

IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

THE QUEEN

-v-

THOMAS CORRIGAN

Before: MORGAN LCJ AND COGHLIN LJ

MORGAN LCJ (delivering the judgment of the court)

[1] This case enables the court to give some guidance to sentencers on the factors that should be taken into account when sentencing for handling stolen goods.

Background

[2] The appellant was arraigned on 30 April 2008 at Londonderry Crown Court and charged on five counts:-

Count 1 - That he was, without lawful excuse, unlawfully at large contrary to Section 25 of the Prison Act (NI) 1953 between 24 April 2007 and 9 May 2007.

Count 2 - Handling stolen goods, namely a BMW motor vehicle obtained in the Republic of Ireland contrary to Section 23(4) of the Theft Act (NI) 1969.

Count 3 - Driving whilst unfit through drink or drugs contrary to Article 15(1) of the Road Traffic (NI) Order 1995.

Count 4 - Driving without insurance contrary to Article 90(4) of the Road Traffic (NI) Order 1981.

Count 5 - Obstructing a constable in the execution of his duty contrary to Section 66(1) of the Police (NI) Act 1998.

[3] He pleaded not guilty to counts (1), (2) and (4) and pleaded guilty to count (5). He was re-arraigned on 21 May 2008 and pleaded guilty to counts (1) and (4). He pleaded not guilty to count (3). It is apparent from the court records that a trial commenced on 15 September 2008 and was aborted on 16 September 2008. Another trial was aborted on 3 December 2008 and on 18 February 2009 a bench warrant was issued as the appellant had failed to surrender to custody. The case was listed for trial on 1 September 2009 but did not proceed. On 30 November 2009 the case was again listed for trial. The appellant was re-arraigned and pleaded guilty to count (2). In summary, pleas of guilty were entered on counts (1), (2), (4) and (5) and count (3) was left on the books not to be proceeded with without the leave of the Court.

[4] On 17 December 2009 His Honour Judge Grant sentenced the appellant as follows:-

Count 1 - 1 year's imprisonment concurrent

Count 2 - 3 years 6 months imprisonment concurrent

Count 4 - Disqualified from driving for 5 years

Count 5 - 1 year's imprisonment concurrent

making a total sentence of 3 years 6 months imprisonment against which he now appeals.

The circumstances of the offences

[5] On 8 May 2007 the appellant was stopped by police at Ballykelly Road, Limavady, driving a silver BMW car. The appellant gave police a false name, date of birth and address. He was breathalysed by police and arrested. The police were suspicious that the BMW car was stolen and discovered that the car had been fixed with false number plates. It was then established that the vehicle had been stolen in Dublin on 8 April 2007 from outside the owner's private address. The police then positively identified the appellant and confirmed that he was unlawfully at large from HMP Magilligan.

[6] At the time of his arrest the appellant was serving a period of imprisonment under a custody probation order made on 15 December 2004 of 7 ½ years imprisonment to be followed by 18 months probation

following a conviction for armed robbery on 20 May 2003. The appellant had been released from Magilligan on 23 April 2007 for a period of home leave to return to the prison at 1300 hours on 25 April 2007. He had not returned as required.

[7] During his police interview the appellant had claimed that he had purchased the car trading in a Honda civic he owned together with the balance in cash which approximated a total of £9,000. He gave no other details from whom he had bought the car. He accepted that he was unlawfully at large from HMP Magilligan but since his return to Magilligan following his arrest had been adjudicated by a governor for that. He accepted he was driving without licence and insurance and that he initially provided police with false details of his identity. He claimed he did not know that the car was stolen and that he had not been responsible for putting on the false number plates.

The appellant's previous convictions

[8] The appellant has several previous convictions (49 in total) dating back to 1989 when he was still a juvenile, the majority of which relate to car crime.

[9] In March 1989 he was convicted of several counts of criminal damage, attempted theft and attempting to take a motor vehicle without owner's consent for which he was dealt with by way of a conditional discharge. In July 1991 he was fined for reckless driving and no insurance.

[10] In February 1992 he was convicted of several counts of going equipped for theft, attempting and taking a motor vehicle without the owner's consent and criminal damage was detained in the YOC for a total of 9 months.

[11] In March 1993 he was convicted of hijacking and detained in the YOC for 3 years. In July 1995 he was convicted of attempting to take a motor vehicle without the owner's consent, criminal damage and going equipped for theft and sentenced to 6 months imprisonment in total.

[12] In March 1996 he was again convicted of taking a motor vehicle without the owner's consent, criminal damage and other driving offences. He was sentenced to a probation order for 18 months and also given a conditional discharge on other offences.

[13] In January 2001 he was imprisoned for 1 month and disqualified for driving for several driving offences. In March 2001 he was convicted of assault occasioning actual bodily harm, disorderly behaviour and assaults on police and imprisoned for 6 months.

[14] There were other driving offences for which he was convicted in July and October 2004 and dealt with by way of disqualification and fines.

[15] On 15 December 2004 he was convicted of armed robbery and sentenced to a custody probation order of 90 months imprisonment and 18 months probation.

The pre-sentence report

[16] The pre-sentence report shows that the appellant was assessed as highly likely to re-offend due to his previous history of offending behaviour, a history of alcohol and drug misuse, limited victim awareness, history of impulsive and reckless behaviour, poor problem solving skills, lack of stress management strategies and associations with negative peer group and also his continued involvement offending behaviour while subject to probation. The appellant was also categorised as posing a risk of serious harm to others. It was not considered appropriate to recommend any further periods of probation supervision.

Guidance

[17] There are no guidelines in relation to handling stolen goods in this jurisdiction and no final guidelines issued by the Sentencing Guideline Council in England and Wales. There is a guideline judgment in England and Wales of R v. Webbe and others [2002] 1 Cr App RS 22 where the court considered advice from the Sentencing Advisory Panel when considering the offence of handling stolen goods contrary to section 22 of the Theft Act 1968 which carries a maximum penalty of 14 years' imprisonment. The court noted that it was difficult to establish guidelines in this area because of the many ways in which this offence might be committed but we consider that this authority which was not cited to the learned trial judge provides useful guidance which should be taken into account in this jurisdiction. Aggravating factors identified were -

- closeness of the handler to primary offence

- seriousness of primary offence
- high value of goods
- goods were proceeds of domestic burglary
- sophistication
- high level of profit made or expected
- provision of regular outlet
- threats of violence/abuse of power by handler over others
- commission of offence whilst on bail

[18] The Court of Appeal in *Webbe* suggested that property handled of low monetary value and acquired for the receiver's own use will generally attract a moderate fine or community sentence. If any of the aggravating factors is present or the offender has a record for dishonesty or sophisticated law-breaking a custodial sentence should be imposed. Where the value of the goods is substantial, up to £100,000, and the offending has the character of a business or proximity to other criminals a range of 12 months to 4 years is generally appropriate. Sentences in excess of that would normally be reserved for goods of greater value where the handling had the character of a professional commercial operation encouraging criminal activity by others.

Discussion

[19] We are entirely satisfied that the charge of handling stolen goods obtained in the Republic of Ireland was the most serious charge on the indictment. It is important to bear in mind, however, that this charge, unlike the usual handling charge, has a maximum sentence of 7 years rather than 14 years. The car was of material value and was stolen during a domestic burglary. The appellant had a bad record for dishonesty and driving offences. The fact that the offence was committed while unlawfully at large is itself an aggravating factor although there is a separate count in relation to being unlawfully at large and there should be no double counting. The plea came very late in the day indeed and in our view very little discount can be expected for it. The appellant pleaded to the charge on the basis that he believed the vehicle to be stolen rather than knowing it to be stolen. We consider that the appropriate sentence on count 2 in light of the 7 year maximum was one of 21 months imprisonment. We consider that the sentences on counts 4 and 5 should remain and run concurrently.

[20] The appellant pleaded guilty at a reasonably early stage to count 1 and effectively made admissions at interview. He was, however, effectively caught red handed so the amount of discount for the plea must reflect that (see R v Pollock [2005] NICA 43). Prisoners given home leave have a responsibility not to abuse the system and those who do so must expect to be dealt with severely. We see no basis upon which to interfere with the sentence of the learned trial judge except to make that sentence consecutive to the sentences imposed on the other counts (see R v Gaynor [2001] NICA 40). The effective total sentence will therefore be one of 2 years and 9 months imprisonment and we allow the appeal to that extent.