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IN THE COURT OF APPEAL

CRIMINAL DIVISION



CASE NO 202101153/A4

Neutral Citation Number: [2021] EWCA Crim 1604

Royal Courts of Justice  
Strand  
London  
WC2A 2LL

Tuesday 7 September 2021

LADY JUSTICE SIMLER DBE  
MRS JUSTICE CHEEMA-GRUBB DBE  
MR JUSTICE ANDREW BAKER

REGINA  
V  
RICHARD JOHNSON

Computer Aided Transcript of Epiq Europe Ltd,  
Lower Ground, 18-22 Furnival Street, London EC4A 1JS  
Tel No: 020 7404 1400; Email: rcj@epiqglobal.co.uk (Official Shorthand Writers to the Court)

MR S SANDFORD appeared on behalf of the Appellant

**J U D G M E N T**

1. MRS JUSTICE CHEEMA-GRUBB: In the early evening of 13 August 2020, Richard Johnson committed an aggravated burglary at the home of the family of a convicted sex offender in Tilbury. He disguised himself as a delivery driver and when Mrs Gould answered the door he attacked her with a claw hammer. Fortunately her adult son came to her aid. He saw a man holding a hammer as if to bring it down on his mother's head. After a struggle in which the older Mr Gould also joined, the assailant was able to escape. As he fled he shouted: "Your brother is a nonce." He left in a car with an unidentified accomplice.
2. As a result of the attack, Mrs Gould suffered bruising to her arms and her husband a bloody lip. Police traced Johnson through CCTV which captured him driving the car without insurance or a licence.
3. On 20 August 2020 he was arrested for that offence and also for burglary of a garden shed in which he and another man had stolen alcohol and other items to the value of £180 on 15 July 2020. He was interviewed under caution and remained silent. He participated in an identification parade and was identified by the younger Mr Gould.
4. Johnson, who was aged 29 years, admitted the burglary of the shed at the Magistrates' Court and the aggravated burglary, together with two section 51 summary only offences of driving without insurance or a licence at a PTPH at Basildon Crown Court.
5. The appellant submitted a basis of plea which was not accepted by the prosecution. A pre-sentence report was prepared and sentence was adjourned for a Newton hearing to determine whether the appellant had attacked the Gould's home under coercion from those to whom he said he owed a drug debt. However, at that hearing the basis of plea was not pursued and he was sentenced on 7 April 2021 by Mr Recorder Caudle to 10 years' imprisonment on the section 10(1) Theft Act 1968 offence, with one year concurrent for the section 9(1)(b) offence. There was no separate penalty for the driving matters, but his licence was endorsed. A restraining order for 10 years and a surcharge were imposed. This is his appeal against sentence with leave of the single judge.
6. The prosecution opened the case on the basis that the motive for the attack during the aggravated burglary was knowledge of the Gould family's other adult son and his convictions for sex offences. This was supported, of course, by what the appellant had shouted at them.
7. In victim personal statements, the family set out the fear of further targeting that they now lived under, the anxiety and vigilance the appellant's violence at their home had engendered and Mrs Gould described how deep bruising and harm to the underlying tissues of her arm and shoulder continued to cause pain, such that she was to undergo tests for nerve damage from the attack.
8. It was and is conceded on behalf of the appellant that the aggravated burglary was a Category 1 offence of greater harm and higher culpability. The victims were at home, a weapon was carried and used to injure and it was a targeted attack. The guideline starting point for a Category 1 aggravated burglary is 10 years' custody. Furthermore, the appellant has a criminal record consisting of 18 convictions for 31 offences spanning 2005 to 2016. He has acquired a number of convictions for harassment, four convictions for theft-related offences including one for handling stolen goods, two convictions for theft and one conviction for robbery in October 2016 for which he was sentenced to three years and 10 months at Basildon Crown Court.
9. Unsurprisingly, although he did not need to deal with it at all, the judge concluded that

the account in the appellant's basis of plea did not reduce his culpability. He acted voluntarily and he lied to the police and probation officer when he claimed that he had acted under duress. The offence was aggravated, said the judge, by the presence of an accomplice and his previous convictions and further aggravated by the second burglary for which he fell to be sentenced. The judge concluded that he would increase the sentence for aggravated burglary to reflect the second offence rather than impose a consecutive sentence. Despite the contents of character references and a letter written by the appellant to the court, the judge concluded there was little by way of mitigation. No remorse for the true facts of the offence was demonstrated during the pre-sentence report interview. Consistent with the conclusion of that report, the appellant met the test for dangerousness but the judge concluded it was not necessary to impose an extended sentence because the risk posed could be managed by a lengthy determinate sentence.

10. After passing sentence, the judge was asked to explain how the sentence had been reached and responded that he had adopted a notional starting point of nine years' imprisonment, increased to 12 years to reflect the aggravating features, which he then reduced by 25 per cent for the guilty plea, and he added one year, reaching 10 years' imprisonment to reflect the non-dwelling-house burglary.
11. Mr Sandford's grounds of appeal can be encapsulated thus. First, a notional sentence after trial of 12 years for the aggravated burglary was manifestly excessive because the appellant was only 29, he had no previous convictions approaching the gravity of the instant offence, he had expressed remorse in his letter to the court, there was limited entry to the house and no really serious injury was inflicted. Secondly, the increase from nine years to 10 years to account for the non-dwelling-house burglary was simply too much. An application of the relevant guideline would have led at most to a sentence of 18 weeks' custody less the one-third for the early guilty plea. Furthermore, the judge did not make any allowance expressly for conditions in prison at the present time.
12. We are not persuaded that the categorisation for the placing of the offence within Category 1 was excessive. This was a targeted attack on the innocent family of an offender. Plainly planned, it could well have caused very grave injury indeed. The multitude of Category 1 features, the impact on three members of a family and the appellant's record would have amply justified a sentence after trial of 12 years' imprisonment. Such an uplift would also recognise that this offence was committed a month after the opportunistic non-dwelling-house burglary. Nor is this a case in which the court would have expected a specific reduction for prison conditions during the Covid-19 pandemic. It was a long sentence, the vast majority of which will be served in more usual circumstances.
13. However, the judge did fall into error in his treatment of the non-dwelling-house burglary. We agree with Mr Sandford that a sentence of one year for that offence would have been manifestly excessive and should not have contributed to an increase in the term for the aggravated burglary to the extent that it did. We note that the judge failed to specify any reduction in sentence he passed for the early guilty plea to that offence. In our judgment, a sentence of three months concurrent would have amply reflected the gravity of that offence and the early guilty plea.
14. Accordingly, we quash the sentence of 10 years' imprisonment for aggravated burglary and impose a sentence of nine years. We also quash the sentence of 12 months for the non-dwelling-house burglary and replace it with three months concurrent. The total

sentence is thus now nine years. To that extent, this appeal succeeds.

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Lower Ground, 18-22 Furnival Street, London EC4A 1JS  
Tel No: 020 7404 1400  
Email: rcj@epiqglobal.co.uk