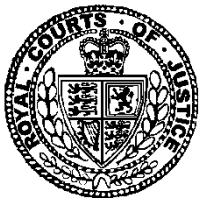

No. 202102249 A1

IN THE COURT OF APPEAL
CRIMINAL DIVISION

[2021] EWCA Crim 1563

Royal Courts of Justice

Thursday, 14 October 2021

Before:

MR JUSTICE TURNER

HER HONOUR JUDGE KARU (RECORDER OF SOUTHWARK)

REGINA

V

CONOR QUINN

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Mr. P. Du Feu appeared on behalf of the applicant.

The Crown were not represented.

JUDGMENT

MR JUSTICE TURNER:

1
On 18 May 2021, having pleaded guilty before the Oxford Magistrates' Court, the appellant, then aged 32, was committed for sentence, pursuant to section 14 of the Sentencing Act 2020 for an offence of theft. On 1 July 2021 he duly appeared before the Crown Court at Oxford, where he was sentenced to 12 months' imprisonment, suspended for 24 months, and 200 hours' unpaid work. He appeals against this sentence by the leave the single judge.

2
The facts are these: for about four years the appellant was employed as a bio-technologist at Oxford Biomedical, a medical research company in Oxford. In this capacity he worked on the development of viral vectors intended to be used in the treatment of those suffering from leukaemia. On 13 June 2019 one of his duties was to divide up a liquid viral vector from a bulk container into smaller bottles for distribution. Following this process, there was, as usual, a quantity of surplus product left over. The normal process would have been to decontaminate and dispose of any such surplus. The appellant, however, was seen by a work colleague acting suspiciously, placing a spare bottle containing fluid in a separate section of the facility. When that colleague checked the bottle he saw that the liquid inside had a cloudy, white/blue appearance which looked just like the viral vector, which it was. The matter was reported to the appellant's managers, whereupon CCTV footage was reviewed, which showed the appellant moving a 500-millimetre bottle around the facility and eventually leaving the premises, taking it with him.

3
An internal investigation began on 17 June, and the appellant was suspended from his employment. At first, he denied the theft, and the matter was reported to the police. The appellant was arrested a few days later and went on to admit the theft in interview.

4
In his sentencing remarks the judge correctly identified an element of breach of trust. The appellant was a well-qualified man who had been carrying out a responsible job. In applying the Theft Offences Guideline, he concluded that the offending reached was of a high degree of trust or responsibility, thereby attracting category A culpability. More challenging in the circumstances of this case, however, was the assessment of harm. In particular, the assessment of the monetary value of the vector was controversial. One approach was to start with the value of the entire batch and allocate a proportionate value to the stolen sample. This method gave the sample a notional value in the region of £50,000. However, if the appellant had not made off with the product, it would have been disposed of as being surplus to requirements and so there was no financial loss to his employers at all. As it happens, the appellant had destroyed the liquid in the knowledge that it would have become useless within 48 hours anyway. Quite what his motive had been in making off with it in the first place remains a mystery, quite probably to him as well as us. There was certainly no evidence that he had planned to gain financially or otherwise from the theft.

5

This state of affairs was bound to present any sentencer with a problem, because every category of harm identified in the Guideline is anchored to a reference to the value of the goods stolen. The Guideline states:

"Harm is assessed by reference to the financial loss that results from the theft and any significant additional harm suffered by the victim or others. Intended loss should be used where actual loss has been prevented."

In this case no financial loss arose from the theft and none was shown to have been intended.

6
In our view, it follows that the issue as to whether the sample was worth £50,000 or nothing is liable to give rise to a sterile debate. The real harm, on the facts of this case, is identified in the witness statement of Chief Operations Officer Nicholas Page, who observed:

"This theft is incredibly concerning for Oxford Biomedical. We work under strict operating procedures, as set out by the Medicines and Healthcare products Regulatory Agency, as well as the Health and Safety Executive. A lot of our work is highly confidential as a public listed company, and it would be hugely damaging for any of our products or items to be lost or sold."

7
If the sample were valued at little or nothing, the level of harm by the strict application of the Guideline would be liable to be categorised, in our view inappropriately, at the very lowest level, and this is, indeed, the approach advocated on behalf of the appellant. Since the Guideline categories of harm are each firmly bound to the concept of monetary value, which in the very particular circumstances of this case, is of little relevance to the sentencing exercise, the court must take a more flexible path, recognising by the application of section 125(1) of the Coroners and Justice Act 2009, it would be contrary to the interests of justice to adopt such a mechanistic approach to the Guideline in this case. The potential for inflicting serious reputational damage to his employers, whose standards were, as one would expect and which the appellant was bound to know, tightly regulated, was high, and this factor must be taken into account in assessing harm, regardless of the fact there was in the event no evidence, either that any actual loss or damage had been occasioned as a result of the theft or that the appellant had secured any benefit from it.

8
Also, having to be taken account in the balancing exercise, there were significant mitigating features, including: (1) the appellant was of previous good character; (2) at the time of the offence he was struggling with mental health issues associated with the serious illness of his mother; (3) there was a considerable and unexplained delay between the commission of the offence and the matter coming before the court for sentence, no part of which could be laid at the door of the appellant, and (4) the appellant inevitably lost his job and previous good reputation. We were pleased to hear this morning that the appellant has obtained employment as a delivery driver and is making sound progress with his unpaid work. In addition, he was entitled to significant credit for his early guilty plea. It is to be noted in this context that the definitive guideline for reduction in sentence for a guilty plea provides:

" **E1. Imposing one type of sentence rather than another**

The reduction in sentence for a guilty plea can be taken into account by imposing one type of sentence rather than another; for example:

•

by reducing a custodial sentence to a community sentence [...]"

Section 230 of the Sentencing Act 2020 provides:

" **230. Threshold for imposing discretionary custodial sentence [...]**

(2) The court must not pass a custodial sentence unless it is of the opinion that—

(a) the offence, or

(b) the combination of the offence and one or more offences associated with it, was so serious that neither a fine alone nor a community sentence can be justified for the offence."

9
In the circumstances, we are persuaded that a community sentence could be justified for this offence, and although a term of imprisonment may well have been justified after trial, in the very particular circumstances of this most unusual offence, the unpaid work order alone properly reflected the level of appropriate punishment and a custodial sentence was manifestly excessive.

10
This appeal is, therefore, allowed to the extent that the sentence is reduced to a community order to include 200 hours of unpaid work. The Victim Surcharge Order must reflect this and be reduced from £140 to £85.

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