



JUDICIARY OF
ENGLAND AND WALES

Sentencing Remarks

HH Judge Robert Atherton

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v

Dane Wesley Twemlow, Thomas Downey, Conrad McGrath, Lloyd Brian Coudjoe, David Christopher Swarbrick and Anthony Winder

18 August 2011

at Manchester Crown Court

Riot Cases

Each of you is to be sentenced for offences which were committed on the night of Tuesday, 9th August. They all involve taking property from shops which had been broken into in Salford Shopping Precinct or Manchester City Centre. Often when the court is dealing with cases involving stealing, the fact that the property stolen was of low value will be a significant factor in determining the level if not the type of sentence to be imposed. But that is of much less significance in these cases; these offences must be seen in the context of the events of that night. On Tuesday of this week, His Honour Judge Gilbert Q.C., the Honorary Recorder of Manchester in sentencing the first of these cases to come before the Crown Court, set out in detail, the nature and effects of the events of that night. Each of your counsel or advocates has had a copy of those remarks and they are available on the internet for the general public to read. I do not propose to repeat in detail his description of those events and I adopt it for the purpose of these cases. I will, however add an aspect which in

my view is additionally relevant in assessing the gravity of the events and it is the effects upon people who were in the city that day and who were trying to go about their everyday duties whether in their jobs or shopping or there to socialise. Even before the actual violence began, the rumours supported by the growing groups of people was causing such people who were in the cities to make their way home, such was their fear of what might happen. When the violence began with the forcing of entry into and pillaging of shops, and aggression towards the Police, that anxiety increased. As it moved from street to street and from area to area people became increasingly frightened. To those who watched it on television or the internet both in this country and abroad expressions of horror and consternation were expressed.

I must also make it clear that I agree with everything he said as to the approach which the court must take to these cases. There were leaders and followers. Some went to the areas deliberately; some may have initially been by-standers. Some were there by accident. The sensible ones went home leaving the police and other services to do their jobs of restoring peace, stopping fires and trying to make property safe until the clear up began the following morning. Some were probably encouraged to be involved on seeing others doing it. But they became involved and bear a substantial responsibility.

These offences were looting. It was being carried on by a large number. You were amongst them. That is the reason that low value is of less significance in these cases. The approach was "I want it; I'll take it. I don't care whose it is, it's mine now."

The law requires the court when dealing with an offender to have regard to the purposes of sentencing. The relative importance of the purposes varies from case to case. They are set out by statute and specifically include the punishment of offenders, the reduction in crime including its reduction by deterrence, the protection of the public. In my judgment in these cases, those purposes must be of prime importance. In so saying I do not ignore the other important purposes of the reform and rehabilitation of offenders and the making of reparation where it is appropriate to do so. But they must generally be of less significance in these cases than may otherwise be the case.

I must have regard to the guidelines issued by the Sentencing Council and its predecessor and the guideline judgments of the Court of Appeal. They are guidelines and they

acknowledge that there are circumstances in which the court is entitled not to follow them and impose a sentence which the case demands. In so doing I must consider whether the circumstances of the case are such that only a custodial sentence is appropriate. In the case of any defendant who is of previous good character or has not previously served a prison sentence I must consider whether there is any possible alternative and even then must impose the least sentence of imprisonment possible. In this approach I expressly agree with the observations of HHJ Gilbert QC. In passing sentence on Tuesday, he set out the ranges of sentences which are to be imposed. I respectfully agree with those ranges. They are set upon the premise that the defendant has been convicted by a jury but was of good character. A defendant's personal history and attitudes are relevant features. Previous convictions and a defendant's response to previous court orders is relevant and may result in a significant increase in sentence. The best mitigation will usually be the plea of guilty and will be clearly reflected in the sentence imposed. The earlier it is entered, the greater the reduction.

I turn then to these cases. I have taken time overnight to consider the cases. I have re-read the reports and letters which some of you have sent me and I have thought about the submissions made by counsel and advocates. All of you pleaded guilty at the first opportunity. The guidelines indicate that the court should give a reduction of up to one third. It may reduce that figure if the evidence was overwhelming. I have considered whether I should follow that principle and have decided not to do so. I shall make the full reduction of one third of the sentence which otherwise would have been imposed in respect of each of you.

There are other comments which apply in all your cases. Firstly and most important, I acknowledge that none of you falls to be sentenced in respect of an offence of violence towards another person. There is no suggestion that anyone of you was involved in any organisation, planning or active encouragement. But your presence and participation in the offences you have committed added to the scope of the disturbances. The locations of your offences show the geographical extent of them. Salford Shopping Precinct, Oxford Street, St Anne's Square, Piccadilly Gardens and Oldham Street in the Northern Quarter.

I accept that none of you were amongst those who effected the actual break-ins of premises nor amongst the first to enter them. But four of you did enter and your sole purpose was to steal. You may have gained little even if you had escaped but that is of less importance as I have already said.

I shall now turn to your specific cases.

Dane Wesley Twemlow

You pleaded guilty to an offence of theft of a 32" television. You were arrested as you were carrying it from the direction of the Salford Shopping Precinct. It follows that the property was recovered. You say you found it in a trolley. There is no evidence to contradict that. It is said you would have had difficulty in taking that the 4 or 5 miles home. That did not deter you from trying. But those facts must be seen in the context of your activities leading up to taking that television. You had been on your way home when your attention was drawn to the Shopping Precinct. You stopped and watched for a period which you estimate at 2 hours. You saw shops broken into goods stolen and you told the police in interview that you saw "loads of TVs coming out of the precinct so that you couldn't believe how many." When you saw one, you decided to take it. You said you needed it.

I have read the detailed albeit Fast Delivery Pre-Sentence Report. It is very carefully balanced and cogently argued in favour of a non-custodial sentence. I regret that the circumstances are such that I cannot accede to the suggestion made. I am satisfied that the circumstances of the offence are so serious that only a prison sentence is appropriate.

You have an appalling record of criminal convictions. I acknowledge that since 2003 they have been offences of dishonesty rather than of violent or threatening behaviour. I accept that many will have been committed because of your addiction to drugs. I welcome the progress which you have made in reducing you addiction to heroin and hope that that will continue. On the other hand I note that you still indulge in cocaine from time to time and that you regularly spend a substantial part of your income on smoking cannabis. It should not be overlooked that during the term of the present Community Order you have twice been made subject to a Conditional Discharge for offences of theft.

In my judgment the appropriate sentence would have been 18 months imprisonment. Giving credit for your plea of guilty the sentence will be 12 months. There will be 1 month imprisonment on each of the theft charges which will run consecutively making a sentence of 14 months in all. You will have credit for the 8 days on remand and the community order will be discharged.

Thomas Downey

You pleaded guilty at the first available opportunity to an offence of burglary of a shop called "Krispy Kreme" which involved the taking of a quantity of food and a can of Coca Cola. You also pleaded guilty to the Breach of an Anti-Social Behaviour Order which had been imposed on the 19th November 2010 as a result of having entered into an area of the city from which you were excluded. I shall consider the two charges together. You are entitled to and receive credit for your early guilty plea.

You are an alcoholic. That is established by your record which shows that it is a chronic condition. You drink too much, too regularly and when in drink become threatening and abusive. Many attempts have been made to address that alcoholism but none seems to have had much success. It is a notable feature of your record that frequently you have left court only to return very soon after having committed another offence. Indeed on the evening before your arrest you had been released from prison and seem to have got no further than Piccadilly on your way to stay at someone's house.

You were found in the shop at 1.30am. The shop keeper turned you out when he came to board up after the shop had been ransacked. You were not involved in the entry nor amongst the many who had been there to steal. But you went back and helped yourself. The shop keeper described your condition in blunt terms "he was pissed".

I have read the Pre-Sentence Report which makes depressing reading. You have been realistic in your approach in your instructions to your counsel in acknowledging that this must be dealt with by an immediate prison sentence. It will not be the first prison sentence but I note that they have all been measured in weeks and I think the longest was 6 months. It is not the intention to provide a long period in which you will not be able to obtain alcohol but in fact this sentence may have that fortuitous result. The sentence but for your plea

would have been two years imprisonment. I reduce it to 16 months. You will have credit for the 8 days on remand. I make no separate penalty in respect of the breach of the Anti-Social Behaviour Order. I have reflected that fact in the sentence imposed.

Conrad McGrath

You pleaded guilty at the first available opportunity to an offence of burglary of Tesco Express on Oxford Street. You had followed the example of others in squeezing under the shutter and seeing what you could steal. You were found by the police at 10.35pm and tried to escape when you saw them.

You are 21 years old and I shall treat you as being of good character. You came into the city despite the advice of friends and your mother. That was stupid and you should have known better. You are a student at University and have thrown away a lot. It is a heavy price to pay for such behaviour. I hope that you will seek to continue a promising career after your release from prison.

I have read the Pre-Sentence Report. You are an intelligent young man and well able to understand the significance of the events of that night. I regret that I cannot accede to the suggestion made in the report because of the gravity of these offences. I am satisfied even for a young person of effectively good character that a prison sentence is inevitable.

I shall direct that a copy of the Pre-Sentence Report shall accompany you to prison and invite the Prison Governor to have regard specifically to the risks which could arise as can be seen in the top paragraph of Page 9.

The sentence will be 16 months after giving credit for your early plea of guilty.

Lloyd Brian Coudjoe

The offence which you committed is very similar to that of Conrad McGrath. It was the same shop and you too were caught when the police arrived. There is however a further feature to your case and it is that the evidence shows that you saw the events at Salford before going on to watch the attack upon the Arndale Centre and thence to Oxford Street. You were one who swelled the crowd and then became actively involved. You have previously

appeared before courts on two occasions. One was clearly serious and the fact that you breached the order three times gives some indication of your attitude and immaturity.

You too have thrown away your present opportunity in that you will not be able to continue your course of bricklaying. I hope that you will seek to continue such work on your release.

I have decided that you should be sentenced in the same way as Conrad McGrath despite the differences which I have noted. The sentence is therefore 16 months in a young offender Institution with credit for the 8 days served on remand.

David Christopher Swarbrick

You pleaded guilty at the first available opportunity to an offence of burglary of Quality Save, a shop on Oldham Street. You were arrested at 9.40pm and were found to have stolen a number of items of cosmetics. The value was low. You had seen the incidents in the city and took advantage of the situation.

You are almost 26 years of age. You have a lengthy record of offences of dishonesty which I accept may be due to your addiction. There have been many attempts to help you address the problem and indeed as recently as 15th June 2011 you were made the subject of a suspended sentence of 4 months and in respect of which you are now in breach.

I have read the letter which you have sent me and the Pre-Sentence Report. Your attitude towards your offending is to feel regret for the embarrassment which you have caused your family and the citizens of Manchester, yet on the other hand have described your general offending as being "an occupational hazard", your comment to the police was that "it's no big deal, it's only a bit of moisturiser."

In my judgment the appropriate sentence after a trial would have been 30 months imprisonment. I reduce it by one third to twenty months and the suspended sentence will take effect consecutively making 24 months in all. You will have credit for the 8 days on remand and the community order will be discharged.

Anthony Winder

You pleaded guilty at the first available opportunity to an offence of burglary with intent. The shop concerned was Swarkowski store at St Anne's Square. You were arrested there when you were found trying to break into a cabinet. It is to be observed that you were trying to obtain goods which were of comparatively higher value than the other defendants and were neither foodstuffs nor drink. The only purpose could have been to sell it or provide a nice ornament which otherwise you would have been unlikely to acquire. There was a number others also present and I note that the shop was ransacked. You sustained an injury when the police officer seeking to detain you struck you with his baton. I note that you do not make any complaint about that action and are realistic in not doing so.

You are 38 years old. You were certainly not a youth and in fact a man of considerable maturity and worldly experience. After a difficult early life you have made a highly respectable life for yourself and your family. You should have been at the forefront of leading people away from such activities but you became involved in. Now you have thrown so much away. You made a comment when arrested with which I have already indicated my view, that you summed yourself up well by it.

I have read your letter and the Pre-Sentence Report and I take into account the matters set out there. I have particular regard to the way in which you have matured and approached your adult life. You have incurred a substantial debt in order to accomplish that and I do not ignore it. You know better and need no lecture. I only hope that the reason for your involvement was because of the 10 cans of lager you had drunk. I regard your offence as serious and would but for your plea have imposed a sentence of three years. With the credit you are entitled to it is reduced to 2 years. Credit for the 8 days on remand obviously follows.

HHJ Robert Atherton

18th August 2011