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No: 201300608 A3
IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
Strand
London, WC2A 2LL
Tuesday, 26th March 2013

B e f o r e:
LORD JUSTICE TREACY
MR JUSTICE MACDUFF
HIS HONOUR JUDGE MILFORD QC
(Sitting as a judge of the Court of Appeal Criminal Division)
R E G I N A
v
DANIEL JOHN LEE STICKLEN

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Mr C Hennis (Solicitor Advocate) appeared on behalf of the **Appellant**

J U D G M E N T
(Approved as corrected and perfected herein
AGM 21.04.13)

1.MR JUSTICE MACDUFF: Section 125(1) of the Coroners and Justice Act 2009 provides that the courts must follow any sentencing guidelines which are relevant to the offender's case unless of the opinion that it would be unjust to do so. In sentencing this appellant, who appeals against sentence with leave of the single judge, His Honour Judge Moore, sitting in the Crown Court at Sheffield, expressly referred to section 125 when, on 14th December of last year, he imposed a sentence of 19 months' imprisonment. This sentence was made up of 15 months' imprisonment and four months' imprisonment to be served consecutively, respectively for an offence of burglary and for breach of a community order, itself imposed for an offence of burglary. The learned judge said that it would be unjust and that the court would be brought into disrepute if he were to follow the guidelines, which would not permit a sentence of sufficient length.

2.The appellant's grounds of appeal are essentially based upon the submission that the learned judge was wrong to adopt that course, that there was no good reason for departing from the guidelines. Additionally, it is said that the appellant was not given a sufficient discount for his plea of guilty.

3.The background facts are these. In June 2012 the appellant had pleaded guilty before the magistrates to an offence of burglary of an unoccupied dwelling, having entered in order to steal, it appears, copper piping so as to be able to fund his drug habit. The house was awaiting letting by estate agents. The magistrates had sentenced him in July 2012 to a community sentence with a work requirement, as well as other requirements.

4.In September, at a time when he was subject to that community order, he entered another unoccupied house. In fact, it was a house in Doncaster where he had previously been a tenant, and, as the learned judge remarked, within two months he was "doing it again". The police were called at the request of a neighbour. The police attended the property. The appellant was upstairs. He was arrested. Copper piping had been removed from the hallway and the kitchen. A radiator had been removed from the wall in the hallway. The boiler in the kitchen had been pulled from the wall and a number of floorboards in the bedroom had been taken up. Damage to the extent of about £500 had been caused.

5.The appellant was again brought before the magistrates charged with burglary of a dwelling. Because of the nature of the charge, he was committed to the Crown Court. It is clear that he was always content to plead guilty to simple burglary. Submissions were made on his behalf to the prosecution that this property, being unoccupied, was not a dwelling, and in due course the prosecution indicated agreement and the charge was amended.

6.The Crown having accepted that the charge could be reduced, the appellant was brought before the Crown Court on 30th November 2012, where he pleaded guilty to the offence of the burglary committed in September. At the later sentencing hearing before Judge Moore, he admitted to being in breach of the community sentence imposed by the

magistrates. As we have already mentioned, he was sentenced to 15 months' imprisonment for the burglary and four months' imprisonment for the breach to run consecutively, giving a total sentence of 19 months.

7.In passing sentence the learned judge expressly allowed a discount of 25 per cent for the plea of guilty. We will deal first with that ground of appeal.

8.It is submitted that a full one-third discount should have been given and that no explanation was given by the learned judge for not doing so. The appellant had always been content to plead to simple burglary, but that option was not available to him until the Crown accepted the defence submissions and reduced the original charge.

9.We consider there is merit in that submission. In our judgment, the appellant did in fact plead guilty at the first available opportunity and he should have been allowed the full credit for his plea.

10.The second and more substantial ground of appeal is based upon the guidelines for burglary which the learned judge expressly refused to apply. He said this:

> "Had it not been for the technicalities that the renovations to the house caused it temporarily not to be regarded as a dwelling house, you would have been up for a statutory minimum sentence.
>
> Whilst I am prepared to a certain extent to spare you that, the law runs the risk of bringing itself into disrepute if you're sentenced as if this were a shed or a factory, for clearly, it was a dwelling house waiting for a tenant."

In our judgment, the justification for treating a dwelling as being different from other properties (and the judge mentioned a shed or a factory) is the very fact that it is someone's home, occupied, with personal and sentimental property within it. It is for that reason that higher sentences are required, and for that reason that statutory minimum sentences have been deemed appropriate. Those factors do not apply here: there were no occupants, there were no personal objects, this was not someone's home with personal space being violated - indeed, no new tenant or purchaser had yet been identified. The premises were not only unoccupied, they had been empty for many months and were bare and unfurnished. With the greatest respect to the learned judge, we do not see any justification for his observation that this was a "technicality" resulting from renovations making the premises temporarily not to be regarded as a dwelling.

11.Notwithstanding the views of the learned judge, we consider that these premises were indeed similar to other non-residential premises and we consider that the appellant, having pleaded guilty to the burglary of a non-dwelling, should have been so sentenced. True it is that the judge did not go the whole way and sentence him as though this were a dwelling, but he went halfway there and sentenced substantially above the level permitted by the guidelines. Nor can we see why he should have regarded it as unjust to sentence in accordance with the guidelines. He gave no reason, except to observe that he considered that the non-domestic burglary guidelines were "artificially restrictive". That can only mean that the judge did regard the unoccupied premises as akin to a dwelling.

12.This court has said before that it is not open to a sentencing judge to refuse to follow the guidelines just because he or she does not consider that they provide a sufficiently severe penalty, and we note in parentheses that if the Crown had charged the correct offence at the outset, the case may (and we emphasise "may") have been dealt with in the Magistrates Court.

13.The learned judge had the benefit also of a pre-sentence report, which noted that the appellant accepted responsibility, did not seek to minimise his behaviour and recognised the impact of his offending. He had fully engaged with the drug treatment team in prison. The recommendation, perhaps to be considered as unrealistic, was for a suspended sentence with a raft of other community measures.

14.The appellant had previous convictions. He had appeared before the courts on 11 previous occasions for 27 offences between 2006 and 2011, he now being aged but 25 years. Previous appearances had been for theft and breaches of previous court orders with some non-custodial and some short custodial sentences. Specifically, he had previous offending for burglary, the last one which we have already mentioned on 10th July when the community order was imposed.

15.Having considered the guidelines in respect of simple burglary carefully, we have reached the conclusion that the correct total sentence here, embracing both the burglary and the breach, would have been one of 18 months' imprisonment after a contested trial, from which a full discount of one third should have been allowed, resulting in an overall sentence of 12 months' imprisonment. Accordingly, we allow the appeal and substitute sentences of nine months' imprisonment and three months' imprisonment to run consecutively in place of the sentences imposed by the learned judge. To that extent this appeal is allowed.

Approved as perfected and amended herein
21.04.13