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IN THE COURT OF APPEAL

CRIMINAL DIVISION

CASE NO 202103724/A4

NCN: [2021] EWCA Crim 2006



Royal Courts of Justice

Strand

London

WC2A 2LL

Tuesday 21 December 2021

THE VICE-PRESIDENT OF THE COURT OF APPEAL (CRIMINAL DIVISION)

(SIR ADRIAN FULFORD)

LORD JUSTICE HOLROYDE

RECORDER OF LONDON

(HIS HONOUR JUDGE LUCRAFT QC)

(Sitting as a Judge of the CACD)

REGINA

V

CLAIRE VICTORIA CHARLTON

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 M BASHIR appeared on behalf of the Applicant.

J U D G M E N T

1. LORD JUSTICE HOLROYDE: Claire Charlton (now aged 33) has for many years used Class A controlled drugs. She has committed criminal offences to support her drug habit. After a trial in the Crown Court at St Albans before Recorder Malek QC and a jury, she was convicted of burglary of a dwelling. It was her third domestic burglary and the minimum sentence provisions in section 314 of the Sentencing Code were engaged. On 17 September 2021 the recorder sentenced her to 3 years' imprisonment. Her application for leave to appeal against that sentence has been referred to the Full Court by the Registrar.
2. It appears that the applicant was introduced to drugs as a teenager. She has previous convictions for more than 40 offences, many of them involving theft. Her previous convictions for domestic burglary were in 2009, when she received custodial sentences totalling 15 months for four such offences committed when she was aged 20; and in 2016, when she received a total of 40 months' imprisonment for two offences of a domestic burglary and one of attempted burglary committed when she was aged 27.
3. The present offence was committed on the morning of 20 April 2019. The applicant entered the home of an elderly couple through an unlocked side door. She was confronted by the householders and ran off, stealing jewellery, watches, cash, war medals, a mobile phone and a passport. The monetary value of the stolen goods (none of which were recovered) was around £9,000. The stolen medals were, the recorder said, irreplaceable.
4. In a victim personal statement the householders said that they had been left with a deep sense of unease and a feeling of their vulnerability as they grew older. They also said that their contact with the applicant in their home haunts their dreams.
5. That serious offence was committed when the applicant was on licence from the 40-month prison sentence to which we have referred. The applicant was arrested in January 2020. Whilst on bail for this offence she committed an offence of burglary in non-dwelling premises, for which she was sentenced to 22 months' imprisonment. She had been released on licence from that sentence a few weeks before she was sentenced for the present offence.
6. At the sentencing hearing the recorder was assisted by a pre-sentence report. This indicated that since her recent release from prison the applicant had been complying with the conditions of her licence, had attended all appointments and had completed negative drug tests. She told the reporting probation officer that she was in a stable relationship, and that she was motivated to remain drug free because of her wish to maintain contact with her 10-year-old daughter, who is in foster care. The applicant shares parental care with the foster parents and was visiting her daughter twice weekly. She was assessed as posing a high risk of further offending although a low risk of causing serious harm. The probation officer proposed a community order with a number of requirements, including a drug rehabilitative requirement for 9 months and a rehabilitation activity requirement for 15 days.
7. The recorder considered the Sentencing Council's definitive guideline for offences of domestic burglary. He concluded that there was greater harm and somewhere between lower and higher culpability. Even as a category 2 case, the starting point was 1 year's custody with a range of up to 2 years. But, said the recorder, the case may be sufficiently serious to go beyond that range. In any event, the recorder was required by section 314 of the Sentencing Code to impose at least 3 years' imprisonment unless he was of the

opinion that there were particular circumstances which related to the offence or to the offender and would make it unjust to do so in all the circumstances. In that regard the recorder considered the mitigation. He accepted that the applicant was trying to resolve her drug problem and to address her relationship with her daughter. He concluded however that the case was too serious for him to find it unjust to impose the statutory minimum sentence. The applicant had 26 previous convictions for 43 offences. She was on licence from a prison sentence for burglary at the time of this offence, and there had been a significant impact on her elderly and vulnerable victims. Those features put the case at the top of the category 2 range. He therefore sentenced her to 3 years' imprisonment, saying to the applicant:

"I can see you're a good person. It's just drugs that's holding you back. Until you beat the drugs, you're going to be coming back to prison."

8. In prison, the applicant underwent a routine medical check. From this she learned, for the first time, that she is pregnant with twins. That pregnancy has been confirmed in a letter from the prison medical team.
9. The applicant's solicitors sought to have the case re-listed under section 385 of the Sentencing Code ("the slip rule") but it was not possible for the recorder to hear the application within the relevant limit. We are satisfied that that unsuccessful attempt provides a sufficient explanation for the failure to lodge the notice of appeal on time.
10. Mr Bashir, representing the applicant in this court as he did below, has put forward two grounds of appeal. First, he repeats the submission he made to the recorder that it was in all the circumstances unjust to impose the required minimum sentence. He submits that the recorder failed to give sufficient weight to the mitigating factors, in particular the negative impact of imprisonment on the applicant's efforts to maintain contact with her daughter and the steps which she was taking to remain drug free. Secondly, he submits that the applicant, through no fault of her own, was denied any opportunity to invite the recorder to consider the additional fact of her pregnancy. He submits that the pregnancy, which was unknown to all including the applicant at the time of the sentencing hearing, adds to the other mitigation and that cumulatively the effect of the mitigation is to render the sentence unjust and manifestly excessive.
11. We have reflected on Mr Bashir's submissions.
12. This was, on any view, a serious offence which caused significant harm to the elderly victims. The applicant's previous convictions were a serious aggravating feature. So too was the fact that she was on licence from a prison sentence for burglary when she committed this offence. There is, in our view, no basis on which the recorder could be criticised for concluding that the circumstances took the case at least to the top of the category 2 range before considering personal mitigation.
13. The mitigation however was substantial. It is clear, as the recorder said, that the applicant's life has been held back by her abuse of controlled drugs, and that she needs to break away from drugs if she is to avoid further offending in the future. In that regard, the information contained in the pre-sentence report was important. It showed that the applicant had succeeded in being abstinent from drugs for about 5 years after the birth of her daughter, but had then relapsed. She was now making efforts to maintain her relationship with her daughter and, with the assistance of prescribed methadone, had not

used illicit drugs in the weeks between her release on licence and the sentencing hearing. She had also been complying with the conditions of her licence, which we regard as an encouraging sign, given her past history.

14. The recorder was therefore faced with a difficult sentencing decision. He was, in our view, entitled to reach the conclusion he did on the basis of the information which was known to him. There was however a very important additional existing fact which was not known at that time but which has subsequently been established. Had the recorder been aware of that fact, we have no doubt he would rightly have taken it into account and given considerable weight to it, for three reasons. First, because imprisonment would now be a far heavier punishment for this applicant than for most other prisoners; secondly, because the pregnancy and births can be expected to increase her motivation to remain drug free; and thirdly, because it is necessary to have regard to the rights of the children who, as things stand, will be born in prison.
15. We are satisfied that when the pregnancy is added to the other personal mitigation in the applicant's case, there are particular circumstances relating to the offender which would make it unjust to impose the minimum prison sentence which would otherwise be required. We are satisfied that in all the circumstances the applicant should be sentenced differently, in a way which will allow her to be at liberty when her twins are born and to have the support of the Probation Service in breaking away from her abuse of drugs, but which will also leave her in no doubt as to the likely outcome if she re-offends. We therefore grant the necessary extension of time. We grant leave to appeal against sentence. We quash the sentence of 3 years' imprisonment and substitute a sentence of 2 years' imprisonment suspended for 2 years, with a drug rehabilitation requirement for 9 months and a rehabilitation activity requirement for 15 days. The statutory surcharge will apply in the sum of £140.

LORD JUSTICE HOLROYDE: That concludes the judgment of the Court but we want now to speak directly please to Ms Charlton if she could be brought onto the large screen.

Ms Charlton are you able to hear me clearly?

THE APPLICANT: Yes.

LORD JUSTICE HOLROYDE: Have you been able to follow and understand what I have just been saying?

THE APPLICANT: Yes.

LORD JUSTICE HOLROYDE: The result is that your appeal has succeeded, your prison sentence has been reduced in length to 2 years and that is suspended for 2 years. What it is very important for you to understand is that if in the next 2 years you commit any offence, whether or not it is of the same type as this offence, you will be brought back to court and it is likely that some or all of the suspended sentence will be brought into operation. In addition, there are two requirements which you will have to comply with: one is a drug rehabilitation requirement, obviously designed to help you get away from the drugs; the other is a rehabilitation activity requirement to help you with other difficulties which you have got into in the past. You are going to have to meet the Probation Officer who is assigned to your case as and when you are required to do so. You will have to attend whenever you are required and co-operate fully with the activities and measures which are arranged. If you do not comply with either of those requirements you will be in breach of the order. That means you can be brought back to court and you will be liable to serve the suspended sentence in full or in part. Do you understand all of that?

THE APPLICANT: Yes sir.

LORD JUSTICE HOLROYDE: Thank you very much. That is all we need to say to you.

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Lower Ground, 18-22 Furnival Street, London EC4A 1JS

Tel No: 020 7404 1400

Email: rcj@epiqglobal.co.uk