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NCN: [2024] EWCA Crim 756
IN THE COURT OF APPEAL
CRIMINAL DIVISION
ON APPEAL FROM THE CROWN CO
LEWES
MR RECORDER NICOLSON-PRATT 20230119
CASE NO 202400221/A4



Royal Courts of Justice
Strand
London
WC2A 2LL

Friday 21 June 2024

Before:

LORD JUSTICE MACUR

MRS JUSTICE COCKERILL

MRS JUSTICE TIPPLES

REX

V
RYAN CAHILL

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MR M McALINDEN appeared on behalf of the Applicant.

J U D G M E N T

MRS JUSTICE COCKERILL:

1. On 20 December 2023, in the Crown Court at Lewes before Mr Recorder Nicholson-Pratt, the applicant was sentenced in respect of the following offences to which he had pleaded guilty.
 - a. The lead offence was Count 8, being concerned in the production of a Class B drug (Cannabis), contrary to section 4(2)(b) of the Misuse of Drugs Act 1971, 44 months' imprisonment;
 - b. Count 2, burglary (non-dwelling), contrary to section 9(1)(b) of the Theft Act, 15 months' imprisonment consecutive,
 - c. Attempted burglary (count 3) and burglary Count 4, no separate penalty.
 - d. Count 5, burglary (non-dwelling), contrary to section 9(1)(b) of the Theft Act, 15 months' imprisonment concurrent;
 - e. Count 6, attempted theft, contrary to section 1(1) of the Criminal Attempts Act 1981, 6 months' imprisonment concurrent;
 - f. Count 7, damaging property, no separate penalty; Count 10, assault occasioning actual bodily harm, contrary to section 47 of the Offences Against the Persons Act 1861, 21 months' imprisonment consecutive.
 - g. Counts 11 and 12, assault by beating, contrary to section 39 of the Criminal Justice Act 1988, no separate penalty.
2. The total sentence imposed was therefore 80 months for three sets of offences as the

Learned Recorder described them - 15 months for the first set, 44 months for the second and 21 months for the third set of offences.

3. No evidence was offered against the applicant on Count 1, holding a person in slavery or servitude and a not guilty verdict was entered, pursuant to section 17 of the Criminal Justice Act 1967. In relation to Count 9, possession of a prohibited weapon was ordered to lie on the file against him in the usual terms.

THE FACTS

4. The facts for the respective offences can be summarised thus:

Count 2

5. On 30 January 2023, a branch of the Co-Op in Petworth was broken into at around 04:30am. The front door was forced open and cigarettes were stolen. Staff arriving later that morning found that the door had been forced open. The metal lock was in pieces on the floor and baskets had been knocked over. The Perspex screen by the counter had been smashed and the cigarette holder was damaged. CCTV footage showed the applicant and another male forcing open the door of the store with a crowbar and loading up a bedsheet with cigarettes.

Count 3

6. On 31 January 2023, the applicant and another male used an angle grinder to attempt to force access to a branch of Sainsbury's in Pulborough at around 03:30am. They failed to gain access, they then attempted to kick the door in but were unable to do so and left without stealing anything..

Counts 4 & 5

7. On 6 March 2023, the Co-op in Petworth was targeted again just after 04:00am. On this occasion the applicant and another male unsuccessfully attempted to access the ATM using an oxy-acetylene torch, causing damage. CCTV footage showed a dark coloured vehicle outside the store. The applicant and another male wearing face coverings and quilted gilets forcing entry to the store and attempting to break into the tobacco area unsuccessfully.

Counts 6 & 7

8. On 15 March 2023 at 05:05am, the police received a number of reports that people were attempting to steal or rip out a Cash Zone ATM, which was a self-standing unit, outside a parade of shops in Horsham. No cash was stolen but metal cassettes containing various paperwork and other ATM material was stolen from the unit, which was left on the road. Around £5,000 of damage was caused to the machine, which contained around £12,000 in cash.

Count 8

9. On the evening of 9 June 2023, police officers carried a warrant at Slifehurst Wood Farm in West Sussex. That is a rural smallholding which contains a large barn and an old caravan. It had been leased to males including someone called "Reece" or "Ryan" about 2 years before. Officers found a substantial cannabis production site with multiple cannabis plants in various stages of growth and associate growing equipment. Inside the caravan they found a large amount of herbal cannabis bud. There was only one male present in the caravan, the complainant (Earl Harris), who was visibly in a poor state and

living in squalid conditions.

10. There was a drugs expert's report of three grow rooms. In grow room 1, 37 plants estimated to be 100 centimetres tall nearing maturity; grow room 2, 28 plants, estimated to be 100 centimetres tall nearing maturity; grow room 3, 30 plants, again 100 centimetres tall nearing maturity. Also contained in grow room 3 were 270 young plants. The expert stated it would be realistic to expect 243 of these plants to yield female flowering head. A total yield would have ranged been 9 and 28 kilograms. The price for a kilogram at the time of the offence ranged from £3,500 to £6,000. Therefore, it is estimated that the production could have achieved between £31,500 and £168,000 value.

Counts 10 to 12

11. The complainant Earl Harris was interviewed and told officers that the applicant and others had mistreated him in various ways, including threats to hurt his family, making him sleep in the dog kennel on the floor or in the mud, throwing things at him, verbally abusing him, threatening to "*cut him open*", dragging him through dog excrement, kicking him in his stomach and groin area, knocking out his teeth, starving him, preventing him from going to a family funeral, hitting him with cups, strangling him until he nearly passed out and beat him to a level where the complainant thought he had sustained broken ribs as he could not cough. He also said that he was "clumped" to the face and head while he was in a car. He said he had attempted to escape on numerous occasions which led to violence being inflicted on him. He said he once attempted to escape by jumping from a moving van. He said he had remembered being in a corner and being stamped on, kicked, beaten, punched and strangled, beaten with inanimate objects and not given clean clothes after being dragged through dog excrement and that he had

been given no provisions for personal hygiene. He said he was kicked to the groin and stomach which caused him to vomit and that he struggled to use the toilet following some of this abuse. He said that he had tended to the cannabis grow and was held responsible if things did not go well.

APPLICATION FOR LEAVE TO APPEAL

12. The Applicant renews his application for leave to appeal following refusal by the single judge. We are most grateful for the clear and focused submissions of Mr McAlinden, who appeared before and, following refusal, appears pro bono.

13. The grounds advanced are;

- a. The starting point taken on Count 8 was too high and the sentence of 44 months was manifestly excessive. If the Learned Recorder intended to run this “lead” sentence consecutive to Sets 1 and 3, he should have reduced the starting point to take into account totality. A starting point of 4 years should have been taken with the sentence then reduced to 36 months giving the appropriate credit. Set 1 should have been reduced to 12 months and Set 3 should have been reduced to 15, making a total sentence of 63 months;
- b. Secondly, it is said the principle of totality was not sufficiently taken into account and overall, the total sentence of 80 months was manifestly excessive.

14. Before us this morning Mr McAlinden, in his focused submissions, emphasised in particular the respects in which he parted company with the single judge. He submitted

that the judge's reliance on the conduct in relation to Mr Harris was inappropriate, as that was reflected in the later counts and that therefore amounted to double counting and the modern slavery count had been allowed to creep back in although that was allowed to lie on the file. He submitted that the account of the heavily convicted Mr Harris was never accepted on behalf of Mr Cahill but had effectively driven the reasoning. He submitted that Mr Cahill did not properly have a leading role and that all of these factors led to a manifestly excessive sentence on this count. It was also submitted that the overall sentence, standing back and looking at the groups of convictions, was manifestly excessive at 80 months.

DISCUSSION

15. Clear and cogent reasons were given by the single judge, which will have been served on the applicant, and are not repeated here. We have, of course, read the material provided to us, we have given independent consideration to the renewed application and to the submissions both in writing and orally. But we agree with the single judge that it is not arguable that the sentence imposed was manifestly excessive.
16. Firstly, we do not agree that the starting point on count 8 was too high. It may be right that this offence has only some "leading" features, but there are enough that the judge could legitimately say that the category was borderline leading/significant. The original starting point was taken at 60 months (misheard by the transcriber as 16) - that is the top of significant role. It cannot be said that the further uplift to reflect the significant role factors and what was, on any analysis, supervision if not exploitation of Mr Harris, entirely separate to the counts which were pursued, was a decision which was not properly open to the judge. Therefore, we consider that the 72-month figure was entirely

justifiable, albeit that some other judges might well have reached a lower figure.

17. The discount then applied explicitly allows both for mitigation and totality and, while the mitigation was not insignificant, the deduction overall was one which was fairly generous. It produces, in our judgment, a result, balancing one against the other, which is not even particularly stern.

18. As for the argument that the totality should have been reflected in reductions to all of the “sets”, this is not arguable. As is well understood, the purpose of totality is not to give any fixed percentage reduction in any mandated way but to enable the judge to fairly reflect the totality of the offending behaviour. Here there was a very considerable amount of offending behaviour, so much so that the sentencing judge had to sensibly group the offences in “sets”. Each of those sets had some serious features. Although others were involved, the applicant played a full part. Overall, it was behaviour reflecting a serious consistent pattern of law breaking. Allowance made for totality in relation to the leading count. We find it not remotely arguable that the sentence imposed overall was manifestly excessive for the totality of that offending behaviour.

19. Accordingly, this renewed application for leave is dismissed.

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