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IN THE COURT OF APPEAL
CRIMINAL DIVISION
CASE NO 202002182 A4
[2020] EWCA Crim 1895



Royal Courts of Justice
Strand
London
WC2A 2LL

Wednesday 2 December 2020

LORD JUSTICE HOLROYDE

MR JUSTICE PICKEN

MR JUSTICE HENSHAW

REGINA
v
BRADLEY FINN

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MR JASON SMITH appeared on behalf of the Appellant

J U D G M E N T

MR JUSTICE HENSHAW:

1. The appellant was on 3 July 2020 committed for sentence, having pleaded guilty before the magistrates to five offences committed on 30 June and 1 July 2020. These offences were: (1) receiving stolen goods, (2) dangerous driving, (3) driving without insurance, (4) going equipped and (5) driving while disqualified. The appellant was sentenced on 31 July 2020 in Newcastle-upon-Tyne Crown Court by Mr Recorder Sandiford QC.
2. After giving full credit for the appellant's guilty pleas, the Recorder imposed a sentence of 16 months' imprisonment for receiving stolen goods, a consecutive sentence of 14 months' imprisonment for dangerous driving, concurrent sentences of 2 months and 4 months respectively for going equipped and driving while disqualified, and no separate penalty for driving without insurance. The total custodial term was therefore 30 months.
3. The appellant appeals against sentence by leave of the single judge.
4. The main facts were as follows. Between 00.45 am and 10 am on 30 June 2020 there was a house burglary in which a jacket containing the keys to a Volkswagen Polo car was stolen from its owner's house while she was asleep. The car itself (valued at £1,000) was then stolen from outside her house. At just after 11 pm that night, staff at a restaurant in Pennywell, Sunderland contacted police because they were concerned as to the conduct of individuals inside that Volkswagen car and suspected that they may be drunk. Police officers attended the area. A police officer spotted the car and turned round to follow it. The appellant, who was driving the vehicle, saw this and made off at high speed. The officer activated his lights and sirens and followed the Volkswagen for about 10 minutes. He described it as reaching speeds of between 50 and 80 mph in roads with a 20 to 30 mph limit in densely populated areas. It went through red lights. For the majority of the pursuit the Volkswagen's lights were turned off. The officer was joined in the pursuit by a second officer. The Volkswagen went off the road onto a public footpath, and then a grassed area, and lost control. It came to rest against a garden fence. The appellant and two passengers made off, but the appellant gave himself up on a nearby road.
5. The vehicle was searched, and a number of empty plastic petrol drums were found in the boot. It was the prosecution case that these were to be used for stealing petrol. That was the basis of the going equipped charge. At the time the appellant was disqualified from driving and therefore had no insurance. In interview the appellant said that he had purchased the vehicle for £50.

6. The appellant was aged 21 when he committed the offences and 22 by the date of sentence. He had ten previous convictions relating to 36 offences. These included a robbery and numerous driving offences. In October 2015 he pleaded guilty to dangerous driving, failure to stop after an accident, failure to stop when required, driving while uninsured (twice) and driving without a licence (twice). In August 2016 he pleaded guilty to driving while disqualified and without insurance. In November 2016 he pleaded guilty to having committed each of those two offences on three further occasions; at that stage he was imprisoned for 6 weeks and disqualified from driving for 39 months.
7. On 13 April 2017 the appellant pleaded guilty to robbery, dangerous driving and driving while disqualified and without insurance. He was sentenced to 40 months' detention in a young offender institution for the robbery, with a consecutive sentence of 6 months for the dangerous driving. He was disqualified from driving for 41 months and disqualified from driving until he passed an extended test.
8. The appellant had been released on licence pursuant to the 2017 custodial sentence when he committed the present offences.
9. More recently, in September 2019 the appellant pleaded guilty to driving while disqualified, uninsured and without due care and attention. He was imprisoned for 12 weeks and disqualified from driving for 24 months.
10. The appellant thus had a previous conviction for robbery and he also had a very bad record for driving offences, including two previous convictions for dangerous driving, one of careless driving, six of driving while disqualified and eight of driving without insurance.
11. In sentencing the appellant for the present offences, the Recorder first considered the sentencing guideline for handling stolen goods. He took the view that the appellant's offence fell in the high culpability (culpability A) bracket because it involved possession of very recently stolen goods from a domestic burglary. As to harm, the Recorder felt it inevitable that the car would have been of substantial value to the victim. He found that the offence fell on the cusp between categories 2A and 3A and would justify, after trial, an adjusted starting point of 18 months. The aggravating features were the appellant's previous conviction for robbery and the fact that he had committed the offence while still on licence following the earlier conviction. Overall, the Recorder concluded that the appropriate sentence for the handling offence, before credit for plea, would be 2 years' imprisonment.

12. In respect of the going equipped offence, the Recorder noted that there was a degree of planning -- the use of the vehicle and the drums -- but the offence fell into the medium culpability band B. The Recorder assumed that the petrol drums were to be used to try to steal from a petrol station and that the lesser harm band applied. The starting point would therefore have been a high level community order, but the appellant's previous convictions and his licence breach were aggravating factors, so the sentence after a trial would have been at the top of the category, namely 12 weeks.
13. As to the driving offences, the Recorder noted, first, that the appellant had already been disqualified from driving; secondly, this was a serious case of dangerous driving, aggravated by the appellant's bad driving record. The appellant had been trying to evade police arrest for two offences that he had been committing; he ignored the police lights and sirens; he drove at grossly excessive speeds in pedestrian areas and places where people were living; he ran red lights; and he drove the vehicle onto a footpath used by pedestrians and then onto a grassed area. Notwithstanding the fact that nobody was injured, the offence fell towards the top end of the scale when the appellant's numerous previous driving convictions were taken into account. The maximum sentence was 2 years, and after a trial a sentence of 21 months' imprisonment would be justified. In reaching that figure the Recorder also took into account the separate offence of driving without insurance.
14. The Recorder considered that the further offence of driving while disqualified (which was the appellant's seventh such offence) would justify a consecutive sentence of 4 months -- the maximum after giving credit for the prompt guilty plea.
15. The Recorder took the view that, although consecutive sentences were justified for the handling, going equipped, dangerous driving and driving while disqualified, there must be some adjustment for totality. The present situation caused by the Covid pandemic in the prison system should also be taken into account, but to a large measure that was outweighed by the Recorder's duty to protect the public from further offences by the appellant. Looking at the case in the round, the appropriate sentence after credit for plea was 30 months' imprisonment, made up of 16 months for handling and 14 months for dangerous driving, with concurrent sentences for going equipped and driving while disqualified, and no separate penalty for driving without insurance.
16. In addition, bearing in mind the appellant's previous record, he would be disqualified from driving for 3 years, with an extension period of 15 months, and required to take an extended retest.
17. In his grounds of appeal the appellant makes no challenge to the total sentence imposed

of 14 months' imprisonment for dangerous driving and driving while disqualified -- in our view, rightly so. The appellant was guilty of an appallingly dangerous piece of driving that might easily have resulted in death or serious injury to a member of the public or a passenger; moreover, it occurred while seeking to escape from the police and at a time when the appellant was disqualified from driving and uninsured. The sentence was amply justified.

18. The appellant, represented today by Mr Jason Smith, who also appeared at the time of sentencing, does take issue with the sentence for handling stolen goods, as well as questioning how the Recorder took account of totality.
19. The appellant contends that the handling offence fell at the very bottom of harm category 3 -- which in high (A) culpability cases has a category range from 26 weeks to 2 years' custody -- because the value of the stolen vehicle (£1,000) fell at the very bottom of the range for medium value goods which runs from £1,000 to £10,000. However, that contention overlooks the Recorder's conclusion that, as he put it, "somebody's motorcar, normally their second most valuable possession after their house", would have been of substantial value to the user regardless of monetary worth. Mr Smith suggests in submissions today that the likelihood is that the car would have been returned to the victim very shortly after the incident, and he points out that there was no victim personal statement setting out details of any additional harm suffered. However, it seems to us that there is no basis on which it can or should be assumed that the vehicle would have been so promptly returned to the victim, and we consider that the Recorder cannot be said to have fallen into error by taking the approach he did and regarding this as a case of additional harm.
20. The definition of "low value" goods in harm category 4 is up to £1,000, and so goods worth £1,000 fall at the dividing line with medium value goods. Category 3 includes cases of "low value significant with additional harm to the victim or others", whereas category 2 includes cases of medium value goods with significant additional harm. We therefore consider that the Recorder was right to take the view that this case fell on the cusp of harm categories 2 and 3, and so to use 18 months as the adjusted starting point, increased to 2 years in the light of the aggravating factors we have already mentioned. Even if the Recorder were wrong as to significant additional harm, we note that the starting point for category 2A is 3 years' custody whereas that for category 3A is 1 year's custody, and that the category ranges considerably overlap. It appears to us, viewing the matter in the round, that the adjusted starting point of 18 months, increased to 2 years as a result of the aggravating factors (which were significant), was justifiable and certainly not manifestly excessive nor involving any error of principle. It seems to us unrealistic in this case to suggest, as has been submitted this morning, that the starting point should have been towards the bottom end of category 3A.
21. As to totality, the Recorder did take account of totality when imposing concurrent

sentences for going equipped and for driving while disqualified, and when imposing no separate penalty for driving without insurance. We consider that the sentence arrived at took full account of totality.

22. Overall, therefore, it seems to us that there was no error of principle and nor was the sentence manifestly excessive. We accordingly dismiss the appeal.
23. Two final matters arise in relation to the driving disqualification imposed on the applicant.
24. First, in accordance with the guidance of this court in R v Needham [2016] EWCA Crim 455, the court is required to identify separately the appropriate discretionary period of disqualification, the extension period pursuant to section 35A of the Road Traffic Offenders Act 1988, and any other discretionary period pursuant to section 35B.
25. The Recorder was obliged to disqualify the appellant for at least 2 years, by reason of sections 34(4) and (4B) of the Act, the appellant having within the preceding 3 years already been disqualified at least twice for 56 days or more. The Recorder considered that the appellant should in fact be disqualified from driving for 3 years, plus an extension period of 15 months as he would be in custody for at least the next 15 months.
26. As to the period of disqualification, we agree. In terms of the expression of the period in accordance with Needham, the relevant periods are as follows:
 - (1) The appropriate discretionary period (so called) of disqualification is 3 years;
 - (2) the extension period under section 35A (relating to the custodial term for dangerous driving) is 7 months;
 - (3) the appropriate uplift under section 35B (relating to the custodial term for other offences) is 8 months; and
 - (4) the total period of disqualification is therefore 51 months.
27. The second matter is that section 36(7) of the Act provides that the court shall not make a further order for an extended driving test where the person disqualified is already subject to such an order. The record indicates that the appellant is already subject to an extended driving test requirement following his previous conviction and disqualification in 2017. The extended driving test imposed for the current offence of dangerous driving is therefore incorrect and must be quashed, if and to the extent that it has not already been rectified under the slip rule pursuant to a letter which we were told this morning was sent to the Crown Court in August. In any event, however, the appellant does of course remain subject to the extended driving test requirement imposed

in 2017.

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