

Official Court Reporters and Audio Transcribers

5 New Street Square, London, EC4A 3BF

Tel: 020 7831 5627 Fax: 020 7831 7737

[CACD.ACO@opus2.digital](mailto:CACD.ACO@opus2.digital)

---

**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.
- 2 On 16 April 2021, in the Crown Court at Bradford, the applicant (now aged 44) was sentenced to a total of five years' imprisonment for offences of domestic burglary, handling stolen goods and theft. He had pleaded guilty to the offences, but in the case of one of the burglaries only on the morning of trial. He had a long record for offences of domestic burglary and was liable, once again, to a minimum sentence of three years as a "three strikes" burglar under the regime now contained in s.314 of the Sentencing Act 2020.
- 3 We need summarise the facts only very briefly. The victim of the first burglary was an 88-year-old woman living alone at a house in Bradford. On 10 May 2019, she went to bed at 11.30 p.m. checking her doors and windows were locked. She woke up at 5.00 a.m. to discover there were lights on in the house, including in her bedroom. Cash and bank cards had been stolen from her handbag in the bedroom as she slept. The kitchen window had been forced to gain entry. The applicant had attempted, unsuccessfully, to use the bank cards on several occasions between 3.00 a.m. and 4.00 a.m. There was CCTV footage of the applicant in a distinctive vehicle at a McDonald's drive-through. The applicant was arrested and interviewed two days later on 13 May. He denied the offence.
- 4 Some six weeks later, on 22 June 2019, the applicant was found in possession of a holdall stolen in a burglary at a house in the Heaton area of Bradford the previous day. He was arrested and interviewed and made no comment. That was Count 2, handling stolen goods.
- 5 The second domestic burglary for which he fell to be sentenced was committed some eight months later on 21 February 2020. The applicant had not at that stage been charged with the earlier offences but was plainly aware that it was only a matter of time. He was not formally on bail, having apparently been released under investigation. The second domestic burglary was also a night time offence in Bradford. The householder went to bed at around 2.00 a.m. She woke up at 8.00 a.m. to find that a downstairs window had been forced and a laptop computer stolen. The keys of her Mazda CX3 had also been stolen. That vehicle, valued at £11,000, had been taken from the driveway. Forensic evidence linked the applicant to the burglary. He was interviewed on 1 April 2020 and made no comment.
- 6 On 28 May 2020 the applicant pleaded guilty at the Crown Court to the second domestic burglary and theft of the vehicle. However, initially he contested the earlier burglary and the handling charge. There was a co-accused. They both applied unsuccessfully to dismiss the charges. The applicant's trial was then set for 10 April 2021. He eventually pleaded guilty on the day of trial.
- 7 The applicant had a very extensive record for offences of dishonesty. He had been sentenced as a "three-strikes" burglar on five previous occasions. There was no pre-sentence report, nor was a report necessary in the circumstances. A further lengthy sentence of imprisonment was inevitable.
- 8 By the time he was sentenced for these offences on 16 April 2021, he had spent nearly 12 months in custody on remand. It is evident that he had made good progress in prison during this period, even studying for an Open University degree. The judge also had an impressive letter from the applicant's mother, explaining that his continued offending was related to his drug addiction, which he had been addressing on remand in custody.

- 9 For each of these two domestic burglaries, the judge was required to impose a minimum sentence of three years' imprisonment, unless there were particular circumstances relating to the offences or the offender which would make it unjust to do so. The judge plainly had totality well in mind. In his sentencing remarks, he identified the appropriate sentence for each of the burglaries had each stood alone.
- 10 For the first burglary of the 88-year-old lady's house, the sentence after trial would have been four and a half years. With credit for his guilty plea on the day of trial, the judge reduced this to four years. He imposed a concurrent sentence for the offence of handling the holdall stolen in a separate later burglary.
- 11 Turning to the second burglary, where the car was stolen from the driveway, the judge said he would have imposed a minimum term of three years, reduced by the permitted maximum of 20 per cent, resulting in a sentence of two years and five months.
- 12 However, the judge then had to consider totality. Consecutive sentences were called for, but he recognised that a total sentence of six years and five months would have been too long. Therefore, having regard to totality and to the applicant's personal circumstances and mitigation, including his determination to "forswear crime of this kind", as the judge put it, the sentence for the second burglary was reduced to 12 months, but that would have to be consecutive to the four years for the first burglary. There was a concurrent sentence of 12 months for the theft of the vehicle. The total sentence was, therefore, five years.
- 13 In the grounds of appeal, settled by counsel, it is contended that the appropriate sentence for the first burglary should have been three years, not four. It is said that insufficient regard was paid to the progress the applicant had made during the long and onerous period of custody he had served on remand at the height of pandemic, during which he had started to address the root cause of his offending.
- 14 Like the single judge, we are quite unable to accept that this total sentence of five years was even arguably manifestly excessive. The first of the burglaries was a category 1 offence with a starting point of three years. The aggravating factors identified by the judge amply justified an increase to four and a half years after trial. The judge had reduced that to four years, allowing rather more than 10 per cent credit for plea on the day of trial. With totality firmly in mind, the judge then reduced to only 12 months the sentence for the second burglary and associated theft of the vehicle. There had to be consecutive sentences because there were separate victims and, effectively, he was on bail for the first burglary when he committed the second.
- 15 The applicant could not have complained if the judge had imposed a longer total sentence. Instead, he made generous allowance for the applicant's personal mitigation and, in particular, the progress he had made in custody on remand. Those were the circumstances relating to the offender which the judge must have relied on in reaching the conclusion that it would be unjust to impose the required minimum of three years for the second burglary.
- 16 We agree with the single judge that in fact the sentence the judge passed was a merciful one. It is not remotely arguable that the total sentence of five years' imprisonment was manifestly excessive or in any way wrong in principle.
- 17 We have considered whether in these circumstances we should direct that some of the time served should not count towards sentence, even though the single judge gave the applicant no specific warning of this. The applicant has made no representations against such a course. However, in view of the good progress the applicant has been making in prison, and as a further act of mercy, we shall not on this occasion make a direction for loss of time.

---

**CERTIFICATE**

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the Judgment or part thereof.

*Transcribed by Opus 2 International Limited  
Official Court Reporters and Audio Transcribers*

*5 New Street Square, London, EC4A 3BF*

*Tel: 020 7831 5627 Fax: 020 7831 7737*

**CACD.ACO@opus2.digital**

This transcript has been approved by the Judge.