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Neutral Citation Number: [2024] EWCA Crim 1613

IN THE COURT OF APPEAL

CRIMINAL DIVISION

ON APPEAL FROM THE CROWN COURT AT PLYMOUTH

HHJ LINFORD CP No: 50EL0054224

CASE NO 202402197/A4

Royal Courts of Justice  
Strand  
London  
WC2A 2LL  
Thursday, 19 December 2024

Before:

LORD JUSTICE LEWIS  
MR JUSTICE GARNHAM  
MR JUSTICE CONSTABLE

REX

V

ELLIOTT RICHARDSON

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NON-COUNSEL APPLICATION

**J U D G M E N T**

MR JUSTICE GARNHAM:

**Introduction**

1. On 29 February 2024, having pleaded guilty before Plymouth Magistrates' Court, the applicant was committed for sentence in respect of two offences, namely fraud and burglary of a dwelling. On 12 August 2024 in the Crown Court at Plymouth before His Honour Judge Robert Linford the applicant was sentenced to 24 months' imprisonment. The applicant had committed these offences during the two year operational period of a suspended sentence of 16 months' imprisonment imposed on 16 January 2024 at Exeter Crown Court for offences of fraud and burglary. The suspended sentence was activated but with a reduced term of 14 months' imprisonment consecutive.
2. The statutory victim surcharge in the sum of £228 was imposed. The amount payable is determined by the date on which the offence, or if multiple offences the earliest offence, was committed. In this case the date of the earliest offence before the sentencing court was 27 November 2021, the breach offence of burglary. Therefore the relevant charging regime was that between 14 April 2020 and 15 June 2022. The applicable amount of the surcharge would then be the amount for the new offences only namely 10 months' imprisonment and should not include any consecutive terms of the activated suspended sentence, see R v Abbott, Hawker, Harrison [2020] EWCA Crim 516. The amount payable for a sentence of 10 months' imprisonment with the earliest date of 27 November 2021 should therefore be £156. We direct that that sum be substituted for the sum indicated by the Crown Court.

**The Facts**

3. The facts of the case can be shortly summarised.
4. The first complainant, Mr Mark Collins, lived at an address in Plymouth. He knew the

- applicant as he used to be a boyfriend of one of the complainant's friends. On 9 February 2024 the complainant left his house to go to Drake Circus at around 9.00am, something the appellant knew that he did on most days. Later that morning the complainant was informed by his neighbour that someone had broken into his house. She had seen the applicant near the complainant's property and saw him climb over a wall and exit a short time later. The complainant, who was at Drake Circus on his mobility scooter at the time, realised that he must have left a door unlocked when he left that morning. He returned home to find that his Samsung tablet worth £300 had been stolen.
5. On 2 April 2024 the second complainant, Kirsty O'Connor, lost her bank card. She believed it was went missing at around 4 o'clock in front of a branch of Aldi. Data showed that the card had been picked up and used for several transactions at Sloopy's Casino in Exeter Street. Each of those transactions was for £20, totalling around £200. CCTV footage obtained from the casino showed the applicant using one of the machines at the time the transaction had taken place. The complainant was reimbursed for the lost money by her bank.
  6. It is of note that the applicant has five convictions for 17 offences, spanning from 8 July 2020 to 19 December 2023 and they include seven frauds and kindred offences and three thefts and kindred offences.

### **The Argument**

7. On the applicant's behalf it is contended, first, that the impairment disorders from which he suffered are so profoundly significant that it was wholly wrong for the judge to reject them entirely on the basis that they would all have been considered by Exeter Crown Court when imposing the suspended sentence order. Second, it is said that having decided to activate the custodial term of the suspended sentence order, the judge ignored

the applicant's compliance with probation for the seven months for which the suspended sentence order was in operation. Third, it is said that while the judge said he had acknowledged and taken account of the applicant's significant disabilities, he does not appear to have followed the sentencing guideline for sentencing offenders with mental disorder, developmental disorder or neurological impairments. Fourth, it is said that the judge erred in assessing overall culpability at B. In addition, it is said that the judge did not give any or any appropriate weight to the lesser harm factors which were present. Fifth, it is said that the judge gave undue weight to the applicant's previous convictions. Finally, it is argued that the sentence was manifestly excessive and the judge should have imposed a sentence which was not immediate custody or, in the alternative, a manifestly shorter sentence of immediate custody.

### **Discussion**

8. The single judge gave the following reasons for refusing leave to appeal:

"I have considered the papers in your case and your grounds of appeal. While the advice and grounds is admirable in its thoroughness in identifying a multiplicity of ways in which the sentencing judge might have proceeded in a different way it is not arguable that the sentence imposed was manifestly excessive or contrary to principle. In particular:

- On activating the suspended sentence: the guideline is clear that 'Only new and exceptional factors/circumstances not present at the time the suspended sentence order was imposed should be taken into account.' The argument that factors present at the time can nonetheless be taken into account is simply wrong. There is no attempt to identify factors which would legitimately engage this part of the guideline. It is not therefore arguable that the decision to activate was wrong.
- It is plain that the judge gave credit for engagement with probation. It is not arguable (particularly given the terms of the report) that not giving a larger discount was wrong (as opposed to being something another judge might have done).

- It is also plain that while the judge did not explicitly reference the 2020 Guideline for sentencing MD, DD and NI he did take it into account by explicitly referencing the range of issues you face in this regard. It may be right that he would have been better to give more direct consideration to the issue of connection. However even if that is done at the end of the day the judge gave considerable discount from the sentence prima facie applicable for this portfolio of offences against the background of a poor record with related convictions and evidence of escalation in offending type.
- Against this background the sentence actually imposed did plainly include a substantial discount for your mental health/neurological issues. It is not arguable that the total sentence imposed was manifestly excessive."

9. We agree with each part of that ruling. There is no properly arguable ground here and, subject to what follows, this application is dismissed.
10. However, as previously indicated we direct that a sum of £156 is substituted for the sum of £228 as the appropriate statutory victim surcharge.

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

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