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IN THE COURT OF APPEAL
CRIMINAL DIVISION



CASE NO 202103034/A3
[2022] EWCA Crim 534

Royal Courts of Justice
Strand
London
WC2A 2LL

Wednesday 6 April 2022

Before:

LORD JUSTICE EDIS
MRS JUSTICE LAMBERT DBE
HIS HONOUR JUDGE POTTER
(Sitting as a Judge of the CACD)

REGINA
V
RAPHAEL SCARLETT

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MR C DRINNAN appeared on behalf of the Appellant
MR A JOHNSON appeared on behalf of the Crown

J U D G M E N T

1. LORD JUSTICE EDIS: This appeal is another case in which faulty record keeping or procedural error has resulted in a failure by the court system to achieve justice. In this case that failure of justice was the fact that this appellant was very properly sentenced to a total term of 15 months' imprisonment for a number of offences. In the result that must now be reduced to a term of 10 months' imprisonment and he therefore escapes his obligation to serve one-third of the term which was imposed. That is obviously a deeply regrettable state of affairs. In this case the consequences are not as grave as they might be in other circumstances, because the term avoided is relatively short and the error has not caused anyone to be wrongly deprived of their liberty. It is nonetheless highly regrettable.
2. It is unfortunately necessary to explain how this came about in a little detail because the position is rather intricate. In summary, the position is this. On 25 June 2021 in the Black Country Magistrates' Court sitting at Wolverhampton, this appellant pleaded guilty to a number of offences. He did not plead guilty to an offence of theft said to have been committed on 9 October 2020 when it was said that he had stolen £594-worth of champagne from Sainsbury's. That charge, which was before the Justices on that day, was in fact dismissed because it was not pursued. That outcome was incorrectly recorded in the Court Register which showed that the Justices had committed the appellant for sentence in relation to it. When that arrived at the Wolverhampton Crown Court it was given the number S20210248. It appeared from the records on which the Crown Court relied, as it was entitled to do, that it was dealing with four separate committals for sentence which had been ordered pursuant to section 14 of the Sentencing Act 2020 on the same day. There should in fact have been three rather than four such committals before the Crown Court. In the end the sentence of 15 months was made up by the imposition of consecutive sentences of six months and four months in relation to two offences which had been validly committed for sentence, and a third consecutive term of five months for the offence of theft of champagne from Sainsbury's which had not been committed for sentence. All the other sentences were ordered to run concurrently.
3. Because that five-month term was imposed for an offence of which the appellant had not been convicted, it must obviously be quashed. If the record of the three committals which had been ordered by the Justices had been accurate, we have no doubt that the same sentence of 15 months would have been imposed by the court, but it would have been structured differently and the appellant would therefore have been lawfully sentenced to 15 months' imprisonment, rather than unlawfully sentenced to 15 months' imprisonment. That is why we say he has escaped a sentence in part which he richly deserved to serve.
4. In order to explain why we come to that conclusion as to the justice of the sentence which was imposed by the Recorder on 26 August 2021 sitting in the Crown Court at Wolverhampton, it is necessary to say a little bit more about the facts.
5. The three valid committals for sentence were imposed in respect of convictions as follows: S20210249 was ordered in respect of an offence of theft from Boots of cosmetics valued at £105.96p on 25 November 2020. That resulted in a concurrent term of one month's imprisonment in due course. Committal S20210250 was ordered in respect of three offences, two of which were thefts from shops and one was an offence of possession of a class B drug, namely cannabis, which was found on the appellant when he was arrested in respect of one of those two offences of shop theft which occurred on 5

November 2020. The total value of the items stolen in respect of those two offences covered by that committal for sentence was £538.

6. The third valid committal for sentence was numbered S20210251 and involved four offences of stealing from shops, three of which were completed offences and one was an attempt. They occurred in May and June of 2021 and involved property totalling £300 in value. The effective sentence of four months which composed part of the operative term of 15 months was imposed in respect of one of those offences. In addition, that committal for sentence included another offence of possession of cannabis, again found on the appellant on his arrest, and, significantly, an offence of possession of an offensive weapon, contrary to section 1 of the Prevention of Crime Act 1953, namely an axe. That resulted in the term of six months' imprisonment which formed part of the three operative sentences which we identified at the outset of this judgment. The possession of that weapon was a significant aggravating feature, as was the fact that a number of these offences were committed after he had been arrested and bailed by the police. Moreover, given that he had appeared in respect of some of these offences before the Magistrates' Court in January 2021 and denied them, the offences committed after that date were committed while he was on court bail awaiting trial.
7. The applicant is now 38 years old and he has a truly terrible criminal record. In all of those circumstances, it was in our judgment inevitable that the Crown Court in passing sentence would seek to impose a substantial term of imprisonment. The credit that was available for plea in relation to the offences which had been denied in January 2021 was limited. There was full credit available to the later offences, but they were committed while on bail and are significant.
8. In addition to the procedural error and failure to record the outcome correctly which we have identified already in this judgment, a number of other procedural mistakes occurred when dealing with this case which were concerned with the powers of the court bearing in mind that these are low value shoplifting cases. The Crown Court was at one stage concerned that they should not have been committed and constituted itself as a Magistrates' Court under section 66 of the Courts Act, which was in fact entirely unnecessary. However, nothing turns on any of that because none of those errors operated to the appellant's disadvantage and the single judge in refusing leave to argue any ground but the one that we have already identified dealt fully with those problems.
9. The result of all this therefore is that this appellant has had the good fortune to avoid having to serve a five month term which the court intended to impose upon him and which the court was fully entitled to impose upon him.
10. Unhappily the error in recording what had happened in the Magistrates' Court was not identified by the court in time for it to be corrected by the application of the slip rule. The appellant himself, after being dealt with, wrote to the court and pointed out that he had not been convicted of one of the offences for which he had received an effective and operative term of imprisonment. The court made some inquiries and discovered, too late for the application of the slip rule, that he was right. Notwithstanding that, the judge purported to set aside the sentence of five months which he had passed, under the slip rule. That was of no effect. The upshot of that has been that these appellate proceedings have been necessary. The cost to the public of all this is significant and is to be added to the unfortunate consequences of the injustice that we identified at the start of this judgment.

11. It is an unhappy fact that a significant number of appeals which come before the Court of Appeal Criminal Division contain or reveal technical deficiencies in what had transpired below, which involve a considerable amount of court resource to correct. As the court has previously observed, sometimes (not in this case but sometimes) these defects only become apparent when the staff in the Court of Appeal Office have cause to examine an appeal which has been attempted on other grounds. Those grounds may, as all but one of the original grounds were here, be entirely lacking in any merit. Nevertheless, the Court of Appeal office staff having detected the procedural error draw it to the attention of the court and expensive appeal proceedings are the result. It goes without saying that it is important as a matter of high public interest that courts should record accurately the decisions which they have reached, otherwise the consequences which we have explained in this judgment will frequently occur.

Conclusion

12. For the reasons just explained, the sentence of five months' imprisonment passed by the Crown Court in proceedings which were given the number S20210248 is quashed. Otherwise the sentences imposed by that court on that occasion are undisturbed.

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