IN THE COURT OF APPEAL
CRIMINAL DIVISION

CASE NO 202201692/A3
[2022]EWCA Crim 1737

Royal Courts of Justice
Strand
London
WC2A 2LL

Wednesday 2 November 2022

Before:

LADY JUSTICE MACUR DBE

MR JUSTICE HOLGATE

RECORDER OF KENSINGTON AND CHELSEA
(HHJ EDMUNDS KC)
(Sitting as Judge of the CACD)

REGINA
V
AIMEE TROUNCE

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MR M CHEEMA appeared on behalf of the Appellant.

J U D G M E N T

1. MR JUSTICE HOLGATE: On 17 January 2022 in the Crown Court at Aylesbury before His Honour Judge Sheridan, the appellant pleaded guilty to one count of theft. On 29 April she was sentenced by the same judge to a community order for 2 years, with an unpaid work requirement for 100 hours and a rehabilitation activity requirement for 15 days. In addition a compensation order was made requiring her to pay £4,000 to John Lewis Plc, from whom the goods had been stolen, by instalments of £150 every 28 days. On 16 May the case was listed for the sentence to be varied in respect of the compensation order. The judge confirmed the total amount to be paid and varied the periodic payments to £100 a month.
2. The appellant appeals with the leave of the single judge. Her appeal relates solely to the compensation order. A co-accused, Ellis Smith, pleaded guilty to the theft and also to having an offensive weapon. For those offences he was sentenced to consecutive terms of imprisonment for 5 months and 3 months respectively both suspended for 2 years. He was ordered to pay compensation of £6,650 to the retailer and £300 to a security guard.
3. On 4 August 2019 Smith, along with two other men, entered the John Lewis store in High Wycombe. They approached the Mulberry concession where there was a lone female member of staff. Smith carried an extended baton which he flicked out to its full length. He said to the assistant: "I'm just going to take these. Is that all right?" The men then removed 12 Mulberry handbags valued at £10,650 and ran out of the store. Meanwhile the appellant had been waiting in her car nearby. The two other men left in the car driven by the appellant. When she was arrested she had a Mulberry handbag. But it could not be said whether the bag came from this theft.
4. The appellant admitted being the driver of the vehicle. She named the other two men in

the car and said she had been paid to drive them around. She denied knowing anything about the theft and said that the bag at her address was a gift from one of the other men. John Lewis did not recover any of the bags stolen.

5. The appellant was 24 at the time of sentence and she was of previous good character. In the pre-sentence report she said that she was working as a carer in a home for about 20 hours a week. She earned about £800 net a month but had existing debts. She said that she could pay a fine subject to her means.

6. The appellant had indicated a guilty plea to the theft in the Magistrates' Court. At the PTPH on 17 January defence counsel, Mr Cheema, suggested that a psychiatric report be provided to the court as well as a PSR. He says that the judge responded that that would not be necessary given the appellant's previous good character, guilty plea and the sentencing range, which ran from a Band B fine to a low-level community order.

7. After a number of adjournments the sentencing hearing took place on 29 April 2022. Mr Cheema says that no mention was made of a compensation order being sought in the Prosecution's Note for Sentencing. But on 14 March 2021 a form NG19 had already been uploaded to the DCS in which an application was made on behalf of John Lewis for a compensation order. In answer to a question about the costs of replacing the items stolen, the retailer gave figures for each of the 12 bags totalling £10,650.

8. At the hearing on 29 April the prosecution applied for a compensation order in the sum of £10,650. The defence made no suggestion to the judge that that application should not be dealt with that day, for example, because of any issues which arose.

9. In his sentencing remarks the judge noted that during the delay in the case coming to court the appellant's life had improved. She had ceased to be in a violent relationship and indeed had become a highly regarded employee. On the question of means, the appellant

had told the judge, with some hesitation, that she paid £350-£400 a month to her mother by way of rent and had to pay for a mobile phone on top. From what he had been told at that stage the judge assessed that the appellant would be able to pay £150 every 28 days towards a compensation order of £4,000. The judge said that the co-accused, Smith, was earning substantially more money than the appellant. He was ordered to pay the balance of the loss of £6,650 at the rate of £250 a month.

10. After the judge had finished sentencing Smith and had briefly dealt with some other matters, Mr Cheema came back into court to say that his client had a long list of outgoings on her mobile phone and asked for the monthly payments to be reduced to £50. The only issue raised by the defence at that stage concerned the appellant's means. The judge directed a subsequent hearing before him of the issue whether the order should be varied.

11. At that hearing on 16 May Mr Cheema submitted for the first time that the loss to John Lewis had not been £10,650 because that figure related to retail prices. The actual loss had not been provided by the retailer. He also suggested that any loss figure should be apportioned between the four participants in the theft albeit that two of them had not been apprehended. Counsel then gave a list of outgoings said to total £706 a month but unsupported by documents. The judge queried some items such as £66 a month for a mobile phone. Because the only matter raised by the appellant at the previous hearing had been the issue of means, the judge had stated that the prosecution need not be represented at the hearing in May. They were not. It has not been suggested that they were put on notice by the defence that any other matters were to be dealt with.

12. In his ruling, the judge said that no issue had previously been raised about the total amount of the loss and he would not alter the order because two participants had not been

caught. He considered it appropriate to divide the loss between the two persons before the court subject to the question of means. On that issue the judge decided to reduce the payments by the appellant to £100 per calendar month.

13. In summary, Mr Cheema submitted in his written grounds of appeal that the compensation order was manifestly excessive, or wrong in principle, because firstly, the figure of £10,650 represented the retail price of the bags not the wholesale loss to the company; secondly, there were four people involved in the offence and so it was disproportionate for the appellant and Smith to be liable for the full compensation; thirdly, little or no regard was given to mitigating factors, the appellant's limited financial means and excessive debts and the impact of further debts on her health; fourthly, little or no regard was given to the principle that compensation should be payable within a reasonable time, and lastly, to proportionality.

Discussion

14. We note that although the single judge did not grant limited leave to appeal, the points which he saw as being arguable related to the appellant's means and the length of time it would take to satisfy the order at the rate the judge considered appropriate.

15. We do not consider that the judge can be criticised for the way in which he handled the total loss suffered by John Lewis. The answers given on the Form NG19 on their face related to the replacement costs. The appellant did not raise any issue about this when she had an opportunity to do so when both sides were represented. If she had done that, the judge would have been able to give directions for evidence to be called if the parties were unable to agree a figure.

16. We do not consider that as a matter of principle the judge should have reduced the loss figure because only two of the participants in the theft were before the court. Again, this

issue was not raised when the prosecution was represented. The judge noted that the appellant had not cited any authority in support of her argument and that remains the position before us. But we do note by way of analogy that in *R v Beddow* (1987) 9 Cr App R(S) 235, the Court considered that there was nothing wrong in principle with a compensation order being made for the full amount of the loss against one of three defendants where the other two lacked means to make any contribution.

17. The appellant has sought to raise mental health issues before us. But she did not seek to rely upon any evidence on that aspect when the judge gave directions for a further hearing to consider her means. In the circumstances we do not consider that the judge could be criticised for not reducing the amount of compensation on this ground.

18. At the sentencing hearing the appellant sought to give additional information on her outgoings after the judge had passed sentence. He took the reasonable course of directing that a further hearing should take place at which the appellant could give proper information. At that hearing counsel relied upon a list of items supplied by the appellant but without any supporting documentation. It was said that the outgoings amounted to £700 instead of the figure previously given in excess of £400. Doing the best he could with that information the judge reduced the periodic payment to £100. We do not think that that decision can be criticised. It broadly reflected what he had been told.

19. The only remaining issue is whether the order requires the monthly payments to be made for a period which is unreasonable. That was the principal matter upon which Mr Cheema rightly relied in his oral submissions before the Court today. The judge did not address that issue in his reasoning at all, although it is clear from the authorities that it was a matter which he was obliged to consider. But we do note that the judge does not appear to have been assisted by any submissions on that point at the relevant time.

20. In *R v Bradburn* (1973) 57 Cr App R 948, the Lord Chief Justice said that an order requiring payments to be made over a 4-year period would genuinely be regarded as unreasonable. In *R v Ganyo* [2012] 1 Cr App R(S) 108, the Court said that the cases do not lay down a bright line rule imposing an outer limit for the repayment period of a compensation order. The Court upheld orders running for 5 years and 8 years in the circumstances of that case. But in *R v York* [2019] 4 WLR 13, the Court stated that excessively long periods should be avoided and, in general, periods of up to 2 years or exceptionally 3 years are unassailable. Plainly issues of proportionality and undue burden are sensitive to the circumstances of each case, including the offence and the offender.

21. In our judgment, this is an offender on a low income, for whom the financial burden of making regular payments of about one-eighth of her net income for a period in excess of 3 years is unreasonably burdensome or disproportionate. We also bear in mind the lesser role she played in the offence and the reasonable expectation that the benefit she gained was commensurate with that role. In the circumstances, the reasonable period over which she should pay £100 per calendar month is 2 years and so the total compensation ordered to be paid should be reduced from £4,000 to £2,400.

22. Accordingly, we quash the compensation order and substitute an order for compensation to be paid to John Lewis Plc in the sum of £2,400 at the same rate of £100 per month. To this extent the appeal is allowed.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

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