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IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
Strand
London, WC2A 2LL

Wednesday, 19 June 2019

B e f o r e:
LORD JUSTICE HOLROYDE
MRS JUSTICE SIMLER DBE
MR JUSTICE JACOBS
R E G I N A
v
MICHAEL JOHN CRIMES

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Mr A Jamieson appeared on behalf of the **Appellant**

J U D G M E N T
(Approved)

1. LORD JUSTICE HOLROYDE: This appellant entered late guilty pleas to a total of five offences charged on three indictments. On 19 November 2018, in the Crown Court at Manchester (Crown Square), he was sentenced to a total of 6 years 6 months' imprisonment. He now appeals against his sentence by leave of the single judge.

2. The relevant facts can be briefly summarised as follows. For convenience we shall refer to persons mostly by their surnames only. We mean no disrespect to anyone by doing so.

3. On 1 January 2018 a Nissan Qashqai was stolen in Liverpool. On 4 January 2018 a Ford Focus was stolen from the same area of Liverpool. Both cars were subsequently fitted with false registration plates. The Qashqai was stopped by police in Manchester on 10 January 2018. The driver was a man called Morris, a friend of one D'maine Robinson, of whom we shall say more shortly. The appellant was a passenger in the car.

4. On 3 February 2018 the Ford Focus was driven from Liverpool to Manchester on a reconnaissance mission. On 4 February it was used to convey Robinson and an unidentified gunman from Liverpool to a restaurant in Manchester, where Robinson was to meet one Tyrell Thomasson. Unbeknown to Thomasson, this was part of a well-organised plan by an organised crime group to shoot Thomasson in the legs (in the manner known as "kneecapping"), in revenge for an earlier gang-related shooting thought to have been carried out by Thomasson's brother. This plan was successfully put into effect. Thomasson was lured into a trap by Robinson and was shot in the leg by the unidentified gunman. A second shot was also fired by the gunman, fortunately without hitting anyone.

5. The gunman and whoever was acting as his driver then drove away from the restaurant in the Ford Focus and went to the home of a woman called Cooper. She ordered a taxi which took the two men back to Liverpool. In the early hours of the following morning the stolen Ford Focus was destroyed by fire near to Cooper's address. It was this appellant, using substantial quantities of an accelerant, who set it on fire.

6. Robinson subsequently pleaded guilty to conspiracy to cause grievous bodily harm with intent and conspiracy to have a firearm with intent to commit an indictable offence. Following a Reference to this court by Her Majesty's Attorney General, his total sentence became one of 14 years 3 months' imprisonment. Further details of his case can be found in the transcript of the court's decision on the Attorney-General's Reference under neutral citations number [2019] EWCA Crim 257.

7. Cooper pleaded guilty to an offence of assisting an offender and was sentenced to 18 months' imprisonment suspended for 2 years. The gunman and his driver remain unidentified.

8. On 21 May 2018 police officers went to the appellant's home to arrest him in relation to the matters we have summarised. They found him arriving at his house in company

with a man called Maddix. Both men were in possession of bags which proved to contain a quantity of snap bags of amphetamine. Further amphetamine was found inside the house, of which Maddix claimed ownership. Notebooks containing names and numbers, and scales, were also found.

9. In the rear garden of the appellant's home the police officers found a Kawasaki motorcycle which had been taken during the course of a burglary in Manchester in early March 2018. That motorcycle had been partially stripped down and parts of it had been offered for sale on eBay by the appellant. The police officers also found, parked on the driveway of the house, a Ford Transit van, which had been stolen on the night of the 20 March 2018 and subsequently fitted with false number plates. Inside that van there was another motorcycle, which had been stolen in a burglary on the night of 2 April.

10. When interviewed under caution the appellant made no comment. He put forward a prepared statement, saying that he was unaware that the van, its contents and the Kawasaki motorcycle were stolen. He said that he had allowed an acquaintance to park the van on his drive as a favour and that he had bought the Kawasaki in good faith. He claimed that the amphetamine which the police had seized was all for his personal use and that the bags and scales which had been found were simply to monitor his own drug consumption. In the light of his later pleas, none of that was true.

11. On indictment T20187213A the appellant and Maddix were charged with possession of amphetamine with intent to supply. On indictment T20187213B the appellant was charged with three offence of handling stolen goods, these charges relating to the Kawasaki motorcycle, the Transit van and the other motorcycle respectively. For convenience, we shall refer to these as the "A" and "B" indictments.

12. On indictment T20187230, to which we shall refer simply as "7230" the appellant was charged in counts 1 and 2 with the two conspiracies of which Robinson was convicted. In counts 3 and 4 he was charged with two offences of participating in the criminal activities of an organised crime group, contrary to section 45(1)A of the Serious Crime Act 2015. Count 3 alleged that he knowingly took part in the activities of an organised crime group, "by assisting in the stealing of motor vehicles on behalf of a Salford organised crime group". Count 4 alleged that he had knowingly taken part in the activities of an organised crime group "by destroying a motor vehicle by fire on behalf of a Salford organised crime group".

13. At a plea and trial preparation hearing the appellant entered not guilty pleas to all of the charges. Subsequently, and in advance of the date set for the first of his trials, he pleaded guilty to the A indictment and to the counts in the B indictment which related to the Kawasaki motorcycle and the Ford Transit. Those pleas were acceptable to the prosecution. We should note in passing that Maddix also later pleaded guilty to the A indictment and was sentenced to 15 months' imprisonment suspended for 2 years.

14. The trial of indictment 7230 began on 5 November 2018. The jury was sworn, but the judge then allowed time for discussion between the parties and indicated that guilty

pleas at that stage would still attract a reduction of 10%. On 6 November the appellant pleaded guilty to counts 3 and 4. Those pleas were accepted.

15. The appellant was sentenced on 19 November 2018 by His Honour Judge Martin Walsh. No pre-sentence report was thought to be necessary, and we are satisfied that none is necessary at this stage. Counsel made submissions as to the categorisation of the offences charged in the A and B indictments in accordance with the relevant sentencing guidelines. In the absence of any sentencing guideline relating to the offence of participation in the criminal activities of an organised crime group, an offence which carries a maximum penalty of 5 years' imprisonment, prosecution counsel suggested that the judge might wish to consider the guideline for offences of theft and made submissions in that regard.

16. The appellant is now 40 years of age. He had a number of previous convictions dating back many years, none of which significantly aggravated this offending. More recently however, it is relevant to note that on 1 May 2018 he was conditionally discharged by a magistrates' court for offences of producing cannabis and handling stolen goods, which had been committed in October 2017. On 8 May 2018, in the Crown Court at Manchester, he was sentenced to a community order in respect of offences of handling stolen goods, committed in October 2016 and January 2017, and also for possessing cannabis on the latter date. All of those offences preceded the present offending by a matter of months, and the appellant was on bail for them at the time of the present offences.

17. In his sentencing remarks the learned judge summarised the circumstances of the offences. In relation to those charged on indictment 7230, he said this:

> "Count 3 reflects your role in assisting the theft of the Ford Focus from Liverpool on the 4th January 2018; this was the vehicle that was eventually used by the gunman on the 4th February. You also participated in the theft of a Nissan Qashqai car which was stolen from Liverpool on 1 January 2018, and it is implicit in your plea that you knew that these vehicles were to be used by an organised crime group for a criminal purpose; although at that stage the exact nature of the criminal activity may have been unknown to you. Count 4 reflects the part played by you in setting fire to and destroying the Ford Focus car after the shooting had occurred. This was done in an attempt to evade detection of those responsible for the shooting and was undertaken at a time when you must have been aware not only of the identity of the attackers but also the nature of the criminal activity in which they had been involved."

The judge later added, in relation to count 4, that the destruction of the Ford Focus had been carried out by the appellant to impede the investigation by the police and in the knowledge that a shooting had taken place.

18. The judge noted that although the appellant had previously been remanded in custody, he was facing his first custodial sentence. He indicated that credit would be given for the guilty pleas. He emphasised that his overall sentence reflected the principle of

totality and would have been the same however the individual sentences were structured.

19. In relation to the offences on indictment 7230 the judge imposed a sentence of 27 months' imprisonment on count 3 and a consecutive sentence of 42 months' imprisonment on count 4. For each of the other three offences he imposed sentences of 9 months' imprisonment, those sentences running concurrently with one another but consecutively to the longer sentences. Thus the total sentence was, as we have said, 6 years and 6 months.

20. In his very helpful written and oral submissions on behalf of the appellant, Mr Jamieson takes no issue with the sentences imposed on the A and B indictments. As to the offences on indictment 7230, he submits that the suggested comparison with the theft guideline is of limited assistance, not least because the maximum sentence for theft is 7 years' imprisonment. In so far as that guideline might be considered, he submits that even on the least favourable application of it, the starting point for count 3, before credit for the guilty plea, would not have exceeded 2 years' imprisonment. He therefore argues that the sentence on count 3, which implies a sentence before credit for plea of 30 months, was too long.

21. As to count 4, recognising the differences between the cases, he suggests it is nonetheless helpful to look at cases of attempting to pervert the course of justice. By reference to two such cases, R v Dowd & Huskins [2001] Cr App R(S) 349 and R v Beaney [2005] EWCA Crim 1127, he submits that the judge's starting point, presumably in the region of 48 months' imprisonment, was far too high. He further submits that the sentences on counts 3 and 4, whatever their length, should have been ordered to run concurrently, the one with the other, because they represented a course of conduct and the various actions might indeed all have been encompassed in a single count. Mr Jamieson acknowledges that had concurrent sentences been passed, the length of them would have to reflect the overall offending; but he relies on the point to highlight the fact that the effect of the consecutive sentences passed was to impose a total sentence in excess of the statutory maximum for a single offence.

22. Finally, Mr Jamieson submits that insufficient credit was given for the guilty pleas on this indictment, relying on the fact that the appellant had indicated to the prosecution, in advance of the trial date, that he would be prepared to admit assisting the conspirators by burning the Ford Focus.

23. At this stage of the proceedings, we must focus on the overall sentence imposed for the offending as a whole rather than on the precise structure by which that total was reached. The appellant committed three different types of offence on a total of five separate occasions. In principle the judge would have been entitled to impose consecutive sentences on each count provided, of course, that the total sentence was not manifestly excessive. The total sentence had to include appropriate punishment for the offences on the A and B indictments. We well understand why Mr Jamieson has not made any submissions about the sentences imposed for those offences but, as he acknowledges, they are not to be ignored in considering the totality of the sentence.

24. The guilty pleas for those three offences were entered on a basis which limited the appellant's criminality. But they were three distinct offences, committed on separate occasions, by a man who, in the recent past, had committed and was on bail for similar crimes. Having regard to the sentencing guidelines applicable to those offences, we have no doubt that if dealt with in isolation from the offences charged on indictment 7230, they would have merited a total sentence significantly longer than the 9 months' imprisonment which was in fact imposed.

25. There is, as we have said, no definitive guideline applicable to offences contrary to section 45 of the Serious Crime Act 2015. Reference by way of analogy to the theft guideline in respect of the underlying offence charged in count 3, or to fact-specific decisions in respect of offences of perverting the course of justice in relation to count 4, provides, in our view, only very limited assistance. We therefore consider, within the context of the statutory maximum of 5 years' imprisonment, the appellant's culpability and the harm caused, intended or likely to be caused by his commission of these offences.

26. Participating in the criminal activities of an organised crime group is by its nature a serious offence. With regard to the five purposes of sentencing identified in section 142 of the Criminal Justice Act 2003, sentencers dealing with such offences will, in our view, generally wish to focus on punishment, protection of the public and the reduction of crime by deterrence. The offence is by its nature an adjunct to other criminal activity; but that does not mean that the offender necessarily plays only a minor role in the commission of the offence.

27. In relation to the offence charged in count 3 of 7230, the appellant played a part in the theft of two cars within the space of a few days, from a city which is neither his home city nor the base of the organised criminal group for which he was acting. He knew that the cars were intended for use by professional criminals in the commission of crime. The seriousness of the offence therefore went beyond the seriousness of stealing cars for their financial value. The judge rightly accepted that, at that stage, the appellant may not have known the precise criminal purpose for which the cars were intended. The judge appears to have concluded that the appropriate sentence for this offence, before credit for plea, was 30 months' imprisonment. We observe that that is high in the range which, in our view, was open to the judge.

28. The offence charged in count 4 was significantly more serious. It was a determined attempt to impede the inevitable police investigation into the very serious crime which had been committed and of which the appellant was aware. Again, its seriousness went beyond that which is inherent in many other attempts to pervert the course of justice, because it involved such an attempt being made on behalf of an organised crime group. For that reason the offence, in our view, is to be contrasted with offences of the kind illustrated by the cases to which we were referred, where a motorist, involved in a fatal collision, has attempted to conceal his involvement by personally, or with the assistance of family and friends, disposing of or concealing incriminating evidence. The judge was correct to view this offence as requiring a longer sentence than count 3. In our view, he was also correct to order the sentences for counts 3 and 4 to run consecutively. True it is that the same car was involved in the criminal actions on both

occasions. But the occasions were a month apart, in different cities and they were quite distinct aspects of the offender's criminality. We take the view that the sentence which the judge imposed on count 4, which implies a sentence before credit for plea of around 4 years' imprisonment, was somewhat too long, particularly when considered as part of the total term of imprisonment for these two offences.

29. It is however then necessary to reiterate that in the interests of overall totality, the judge imposed very low sentences for the offences charged in the A and B indictments. When we take into account that those three offences could properly have contributed significantly more than they did to the total sentence, we conclude that an overall sentence of 6 years 6 months' imprisonment, though certainly a stiff one, was not manifestly excessive.

30. We pay tribute to the cogency with which Mr Jamieson has advanced his submissions. Despite them, this appeal fails and is dismissed.