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IN THE COURT OF APPEAL
CRIMINAL DIVISION

Case No: 2023/01092/A2
[2023] EWCA Crim 1051.



Royal Courts of Justice
The Strand
London
WC2A 2LL

Thursday 3rd August 2023

B e f o r e :

LORD JUSTICE DINGEMANS

MR JUSTICE GOOSE

MRS JUSTICE FARBEY DBE

R E X

- v -

JAMES DYMOND

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Non-Counsel Application

J U D G M E N T

MRS JUSTICE FARBEY:

1. On 7 December 2022, in the Crown Court at Minshull Street Manchester before Her Honour Judge Landale, the applicant (then aged 39) pleaded guilty to one offence of handling stolen goods, one offence of driving whilst disqualified, one offence of driving without insurance, and one offence of driving otherwise than in accordance with a licence. On 12 January 2023 he was sentenced by Mr Recorder Blakey to 30 months' imprisonment for the handling offence and to no separate penalty for each of the driving offences so that his total sentence was 30 months' imprisonment. He was disqualified from driving for a period of 27 months.
2. The applicant renews his application for an extension of time (46 days) in which to apply for leave to appeal against sentence after refusal by the single judge.
3. We turn to the facts. At around 12.45 am on 27 October 2022, Paul Gibbons drove home from work in a Mercedes fleet car, valued at £35,000, and parked it outside his address in Oldham. At 9 am the next morning he and his wife realised that they had been burgled. The kitchen door lock had been broken and car keys and two vehicles had been taken. Mr Gibbons called his employer who informed him that there was a tracker on the Mercedes. His employer was able to locate the Mercedes via a laptop, which showed that it was parked at an address in Gorton. The car was tracked and the applicant was seen exiting the address with two number plates under his arm and with the Mercedes now bearing false number plates. The vehicle's tracker showed that it had been stolen at 5.11 am and had been driven around various addresses before arriving at the Gorton address. The employer was in touch with the police, and the applicant was soon after arrested.
4. The applicant had 78 previous convictions for offences between 2000 and 2021. These included numerous driving offences and numerous offences of dishonesty.
5. In his sentencing remarks the Recorder considered the sentencing guideline for handling stolen goods. He concluded that the offence was one of high culpability at level A, because the car was recently stolen. He concluded that the harm caused was category 1 harm, because the car was of high value and there was significant additional harm to the victim. The starting point for a category 1A offence is five years' custody and the range is three to eight years.
6. The Recorder, however, appears to have misapplied the guideline because where recently stolen goods are concerned, high culpability requires that there be possession of very recently stolen goods from a domestic burglary or robbery. That criterion was plainly met in the applicant's case. However, the Recorder went on to treat the fact that the car was stolen from a domestic burglary as the additional harm factor under category 1 of the guideline, and so he appears to have counted the domestic nature of the burglary twice, which would not be permissible.
7. In our judgment, this was a category 2 offence, because high value goods were stolen without additional harm factors. The starting point for a category 2A offence is three years' custody and the range is one year six months to four years' custody.
8. In his grounds of appeal, the applicant argues that the sentence was "a bit steep". He states that there was a mix-up with the hearing time, which the Recorder held against him. He has submitted a letter to the court setting out how he cared for his parents-in-law. He claims that their health has significantly declined since his imprisonment.

9. We have given the matter independent consideration. Given the nature of the applicant's offences, an immediate custodial sentence was justified, despite the caring responsibilities which he may have had. There is nothing in the point about the mix-up in relation to the time of the sentencing hearing.
 10. As we have said, the Recorder appears to have misapplied the sentencing guideline to the extent we have set out above. However, any such error was unarguably immaterial. That is because, having weighed all the relevant factors, the Recorder reduced the sentence very substantially in light of the applicant's strong personal mitigation. But this was serious offending overall, and the applicant's lengthy criminal record was a serious aggravating factor which warranted a significant upward adjustment to the sentence.
 11. Given the seriousness of the overall offending and the applicant's lengthy criminal record, the overall sentence of 30 months' imprisonment after a 25 per cent discount for the guilty pleas was not arguably excessive.
 12. For these reasons we refuse to extend the time for an appeal because it would serve no purpose, and we would refuse leave to appeal.
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