

## **R v Lendrum**

COURT OF APPEAL (CRIMINAL DIVISION)

HUTTON LCJ6 AUGUST 1993

6 August 1993HUTTON LCJ

This is an application for leave to appeal by Samuel Brown Lendrum who is now aged 31. At Downpatrick Crown Court on 18 November 1992 he pleaded guilty to the single count in the indictment against him which charged him with the offence of burglary. The particulars of the offence were that:-

"Samuel Brown Lendrum, on the 27th day of January 1992, in the County Court Division of Ards, having entered as a trespasser a certain building, namely the retail premises known as Street Legal, situate at 23 Bridge Street, Comber, did steal therein jeans and shirts to the value of £535 or thereabouts and £19 in cash belonging to William Suitor." His Honour Judge Russell QC sentenced the applicant to 30 months imprisonment on the count of burglary and also directed that a suspended sentence of 6 months imprisonment suspended for 18 months imposed upon him on 3 September 1991 for driving whilst disqualified should be put into operation and should be consecutive to the sentence of 30 months imprisonment for burglary. Accordingly the applicant received a total sentence of 3 years imprisonment.

The facts relating to the offence of burglary were as follows. On Monday 27 January 1992 at 1.25 am police officers on mobile patrol saw two men run across Bridge Street, Comber, carrying bundles of clothing. The officers saw a third man outside the Street Legal boutique and the officers followed him into the premises. They there found the applicant setting a bundle of assorted clothing on the floor. A subsequent search of the area located a Ford Transit van parked close to the boutique. The vehicle was unlocked and its engine was warm.

When interviewed by detectives later in the day the applicant claimed that he had found the door of the boutique lying open and he had entered the premises because he was drunk and was curious. When asked why he had come to Comber he said that he had come to Comber by a taxi from the Antrim Road in Belfast, and he was looking for his aunt's house in Comber.

The value of the clothing taken from the boutique amounted to £535 together with £19 in cash, but a substantial part of this clothing was found by the police where it was dropped by the two men whom they were pursuing.

There were two main grounds of appeal advanced on behalf of the applicant. The lesser ground was that it was wrong for the learned trial judge to put the 6 months suspended sentence into operation because there was no evidence before him that the applicant had driven a vehicle during the period of 12 months disqualification imposed upon him on 3 September 1991. We reject that ground. It was not wrong in principle or manifestly excessive for the judge to put the suspended sentence of 6

months into operation consecutively. The fact that an offence committed during the operational period of a suspended sentence is of a different character from the offence for which the suspended sentence was imposed is not in itself a ground for not activating the suspended sentence: see *R v Craine* 3 Cr App R(S) 198, [1981] Crim LR 727, *R v Wells* 9 Cr App R(S) 68 [1987] Crim LR 429, and *R v Clitheroe* 9 Cr App R(S) 159, [1987] Crim LR 583. Indeed, there are a number of reported cases directly in point in which suspended sentences for motoring offences were put into effect consecutively to sentences for dishonesty and conversely (see *R v Saunders* 54 Cr App Rep 247; *R v Barton* [1974] Crim LR 555 and *R v Vanston* [1972] Crim LR 57).

The principal point advanced on behalf of the applicant was that the sentence of 30 months imprisonment for the burglary was manifestly excessive and wrong in principle.

In considering this ground it is relevant to have regard to the record of the applicant. He has a considerable criminal record having been before the courts on more than twenty previous occasions. The principal features of his record are the following. In October 1975 he was placed on probation for 2 years for the offence of theft. In August 1978 he was placed on probation for 2 years for the offences of burglary and theft. In May 1979 he was ordered to carry out community service in respect of three offences of burglary and theft. In September 1979 he was placed on probation for 2 years for taking a motor vehicle without the owner's consent. In February 1980 he was sentenced to 3 months imprisonment suspended for 2 years for offences of disorderly behaviour, common assault and obstructing the police. In May 1980 he was sentenced to 3 years imprisonment for burglary and theft. In December 1980 he was sentenced to 6 months detention in the Young Offenders Centre for 3 offences of taking a motor vehicle without the owner's consent. In March 1983 he was sentenced to 30 months imprisonment for four offences of burglary and theft. In May 1986 he was sentenced to 9 months imprisonment suspended for 1 year for burglary and theft. In February 1987 he was placed on 18 months probation for handling. In June 1989 he was fined £75 for assault occasioning actual bodily harm. In September 1991 he was sentenced to 6 months imprisonment suspended for 18 months for driving whilst disqualified.

It is therefore clear that the applicant has a number of previous convictions for burglary, having served sentences of 3 years and 30 months for that offence. The applicant pleaded guilty before the learned judge at Downpatrick Crown Court, but it is relevant to note that he only pleaded guilty at the last moment, having pleaded not guilty when he was first arraigned and only changing his plea on the day when his trial was due to begin. Therefore, whilst the applicant is entitled to a reduction in his sentence to take account of his plea of guilty, the reduction should only be a small one because the evidence against him was overwhelming and because he only pleaded guilty at a very late stage.

It is clear that this was not a burglary committed on the spur of the moment when an opportunity for entering and stealing suddenly presented itself to the applicant. It is apparent that the applicant came to Comber with two other men in a vehicle with

the plan and intention of entering and stealing from the boutique, and that a substantial amount of property was taken, and more would have been taken but for the fact that the culprits were disturbed by the police.

Having regard to the nature of the offence, to the applicant's record, and to the consideration that he was caught red handed and pleaded guilty at a very late stage, the collective experience of this court caused us, on first impression, to think that there could be no valid criticism of the sentence of 30 months and that it was within the normal range of sentences imposed by the Crown Courts in this jurisdiction.

This impression was confirmed by the following passage in Thomas on Principles of Sentencing, 2nd Ed, at page 149 referring to sentences in England:-

"Sentences between three and five years are commonly upheld where the offender is in his mid-twenties or older, has committed several burglaries and has a significant record. Sentences of three years have been upheld on offenders in this category convicted of an isolated burglary of a modest nature, as in *Gluckstead*, where a man of 27 with several convictions for offences including burglary broke into a house and stole the contents of the gas meter and two Post Office savings books. The Court said that the sentence of three years imprisonment was 'not . . . improper'. In *Cash* more a man of 33 with three previous custodial sentences for dishonesty (including two breaking offences) broke into an inhabited public house at night with intent to steal. Although the appellant had committed no offence for over two years since his last release from prison, the Court upheld three years' imprisonment as 'appropriate to the circumstances' and could find 'no grounds justifying any reduction in it'. The sentences were upheld in each case.

Decisions such as these suggest that a sentence of three years will not necessarily be considered excessive on the facts for a single burglary, at least of a private home, and sentences below this level reflect the presence of mitigating factors rather than the inherent gravity of the offence."

We also obtained information on the sentences laid down by this court (whether in upholding sentence or in reducing sentence) during the period from November 1990 to February 1993 in respect of burglaries. The information shows that during this period the court laid down the following sentences of imprisonment or detention in the Young Offenders Centre.

In one case a sentence of 6 months.

In two cases a sentence of 12 months.

In five cases a sentence of 2 years.

In one case a sentence of 2 1/2 years.

In five cases a sentence of 3 years.

In one case a sentence of 4 years.

In two cases a sentence of 5 years.

In one case a sentence of 8 years.

This information did not specify the records of the applicants or the appellants and the nature and gravity of the offences involved and is therefore of somewhat limited value. But it does show that sentences between 2 years and 3 years for burglary are well within the range applied by this court.

However the main point advanced by Mr Larkin, counsel for the applicant, was that a number of decisions of the Court of Appeal in England had established a tariff of about 9 months to 12 months for the type of burglary committed by the applicant, even where the accused has a previous record for burglaries.

Mr Larkin referred us to a number of authorities. In *R v Coope* 3 Cr App R(S) 303 the headnote reads:

"Eighteen months' imprisonment varied to nine months for burglary of a garage by a man with a substantial previous record.

The appellant, a man of 24 with seven findings of guilt and six previous convictions for offences including burglary, was convicted by the jury of burglary. He had forced a lock at a garage and stolen a space heater worth £300 and 3.50 in cash. Sentenced to 18 months' imprisonment. Held, the offence was not the most serious kind of burglary, and in the light of present sentencing policy, an offence of this kind could not warrant a sentence of 18 months' imprisonment, even taking into account the appellant's record. A sentence of nine months would be substituted.

In *R v Parr* 3 Cr App R(S) 308, the headnote reads:

"Eighteen months' imprisonment for burglary varied to nine months where a man of 23 with six previous convictions was concerned in a burglary of a shop in which goods worth £1,500 were stolen.

The appellant pleaded guilty to burglary of a butcher's shop in which a quantity of meat and sausages worth £1,500 was stolen. The appellant, aged 23 and with six previous convictions for offences including burglary, was sentenced to 18 months' imprisonment. Held, this was clearly a case in which the judge was obliged to pass a custodial sentence, and the only question was whether the sentence of 18 months was too long. The case could not be considered one of the less serious types of shopbreaking, but because of the dangerous overcrowding of the prisons courts must ask whether there is any compelling reason why a short sentence should not be passed. The sentence could be reduced to nine months' imprisonment."

In *R v Wilson* 11 Cr App R(S) 20 the headnote reads:

"Fifteen months' imprisonment upheld for breaking into a store and stealing goods worth £8,314. The appellant pleaded guilty to burglary and obtaining by deception. The appellant, in company with two other men, broke into a store, causing damage to the extent of £750 and stealing goods worth £8,314. The appellant was arrested shortly afterwards and most of the property was recovered. Sentenced to 15 months' imprisonment for burglary, and three months' consecutive for obtaining by deception.

Held: (considering *Power* (1981) 3 Cr App R(S) 308 and *Bleasdale* (1984) 6 Cr App R(S) 177 the Court derived no assistance from the cases cited: this was a serious commercial burglary by a man with a long record of crime, committed while on bail. The sentences were perfectly proper.

In *R v McKie* [1990] 12 Cr App R(S) 356 the headnote reads:

"Two years imprisonment for burglary of commercial premises and the theft of goods worth £1,138 by a security guard reduced to 15 months.

The appellant pleaded guilty to burglary and criminal damage. The appellant was employed as a security guard and assigned to a meat company. The appellant arranged for two other men to come to the premises with a van in the early hours of the morning: when they arrived he let them in and helped them to load the van with the meat worth £1,138. The appellant had previous convictions for offences of theft and burglary. Sentenced to two years' imprisonment.

Held: (considering *Barrick* 7 Cr App R(S) 142, and *Brown* 9 Cr App R(S) 266) the offence was aggravated by the fact that the appellant was employed to prevent the very dishonesty which he had committed, and the deliberate planning, but was too long for an industrial burglary involving no violence or damage to property, and a sentence of fifteen months would be substituted.

Therefore it does appear that in England this appellant may well have received a sentence considerably less than the sentence of 30 months imposed upon him at Downpatrick Crown Court. It also appears to us that the Court of Appeal in England has decided in recent years as a matter of deliberate policy to reduce the level of sentences for burglary of commercial or business premises.

However this court stated in *R v McDonald* (1989) 3 NIJB 28 that in some cases it will uphold or lay down a level of sentencing higher than the level established in England. At p 34 the court said:

"This Court has held that in this jurisdiction the same level of damages in civil awards and sentences in criminal cases need not apply as apply in England, and in *Simpson v Harland & Wolff Plc* [1988] (as yet unreported) Lord Lowry LCJ stated:

'I would reject the suggestion that our calculations of general damages are "wrong" if they do not conform to standards observed in other jurisdictions since Northern

Ireland, like Scotland and the Republic of Ireland, constitutes a separate legal jurisdiction with its own judicial and social outlook. The courts have their own standards of, for example, sentencing in criminal (cases) and damages in civil causes, and those are the standards established or approved by the people whom the courts in this jurisdiction exist to serve."

As we have stated the sentence of 30 months imprisonment was within the normal range of sentences imposed by the Crown Courts in this jurisdiction as upheld by this court. We have carefully considered whether we should follow the approach taken in England and establish a lower level of sentences for the burglary of commercial and business premises. We have decided that we should not reduce the level of sentences. We consider that the court should seek to protect the occupiers of shops and other commercial premises against burglaries by imposing sentences for such offences which contain a deterrent element, particularly when the offender has previous convictions for burglary. Accordingly we will not interfere with the sentence of 30 months imprisonment imposed by the learned judge and the application for leave to appeal is refused.

Application for leave to appeal refused