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Neutral Citation No. [2024] EWCA Crim 1474



IN THE COURT OF APPEAL

CRIMINAL DIVISION

ON APPEAL FROM THE CROWN COURT AT

NEWCASTLE UPON TYNE

HIS HONOUR JUDGE PRINCE

CASE NO 202403737/A2

Royal Courts of Justice
Strand
London
WC2A 2LL

Wednesday, 27 November 2024

Before:

LORD JUSTICE DINGEMANS
MRS JUSTICE MAY DBE
THE RECORDER OF BRISTOL
HIS HONOUR JUDGE BLAIR KC
(Sitting as a Judge of the CACD)

REX

V

LIAM DEREK MILES

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MR S ROUTLEDGE appeared on behalf of the Appellant

J U D G M E N T
(Approved)

LORD JUSTICE DINGEMANS:

Introduction

1. This is the hearing of an appeal against sentence. The appeal raises an issue about the categorisation of an attempted burglary and the correct meaning of "a significant degree of planning or organisation" in the high culpability A part of the offence-specific guideline.
2. The offence was committed on 15 April 2024. The appellant, who was a 33-year-old man with 48 convictions for 81 offences, including four burglaries and one attempted burglary, pleaded guilty at the first opportunity at the South Shields Magistrates' Court on 19 April 2024. On 8 August 2024 he was sentenced to 28 months' imprisonment for the attempted burglary. No separate penalty was imposed for an offence of possession of a class C drug, being Zopiclone tablets.

Circumstances

3. The circumstances are that at around 9.00 pm on 15 April 2024 (when it was dark) Eli Libretto was at his home address in Watcher Grove, Gateshead with his girlfriend. They were both sat in the kitchen at the rear of the address. Mr Libretto was alerted through his CCTV camera that someone was at the front door. He went to investigate but there was no one there. He again checked the CCTV recording and noticed a male wearing all dark clothing heading towards the back door of the property. Mr Libretto left the address and went round to the back door. He observed a male in his back garden and asked him what he was doing. The male replied that he was looking for his friend's daughter's bike. Mr Libretto asked the man to leave and he did so. Mr Libretto checked the CCTV recording again and saw that the man had attempted to gain access into the address by trying the back door handle.

4. A police officer attended Mr Libretto's address and the CCTV footage was provided. The police officer recognised the man as the appellant.
5. The appellant was arrested on 18 April, three days later, in the same clothes as he was seen wearing on the CCTV footage. Whilst the appellant was searched by the police he was fidgeting with his jacket pocket. Numerous tablets and a strip of Zopiclone were found in that pocket.
6. In interview the appellant initially provided no comment but once shown the CCTV footage admitted that he was present. He stated he could not recall the incident due to his intoxication and he also admitted that he had purchased the Zopiclone off the street and said that he had had a previous prescription for it. He was recalled to prison in relation to the offence of burglary for which he had been released on licence.

Sentencing remarks

7. When sentencing, the judge referred to the pre-sentence report which showed that the appellant was taking drugs at the time of the offending and had ADHD or autism. The judge categorised this as Category A high culpability because the judge found there was a significant degree of planning in creeping around the house. It was category 1 because there were people present and this gave a starting point of three years.
8. The judge found the offending was aggravated by previous convictions, being on licence from a release from a minimum term burglary sentence at the time of the offence and being high on drugs. The offending was mitigated because it was an attempt and not the full offence, it was planned but not sophisticated, there was engagement with drug and alcohol teams in prison. The aggravating factors outweighed the mitigating factors, giving a sentence of three years and six months (42 months). Full credit for the plea gave the sentence of 28 months.

9. The main ground of appeal is that this was an inept and spontaneous burglary and not high culpability A. The judge, as already indicated, found a significant degree of planning or organisation. As appears from the description set out above there was some planning in the sense that the appellant was close to the front door and then walked around to the back of the house and tried the back door handle. This could be properly categorised as some degree of planning and organisation and so medium culpability B, but in our judgment it could not fairly be described as a significant degree of planning or organisation. That would require more thought and planning than was proved to be present in this case.
10. This meant that the proper categorisation would be B, some degree of planning, but also in our judgment the judge was right to find that this was Category 1 - there were persons on the premises at the time of the offending. It is right, as was pointed out on behalf of the appellant, that a discount needs to be made for the fact that this was an attempt. If one takes then Category B1 this gives a starting point of two years. There are the aggravating factors identified by the judge, namely the previous convictions, being on licence, and also being high on drugs at the time. There needs to then be a discount to reflect the fact that this was only an attempt and the other mitigating factors identified by the judge. Notwithstanding all those reductions, in our judgment the aggravating factors outweigh those other factors meaning some increase from the starting point of 24 months, which in our judgment takes the sentence to 30 months. There was then an early plea of guilty. Giving the full one-third discount this gives a sentence of 20 months. Such a sentence might be suspended and we have regard to the overarching guideline on the imposition of community and custodial sentences. This sentence cannot properly be suspended because the appellant had been recalled on licence from his last sentence for

burglary, there had been poor compliance with court orders in the sense that he had offended when on licence and there were no factors justifying suspension in that, unfortunately, rehabilitation still looks a long way off. Further, there is no strong personal mitigation and there are no harmful impacts on others from the imposition of a sentence of immediate custody.

11. Therefore the appeal succeeds to the extent that it is allowed and the sentence originally passed of 28 months is quashed and a new sentence of 20 months is imposed. The sentence on count two of no separate penalty remains as it was.

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

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