IN THE COURT OF APPEAL

CRIMINAL DIVISION

ON APPEAL FROM THE CROWN COURT AT AYLESBURY

HER HONOUR JUDGE TULK 43220033321

CASE NO 202401617/A4

NCN:[2024] EWCA Crim 1142

Royal Courts of Justice
Strand
London
WC2A 2LL

Tuesday, 30 July 2024

Before:

LORD JUSTICE BEAN
MRS JUSTICE FARBEY DBE
HER HONOUR JUDGE MUNRO KC
(Sitting as a Judge of the CACD)

REX
V
PAULIUS KRIAUCIUNAS

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MS C WILLIAMS appeared on behalf of the Appellant

J U D G M E N T

MRS JUSTICE FARBEY

1. On 23 January 2024 in the Crown Court at Aylesbury the appellant, then aged 26, pleaded guilty to six offences of handling stolen goods. On 5 April 2024 before Her Honour Judge Tulk he was sentenced to 42 months' imprisonment on each count with the sentences to run concurrently. He appeals against sentence by leave of the single judge.

2. The facts may be briefly stated. On the night of 3 November 2020, a blue Mercedes was stolen from a residential driveway in Richmond-upon-Thames. The vehicle had a tracking device which showed that it had been taken to an address in Iver. On 5 November 2020, police officers attended the address, which consisted of two garages and a forecourt. They were unable to gain access as the gate was locked. Three men were present. When asked to unlock the gate the men fled to a nearby field, disappearing into the fog.

3. The officers subsequently managed to gain access to the site where they found the Mercedes with a device plugged into the centre console, which had been used to replicate the frequency of the key fob. They found a number of car parts which were linked to 5 other stolen vehicles, including a Volvo, Maserati, BMW and another Mercedes. The site was being used for the purpose of receiving stolen vehicles and stripping them down to disguise them for onward sale. The total value of the stolen vehicles was assessed as being £143,000.

4. The appellant and his co-defendant Marijus Mickeliunas were identified from finger and palm prints on various parts of the vehicles. In interview, the appellant denied any offence and then answered “no comment” to all further questions. Mickeliunas did likewise.

5. The appellant had 15 previous convictions for offences committed between 2013 and 2023. These included numerous offences of theft or attempted theft in Lithuania and a further theft offence in Germany.

6. In her sentencing remarks, the Judge stated that it was quite clear that the offences were professional and sophisticated. She noted that the appellant was an illegal entrant who had no right to work in the United Kingdom. He had made a deliberate and cynical decision to commit the offences for financial gain.

7. The Judge noted the appellant's history of offences of dishonesty in two other jurisdictions. She had the benefit of a pre-sentence report and noted that the author of the report assessed the appellant as being at high risk of re-offending.

8. The Judge had in mind the sentence of Mickeliunas who had been sentenced separately by a Recorder at an earlier hearing after the appellant absconded. Having pleaded guilty to the same 6 offences, Mickeliunas was sentenced to 18 months' imprisonment to be served consecutively to a sentence of 5 years' imprisonment that he was already serving. We have been provided with the Recorder's sentencing remarks which show a notional sentence of 3 years before the appropriate discount for the guilty pleas. The Recorder went on to reduce the sentence to 24 months before discount for pleas in order to reflect the principle of totality in relation to the five-year term.

9. The Judge in the appellant's case was aware of the details of Mickeliunas' sentencing hearing and dealt with questions relating to disparity in her sentencing remarks. She observed that the Recorder had taken the view that the six offences of handling stolen goods were effectively all part of a wider course of conduct for which Mickeliunas was already serving 5 years. The Recorder had considered Mickeliunas' overall criminality and had concluded that the principle of totality required a sentence of 6 ½ years' imprisonment for all his offending, which led her to make a substantial reduction to the sentence for the six offences. The Judge stated that the appellant's situation could be distinguished and that Mickeliunas' sentence should not be seen as any sort of guidance.

10. The Judge applied the relevant sentencing guideline. She concluded that the offences were each of high culpability because of their sophisticated and professional nature. Given that the total value of the various cars exceeded £100,000, she placed the offences into Category 1 harm. The starting point for a Category 1A offence is 5 years' custody and the category range is 3-8 years' custody.

11. The Judge balanced the appellant's relatively limited role against his criminal record which was in her view a serious aggravating factor. She reached the sentence of 56 months which she reduced by 25% to take account of the appellant's guilty pleas entered at a plea and trial preparation hearing after he was apprehended. In this way the Judge reached an overall sentence of 42 months.

12. In her written and oral submissions, Ms Claudia Williams submits that the sentence was wrong in principle and manifestly excessive because there was undue disparity between the sentence imposed on the appellant and the Recorder's approach to the sentence imposed on Mickeliunas for the same 6 offences. The Recorder had, before making a reduction for totality and for guilty pleas, reached a notional sentence of 3 years which was far less than the 56 months before pleas imposed in the appellant's case by the Judge.

13. Ms Williams emphasises that the Recorder had for the same offences categorised Mickeliunas' culpability as having elements of both level A and level B, concluding that his culpability fell between the 2 categories, whereas the Judge in the appellant's case had placed the offending squarely within level A. There was nothing to suggest that the appellant had anything other than a limited role, such that level A culpability could not be justified. Ms Williams submits that the Judge’s approach was wrong in principle and that in any event it contributed to disparity in sentencing.

14. In our judgment the Judge was entitled to treat the appellant's offending as falling into level A culpability for the reasons that she gave. The Judge recognised that the appellant's role was relatively limited but her emphasis on the professional and sophisticated nature of the offending was part of a fair assessment of the appellant's culpability. The appellant's sentence of 56 months before discount for pleas was below the starting point of 5 years and demonstrates the Judge’s acceptance of his limited role. We would regard the Recorder as having been generous in her assessment of culpability under the Guideline. There are no grounds for criticism of the Judge's approach.

15. As regards disparity the question is whether right-thinking members of the public, with knowledge of the relevant facts and circumstances, would consider that something had gone wrong with the administration of justice: R v Balfour Beattie [2007] 1 Cr.App.R (S) 65. That is a high test.

16. The Judge was entitled to consider the appellant's previous convictions for offences committed in other countries as a serious aggravating factor, warranting a significant upward adjustment from the starting point. The co-defendant did not have the appellant's lengthy criminal record.

17. In addition, the Recorder was required to take into consideration the principle of totality in relation to other offending and was, on totality grounds, entitled to make a significant downward adjustment to Mickeliunas' overall sentence. The Judge was not required to undertake that same exercise in the appellant's case.

18. We regard the sentence as just and proportionate in light of the overall seriousness of the appellant's offending. The test for disparity is not met. This appeal is dismissed. We record our gratitude to Ms Williams for her helpful submissions.