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IN THE COURT OF APPEAL

CRIMINAL DIVISION

[2020] EWCA Crim 608



No. 201904370 A1

Royal Courts of Justice

Wednesday, 8 April 2020

Before:

LADY JUSTICE SIMLER DBE
MR JUSTICE MARTIN SPENCER
MRS JUSTICE FARBEY DBE

REGINA

V

DONNA RICHARDS

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MR S. COOKE appeared on behalf of the Appellant.

J U D G M E N T

MR JUSTICE MARTIN SPENCER:

- 1 By leave of the single judge, the appellant appeals against a sentence of 26 months' imprisonment imposed on 12 November 2019 by HHJ Holt in the Crown Court at Isleworth for offences of dishonesty committed over a four-year period, together with an offence of failing to surrender to custody.
- 2 The appellant is now aged 45, having been born on 13 May 1974. The offences committed and sentence imposed were as follows: handling stolen goods - 12 month' imprisonment; failing to surrender to custody - 14 days' imprisonment; possessing an article for use in fraud - 15 months' imprisonment; theft - 26 months' imprisonment, all sentences to be served concurrently.
- 3 The story starts in October 2015 when the appellant was stopped and searched by police at the Westfield Shopping Centre and was found to be in possession of a driving licence and a Nationwide bankcard in the name of Gillian Williams. This formed the basis of the charge of handling stolen goods. She was arrested, interviewed and released on police bail to attend Uxbridge police station on 8 December 2015. She did not do so and this founded the charge of failing to surrender.
- 4 On 20 March 2017 the appellant, together with another female, entered a branch of Halifax in Chiswick. The appellant pretended to act as the carer for her companion, but staff became suspicious and when the appellant handed over a debit card and asked for a cash withdrawal, the member of staff spotted it belonged to someone aged in their 70s. A further check revealed that the card had been reported lost. The police were called, but the appellant and her associate had left before the officers arrived. A search found them in a nearby supermarket and the appellant was arrested. This founded the charge of possessing an article for use in fraud. This offence was committed whilst the appellant was at large and on police bail, but this was not picked up at that time.
- 5 Finally, on 7 September 2019 one Michelle Doherty was in a restaurant with friends and hung her handbag over her chair. When she went to retrieve it, she found that it had been stolen. It contained a driving licence, a debit card, a phone and a set of keys, as well as her husband's wallet. It had been stolen by the appellant. The following day police officers found the appellant sleeping in a car park. She was lying on top of the stolen bag. She was arrested and has been in custody since then. In a victim impact statement, Mrs Doherty explained the effect of the theft on her:

"On the night it happened our children were at home while my husband and I had gone out to dinner. It ended up being an awful end to a lovely evening. I was so scared about what happened. Inside my bag had been my house keys, my car keys, my husband's driving licence. The driving licence had our home address on it with the house keys. I had horrible thoughts that whoever had the bag would go to our home address and find our children and that something would happen to them, which is just unimaginable. On the night this happened, I was in a complete mess, thinking and imagining what could happen to my children, which got me so hysterical and worried.

When my kids go out at night, I find myself constantly checking in with them, which is something I never did before this happened. I am now always telling them to watch their stuff in bars and restaurants and not to carry anything they don't need. They must think I am so annoying and paranoid, but to be honest I do not care. If I am completely honest, I want this female to be punished for

what she did. She turned my whole world upside down that night and then caused me a lot of stress and worry which has not gone away."

6 The learned judge took the charge of theft as the lead offence, this being the most serious of the offences, having been committed whilst on police bail for the two earlier offences. She passed concurrent sentences in relation to the other offences.

7 Although in their submissions both counsel had referred to the Sentencing Guidelines, the learned judge correctly alluded to the fact that she needed to look at the totality of the offending and that, given the past record of the appellant, the Guidelines, referring as they do to a single offence, are of limited assistance. The reference to the appellant's record was a reference to the fact that the appellant had 14 convictions for 66 offences dating back to the year 2000, all relating to offences of dishonesty, including theft, handling stolen goods and fraud. In 2012 she had been sent to prison for 21 months for multiple offences, including 13 charges of theft.

8 The learned judge had available a pre-sentence report, which referred to the fact that the appellant's mother had passed away in 2015. The appellant had struggled with drug use for a number of years and was destitute and homeless. The report referred to the fact that the appellant had been engaged with the drug team whilst in prison and was off methadone. She had been diagnosed with depression, but was receiving help for that too.

9 The learned judge also had a letter dated 10 October 2019 from Sharon Henry from an organisation called EACH Counselling in which Ms Henry said:

"To my knowledge, Ms Richards has never had the chance of suitable accommodation which has caused her life to keep spiralling out of control on drugs and losing her children (ages 13 and 11) to the state. One of the things that she said was that if she would be able to house and get herself rehabilitation, she would be able to contact her children and her life chances would improve gradually. Ms Richards is very vulnerable because of her addiction and homelessness situation. I contacted Streetlink to get her off the streets and she was very worried, because of all the people that she knew who are abusers had been placed into the same hostels that she would be offered accommodation."

Ms Henry referred to EACH being a charity known for working with people like Ms Richards who have substance abuse and mental health issues.

10 Sentencing the appellant, the learned judge rightly considered that the custody threshold had been passed and that only an immediate custodial sentence was appropriate. She considered that the offence of theft, after giving full credit for plea, should be one of 26 months' imprisonment with concurrent shorter sentences for the other offences, including the offence of failure to surrender.

11 Original counsel instructed on behalf of the appellant, Ms Choudhury, in her written advice on 17 November 2019, renewed by Mr Cook in his submissions today, submits that given the Guidelines for theft with medium culpability and category 3 harm suggests a starting point of a high level Community Order and a range from a low level Community Order to 36 weeks' custody, the notional sentence of 39 months' custody, before credit for plea, was manifestly excessive. Ms Choudhury also suggested that "it appears credit has not been awarded to this sentence", but in our judgment that is clearly not right as the learned judge stated in terms that she was given a full one-third credit and the sentence would otherwise have been 39 months. Given that the learned judge was passing a lead sentence for the

offence of theft, taking into account not only the other offences for which the appellant fell to be sentenced, but also her appalling record of criminality for similar offences, we agree with the learned judge that the Sentencing Guidelines were of limited assistance.

- 12 However, standing back and looking at these offences as a whole in the context of the appellant's criminal record and the mitigating factors, we agree that a sentence of 39 months' imprisonment before credit for plea would have been manifestly excessive. In our judgment, the appropriate sentence before credit for plea would have been one of 21 months' imprisonment, which we reduce to 14 months to give full credit for the appellant's plea of guilty.
- 13 The appeal is therefore allowed. The sentence of 26 months' imprisonment for the charge of theft is quashed and we substitute a sentence of 14 months' imprisonment. For the offence of possessing an article for use in fraud, for which the sentence of 16 months' imprisonment concurrent was imposed, we quash that sentence and substitute a sentence of 10 months' imprisonment, also to be served concurrently. We do not interfere with the sentence of 12 months' imprisonment for handling stolen goods and 14 days' imprisonment for failing to surrender to custody. In the result, the total sentence to be served by the appellant will be one of 14 months' imprisonment.
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CERTIFICATE

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the Judgment or part thereof.

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This transcript has been approved by the Judge.