

B e f o r e:

LORD JUSTICE SIMON

MR JUSTICE TURNER

and

HER HONOUR JUDGE TAYTON QC

(Sitting as a Judge of the Court of Appeal Criminal Division)

ATTORNEY GENERAL'S REFERENCE

UNDER SECTION 36 OF

THE CRIMINAL JUSTICE ACT 1988

R E G I N A

- v -

EMMANUEL BUCKLAND

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Mr P Ratliff appeared on behalf of the Attorney General

Mr J Hugheston-Roberts appeared on behalf of the Offender

J U D G M E N T

LORD JUSTICE SIMON:

1. This is an application by Her Majesty's Solicitor General, under section 36 of the Criminal Justice Act 1988, for leave to refer to this court a sentence which he considers to be unduly lenient. We grant leave.

2. The offender is Emmanuel Buckland. He is aged 45. On 17 December 2018, in the Crown Court at Luton, he pleaded guilty to two counts charging burglary of a dwelling, contrary to section 9(1)(b) of the Theft Act 1968 and requested that two further offences of non-dwelling burglary and conspiracy to burgle be taken into consideration.

3. On 25 January 2019 he was sentenced by Mr Recorder Bridge to concurrent terms of two years' imprisonment, suspended for two years, with three conditions: first, participation in a Community Sentence Treatment Requirement for twelve sessions over six months; second, a Drug Rehabilitation Requirement with a Treatment and Testing Order for six months; and third, a rehabilitation requirement for a maximum of fifteen days.

4. Count 1 concerned a burglary of a dwelling in Roundmead, Bedford. The burglary took place in the early hours of 7 November 2018. The occupants of the property at the time were Tania Gill, her husband and their five month old baby. At around 3.25am, Mrs Gill heard a noise downstairs. She then noticed that the lights of her Land Rover vehicle were on and that a man was sitting in the driver's seat. She woke her husband and watched the man leave the vehicle and walk off. She went downstairs and called the police.

5. A cabinet in the kitchen had been opened. The car key was missing from the table in the living room and Mrs Gill's jacket had been taken. This was later recovered outside, next to the Land Rover.

6. A computer laptop bag, which contained confidential medical paperwork relating to her husband, had also been stolen. That documentation was later found strewn about in the garden of the second property that the offender also burgled on 7 November 2018, which gave rise to the charge under count 2.

7. A screwdriver and torch, neither of which belonged to the Gills, were recovered from the Land Rover. A snood and a second screwdriver, neither of which belonged to the Gills, were recovered from the garden.

8. The offender's DNA was recovered from blood on a torn coat pocket that was on top of a child's seat secured to the front passenger seat of the Land Rover.

9. Count 2 related to the burglary of another dwelling at The Croft, Bedford. This, too, took place in the early hours of 7 November 2018. Again, the property was occupied at the time. The house was a short distance from Roundmead. The occupant, Paul Knight, was asleep on his sofa. He was woken by his son who lived in an annex to the property, who had found items scattered over their garden and had realised that they had been burgled. All of the kitchen cupboards had been opened. Mr Knight ran out into the garden and noted that there were folders and paperwork on the ground which did not belong to him. These were later identified as those which had been in the laptop bag taken from the house at Roundmead.

10. Mr Knight's wallet, which contained £100 in cash, his driving licence, a bank card and loyalty cards had been stolen from the pocket of a coat which had been in the dining room. Two packets of cigarettes had also been stolen from his jacket. In addition, a pushbike had been stolen from the garden.

11. The first offence taken into consideration was a non-dwelling burglary of a shed at Cotswold Close, Bedford. The burglary took place overnight on 6/7 November 2018. The property was a short distance from Roundmead (count 1) and The Croft (count 2).

12. At around 7am on 7 November, the owner of the property, Suzanne Cronin, saw that the doors to the shed in the back garden were open. She and her husband walked to the shed and saw an empty bottle of alcohol outside. The lock to the shed door had been broken and the tools from the shed were laid out on the garden lawn. Nothing appeared to have been taken. The offender's DNA was found on the empty bottle of alcohol.

13. A victim personal statement from Mrs Cronin set out how she suffered from anxiety and how the incident made her feel unsafe in her own home. She would constantly check her garden and the security of her property. She had to reassure her son who felt that someone would try and break into their house. If she heard a noise outside, she would feel on edge. She believed that it would take a long time before she would feel safe again.

14. The second offence taken into consideration was a conspiracy to burgle the Wool Pack Public House at Wilstead. At 10am on 23 September 2018, an employee noted that a stock of spirits, valued at between £1,000 and £2,000, was missing from an outbuilding in the garden. A second employee found two empty bottles of alcohol a short distance from the public house. They were from a batch of bottles which were kept in the same area as the stock of spirits that had been stolen. The offender's DNA was recovered from one of the bottles.

15. The offender was arrested in Bedford town centre on 18 November. When he was interviewed, he said that his memory was heavily affected by alcohol and drugs, but he recalled entering the two properties and the shed on 7 November.

16. The offender has been convicted on 38 occasions for 105 offences between 1988 and 2013. The sentences imposed upon him have included terms of imprisonment of up to three years and, since 2004, seven separate community orders with requirements.

17. A pre-sentence report attributed the offending to the offender's addiction to alcohol and drugs. He was said to be making progress on remand in custody and was in receipt of methadone and medication for depression. He was addressing his drug habit and was assessed to be of medium risk of re-offending. There was a tension between this assessment and the observation that he had a history of re-offending while subject to court orders and poor compliance when engaging with drug services. He was deemed "possibly suitable" for a Community Sentence Treatment Requirement.

18. At the sentencing hearing, the court heard brief evidence from a member of Liaison and Diversion Team, which recommended a mental health requirement in the event that a suspended or community sentence was imposed.

19. In his sentencing remarks the Recorder identified the relevant definitive sentencing guidelines on burglary, totality and community and custodial sentences. He found the offender's previous convictions to be a seriously aggravating factor and noted that the minimum term of three years' imprisonment, pursuant to section 111 of the 2000 Sentencing Act applied. He gave the offender full credit for his pleas of guilty. Having identified other aggravating and mitigating factors, he concluded:

In my view, the offence is so serious that only a custodial sentence can be justified but, given that this offending arises from your problems with alcohol and drugs and potentially mental health issues, I do not believe that immediate custody is the most appropriate way to deal with you and I do think that the circumstances of this case are such that it is appropriate that the minimum sentencing not be applied.

20. We would note that there was no diagnosis of any mental illness, and the Liaison and Diversion Team would not have been qualified to make such a diagnosis.

21. The minimum sentence of three years' imprisonment for a third domestic burglary, as provided by section 111 of the Powers of Criminal Courts (Sentencing) Act 2000, applied to the counts for which the offender was to be sentenced. Section 111(2) of the 2000 Sentencing Act is in these terms:

The court shall impose an appropriate custodial sentence for a term of at least three years, except where the court is of the opinion that there are particular circumstances which -

- (a) relate to any of the offences or to the offender; and
- (b) would make it unjust to do so in all the circumstances.

22. The Recorder did not express himself by reference to the statutory test. He did not identify particular circumstances which made it "unjust" to apply the minimum term. He should have done so. If he had done so, we find it difficult to see how, in the light of the offender's antecedent history, his drug or alcohol dependency made the imposition of the minimum term unjust.

23. A broad assessment based on whether it was "appropriate" to pass a minimum term does not amount to the application of the statutory test.

24. Mr Ratliff, who appears for the Solicitor General, identified a number of factors which increase the seriousness of the burglaries. So far as harm is concerned, the occupiers were at home when the offender was present. So far as culpability is concerned, the offender was equipped for burglary. In addition, there were a number of factors which increased the

seriousness of the offending. First, he had 38 previous convictions for 105 offences, 52 of which were acquisitive offences, including five convictions for domestic burglary (2001, 2006 and 2008), six for non-dwelling burglary (1996, 1999, 2001, 2004, 2014), and two for robbery (2008 and 2013).

25. Second, in relation to count 1, a child was at home when the offence was committed. Third, the offences were committed at night. Fourth, the offences were committed under the influence of alcohol and drugs. Fifth, in the offence charged in count 2, there was a degree of ransacking. Sixth, there were relevant offences taken into consideration, the first of which had a profound and adverse effect on the victim.

26. Mr Ratliff recognised that there are mitigating factors: first, the offender's expression of remorse; and second, his plea of guilty.

27. Mr Ratliff drew our attention of *R v. Andrews* [2012] EWCA Crim 2332 at [7] and *R v Silvera* [2013] EWCA Crim 1764 at [7] and [8], as cases which make clear that where section 111 of the 2000 Sentencing Act applies, the task of the sentencing court is to start with the Sentencing Council Definitive Guidelines on Burglary Offences to determine the appropriate sentence on the application of the guidelines and then to cross-check to ensure that the sentence is no less than the minimum required, whilst bearing in mind the operation of section 144 of the Criminal Justice Act 2003.

28. Where offences are to be taken into consideration, the Definitive Guideline of Offences Taken into Consideration and Totality provides that, having determined the sentencing point for the conviction offences, the offences taken into consideration will generally be regarded as an aggravating factor.

20. Mr Hugheston-Roberts, who appears for the offender, did not address any specific argument in answer to these points, bearing in mind the contents of the progress report prepared for the Court of Appeal Criminal Division.

21. Applying the definitive guidelines, it is clear that the offence charged as count 1 was a burglary of greater harm and higher culpability. There was greater harm because the occupier was at home and there was higher culpability because the offender went equipped with a screwdriver for the burglary. The starting point was, therefore, a term of three years' custody, with a range of two to six years. Furthermore, there was the statutory aggravating factor of the offender's extensive record of committing crimes of dishonesty, including burglaries. There were also other aggravating factors: the offences were committed at night and while under the influence of alcohol and drugs. This called for an upward adjustment, which also had to take into account the criminality of the offence charged under count 2, as well as the offences taken into consideration.

22. On the other side of the balance, there was an expression of remorse, which was given tangible effect by the offender's admission of the offences taken into consideration and, of course, the pleas of guilty.

23. The Recorder recognised all the aggravating features and the mitigation, but appears to have been distracted from the proper approach by his view that it was not a case for the application of the provisions of section 111 of the 2000 Sentencing Act.

24. In our view, the sentence on count 1, bearing in mind that a concurrent sentence was imposed on count 2, should have been in excess of four years' imprisonment, before credit was given for the guilty plea. Section 144(2) of the Criminal Justice Act 2003 provides that, where

the court imposes a sentence under section 111 of the 2000 Sentencing Act, the effect of a plea of guilty may not reduce the sentence below 80 per cent of the specified sentence (approximately 29 months).

25. It follows that the offender would have been entitled to full credit for his guilty plea, provided that the sentence imposed was not less than 80 per cent of the sentence passed under section 111 of the 2000 Sentencing Act. With full credit for the plea, the sentence of four years' imprisonment should have been reduced to a term of two years and eight months (32 months). That sentence could not be suspended.

26. The sentence of two years' imprisonment, suspended for two years with conditions, was, therefore, unduly lenient. Accordingly, we substitute for that sentence a term of 32 months' immediate imprisonment on counts 1 and 2, to be served concurrently.

27. We would add this. The Recorder was encouraged by the reports he read and the evidence he heard, and was persuaded by the defence to give the offender a chance. He had already had many chances and he had not availed himself of the opportunities to turn his life around. Nevertheless, one might have expected compliance with the sentence, at least until the hearing of the present application.

28. The contents of the pre-appeal Progress Report is striking:

Since being sentenced to a suspended sentence order on 25 January 2019, [the offender's] engagement has been sporadic. He has been offered fifteen appointments and only attended eight of these.

[The offender] obtained temporary accommodation in early February 2019. However, due to breaking the rules within the hostel setting he was evicted shortly after. [The offender] refused to accept responsibility for his eviction and has declined to work

with SMART Prebend Centre to obtain any remaining accommodation which might be available to him.

With regards to his Drug Rehabilitation Requirement, [the offender's] key worker at Path 2 Recovery has reported that he has not attended a single key work appointment. He has instead dropped in to the service when his script is due. His key worker added that [the offender] is very chaotic in treatment and blames everybody linked to his treatment for not 'helping him enough'. [The offender] has provided one urine test since sentencing. This test came back positive for Class A substances.

Information from Karen Weir, the Operational Lead of Liaison and Diversion Service ... suggests that the L&DS support workers have attempted to engage with [the offender] but without success. [The offender] appeared to be intoxicated whenever contact was made with their support workers. He was demanding and unreasonable, particularly around obtaining accommodation. He often referred to ending his life when his needs were not met. Given the level of hostility, verbal aggression and intimidation expressed to the L&DS support workers, L&DS have withdrawn their support at this time. They will, however, continue to be available to provide the Primary MHTR should this still be required.

Given [the offender's] poor engagement with all the services available to him, alongside his increasing use of substances, I would agree with resentencing. There would be no detrimental impact of a custodial sentence. [The offender] is currently homeless due to breaking the rules within supported accommodation. He is also unemployed. [The offender] is not in regular contact with his family and does not have any dependents.

29. That report speaks for itself.

30. We direct that the offender surrender to Bedford Police Station, Woburn Road, Kempston MK43 9AX, by 4.15 this afternoon. If he does not do so, he will be arrested.