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IN THE COURT OF APPEAL
CRIMINAL DIVISION

CASE NO 202301708/A1



NCN: [2023] EWCA Crim 1175

Royal Courts of Justice
Strand
London
WC2A 2LL

Thursday 21 September 2023

Before:

LORD JUSTICE WILLIAM DAVIS

MR JUSTICE JACOBS

MR JUSTICE GRIFFITHS

REX

V

ROBERT JONES

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MR C EVANS appeared on behalf of the Appellant.

J U D G M E N T

Approved

MR JUSTICE JACOBS:

1. On 25 January 2023, in the Crown Court at Maidstone, the appellant pleaded guilty to an offence of robbery. On 27 April 2023, at the same court, he was sentenced by Ms Recorder Hammond to 5 years and 3 years' imprisonment, and he now appeals with the leave of the single judge.
2. The facts of the offence were as follows. On 5 November 2022 the appellant had entered a Co-op store in Gillingham, Kent. On arrival at the store the appellant was recognised by staff as a potential shoplifter. One of the shop staff, Ms Louise Ramsden, subsequently went to the meat aisle of the store and started arranging stock close to the appellant. The appellant then turned to Ms Ramsden and said, "I'm taking all of this, and I've got a needle". The appellant then showed Ms Ramsden a needle and Ms Ramsden saw an uncapped needle with a clear 1 inch of the needle exposed. Ms Ramsden subsequently backed away from the appellant, who thereafter began to fill up an Aldi bag which he had brought with him with a large number of meat items from the Co-op store. The appellant then left the store with two large shopping bags full of meat items without making any attempt to pay for those items.
3. The appellant was aged 38 at sentence. He had 18 convictions for 51 offences, spanning November 1999 to November 2022. His relevant convictions included four common assault offences and 31 theft or related offences. The convictions included three convictions for robbery in 2018, where concurrent sentences of 4 years were imposed for robberies where a needle or a bladed article was used in the context of robberies from shops. Most recently, there was a spate of thefts in November 2022 from various shops where a needle had been used to threaten staff. Those incidents had been charged as thefts and common assault rather than robbery, although the circumstances of the offending bore considerable similarity to the robbery offence which was before the court. They involved thefts on the 2nd, 3rd, 7th and 15 November 2022.
4. The appellant was sentenced for the other November 2022 offences at Medway Magistrates' Court on 5 December 2022, and he received an 18-month community order with a 20-day rehabilitation activity requirement and a 9-month drug rehabilitation requirement. On the same day however, he was arrested for this offence and remanded in custody. In the pre-sentence report for the index offence the court was requested to revoke that order and it did so.
5. At the sentencing hearing in April 2023, the recorder had a pre-sentence report, which described drug abuse as the primary motivating factor in the appellant's offending. There had been a period, between 2008 and 2016, when the appellant had been free of convictions, but matters had deteriorated afterwards following his mother's death. The appellant was keen to impress upon the author of the pre-sentence report that he had engaged in efforts with substance misuse services whilst in custody and had demonstrated his motivation and desire for change. The author considered that the appellant was capable of making changes but noted that he had made similar assertions in the past and had relapsed. Given those further relapses, she considered that there was a high likelihood of continued substance misuse and acquisitive offending. The appellant was

however able to produce documents from the prison which showed that he was indeed taking positive steps to try to rehabilitate himself, and these included evidence of negative drug tests.

6. In her sentencing remarks the recorder referred to the appellant's rampant drug habit which had led to shoplifting on many previous occasions. She considered that Ms Ramsden (in the Co-op store) had not suffered physical harm, but that the event had had a psychological impact on her. She did not consider that the harm could be described as simply minimal. She had no doubt that it was terrifying to be confronted with an uncapped needle and she therefore categorised the harm as 2 rather than 3, under the relevant Robbery Guideline.
7. In terms of culpability, she accepted that this was a case of medium culpability B because of the use of a weapon, which was not a bladed article. A B2 offence under the Guideline has a starting point of 4 years and a range of 3 to 6. The recorder considered that she could move up within the range because of the nature of the weapon, leading her to a starting point of 5 years' imprisonment. She then referred to the appellant's previous convictions which involved 12 previous instances where he had produced an uncapped needle, or possibly a knife on one or two of those occasions. She said that the previous robbery convictions and multiple convictions for acquisitive offending moved the appropriate sentence in her view to 6 years. She then identified as further aggravating features that the offence was committed under the influence of drugs and there had been a failure to comply with previous community orders, including a community order with a drugs rehabilitation requirement offered in 2019. On the positive side however, she referred to what she described as "the impressive report" on the appellant's time in custody, where he had been a model prisoner. He had undertaken courses and had been a mentor for prisoners and returned negative drugs tests. Balancing those features, her sentence, had there been a trial, would have been 7 years. Credit for plea of 25 per cent reduced that to 63 months or 5 years and 3 months. The recorder also decided that the appellant was a dangerous offender but that a determinate sentence was, in all the circumstances, appropriate and therefore she did not impose an extended sentence.
8. On behalf of the appellant, Mr Evans submits that the appellant had never caused serious harm or intended to. His only intention was to complete the theft of comparatively low value items to meet his habit. He relied upon the substantial progress that the appellant had made in custody with a view to ensuring that there would be no relapse. The appellant had been taken into custody on 5 December 2022 and had therefore been in custody for a period of 5 months (4 months at the time of the sentence).
9. His principal point was that this was a category 3B offence, not category 2B. This was because there was no or minimal psychological harm caused to the victim and there was minimal detrimental effect on the substantial business of the Co-op. The range for a 3B offence is 1 to 4 years with a starting point of 2 years. He submitted that the recorder should not have increased the starting point by a year to reflect the nature of the weapon produced but, in any event, an increase in a year was not justified. He submitted that the judge was wrong to say that the offence was committed whilst under the influence of drugs. The appellant's position was that he was withdrawing from the effects of Class A

drugs and needed money to purchase his next wrap. Overall, he submitted that a sentence of 7 years, which was higher than the top of the range for a category 2B offence, which this was not, was excessive.

Discussion

10. We consider that there is force in Mr Evans's argument. In our judgment, the offence which the recorder was dealing with was indeed a category 3B offence, not a 2B offence. This was a short-lived incident, which had no doubt been frightening at the time, but Ms Ramsden's statement did not provide any evidence of any psychological damage which was more than minimal. Accordingly, the starting point was 2 years and the range 1 to 4. We are not persuaded that it was appropriate to move up within the range because the weapon used was a needle rather than something else. Medium culpability under the Guideline covers a variety of weapons which are not bladed items or firearms or imitation firearms. This weapon was squarely within that category, and we do not think that there was any justification for moving up within the range because it was an uncapped needle rather than some other type of weapon. Nor are we persuaded that there was an aggravating circumstance because of a failure to comply with previous court orders. According to the Police National Computer records, the most recent sentences for the appellant were imprisonment in 2018, followed by the community order imposed by the Magistrates in December 2022, which the appellant was unable to start because he was arrested and remanded in custody for this offence.
11. We do consider, however, that there were features of this case which moved the appropriate sentence, prior to credit for plea, beyond the range of 1 to 4 years. The most significant aggravating factors are, in our view, the appellant's previous convictions. These included the series of offences charged as theft and common assault, but with considerable similarity to the present offence, which had been committed as part of the November 2022 spree. In addition, we consider that the recorder was right to say that the offence was committed under the influence of drugs. The appellant was suffering withdrawal symptoms from his drug use and this was why he was robbing in order to get his next wrap. Set against that, there was the progress made in prison which had impressed the recorder.
12. In those circumstances, we consider that the appropriate sentence, after trial, would have been 5 years. We consider that the sentence imposed by the recorder was therefore manifestly excessive. We reduce 5 years to 3 years 9 months because of the plea. Accordingly, to that extent, the appeal is allowed.

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