

ENGLAND AND WALES / JUDGMENT

Anderson. R. v

Source: caselaw.nationalarchives.gov.uk · Research copy typeset by Esheria. Not court-issued or certified.

Neutral Citation Number: [2014] EWCA Crim 797 IN THE COURT OF APPEAL CRIMINAL DIVISION Case No: 201305336/A8 Royal Courts of Justice Strand London, WC2A 2LL Date: Wednesday, 9th April 2014 B e f o r e: LORD JUSTICE ELIAS MR JUSTICE JEREMY BAKER RECORDER OF REDBRIDGE (Sitting as a Judge of the CACD)

- ----- R E G I N A v IAN ANDERSON

- ----- Computer Aided Transcript of the Stenograph Notes of WordWave International Limited A Merrill Communications Company 165 Fleet Street London EC4A 2DY Tel No: 020 7404 1400 Fax No: 020 7831 8838 (Official Shorthand Writers to the Court)

- ----- Mr C Hamer appeared on behalf of the Appellant Mr B Lloyd appeared on behalf of the Crown

- ----- J U D G M E N T

1. MR JUSTICE JEREMY BAKER: Ian Anderson is 44 years of age. On 6th September 2013 he appeared at South Worcestershire Magistrates' Court and pleaded guilty to two offences of theft, one offence of going equipped to steal and one offence of obstructing a police officer in the execution of his duty. These offences had been committed during the operational period of a suspended sentence order which had been imposed at the Worcester Crown Court on 13th July 2012. Therefore the magistrates committed him to that court for sentence. 2. 3. 4. 5. 6. He appeared at Worcester Crown Court on 4th October 2013, where he admitted and asked to be taken into account 10 other offences of theft. He was sentenced to a total period of 30 months' imprisonment. This comprised concurrent sentences of 30 months' custody on the two theft offences, 24 months on the going equipped offences and no separate penalty on the obstruction offence. No action was taken on the breach of the suspended sentence and a victim surcharge order of £120 was imposed. He applied for leave to appeal against sentence on the basis that it was manifestly excessive. That application has been referred to the Full Court by the Registrar as a result of concerns about the lawfulness of the sentences. It is because of those concerns that we grant leave. Before dealing with those concerns it is to be noted that the offences of theft, of which he was both convicted and admitted on a schedule of other offences were all ones involving shoplifting committed over a period of 5 months, between May and September 2013. The total value of the goods stolen was almost £6,500. These were professionally executed offences, carried out with the assistance of a tag remover which was the subject matter of the offence of going equipped. When the appellant was arrested he gave a false name to the police. The appellant has a

lifelong record of committing similar and other more serious offences. He commenced committing offences of shoplifting at the age of 18 and since then has no less than 40 separate sets of convictions for such offences. He has received sentences of immediate imprisonment in the past and the suspended sentence, of which he was in breach, comprised a sentence of 12 months custody suspended for an operational period of 24 months, together with 150 hours of unpaid work and a supervision requirement. This was for an offence of doing acts tending and intended to pervert the course of criminal justice committed on 20th April 2011. The judge sentencing him at Worcester Crown Court on 4th October 2013 stated that, in view of the prolific nature of the appellant's offending, the guidelines issued by the then Sentencing Guidelines Council were of limited assistance. He indicated that there was little mitigation but that the appellant was entitled to full credit for his guilty pleas. The judge also said that he was going to take no action in respect of the breach of the suspended sentence because: "...firstly, I note that it was a very long time ago; secondly, he has done the work; thirdly, he has, initially, fully engaged with the supervision element. Bearing in mind the sentence I am imposing on this occasion, in my judgment it would be unfair to impose any additional penalty for that breach of the suspended sentence..." 7. 8. 9. In fact breach proceedings had already been commenced against the appellant in respect of the supervision requirement of the suspended sentence order. At this stage, we propose to address the concerns raised about the lawfulness of the sentences. At the committal hearing the magistrates declared that, had it not been for the breach of the suspended sentence order, they would have been minded to deal with the offences themselves in accordance with their own sentencing powers. However, in view of the breach of the suspended sentence order, they would commit the appellant to the Crown Court to be dealt with in relation to both the breach of the suspended order, together with all of the remaining offences. In these circumstances, the certificate of committal ought to have recorded that the appellant had been committed to the Crown Court in respect of the breach of the suspended sentence, under paragraph 11(2) of the Schedule 12 to the Criminal Justice Act 2003 and, having done so, committed the remaining offences under section 6(2) and (3) of the Powers of Criminal Courts (Sentencing) Act 2000. This would have had the consequential effect of limiting the Crown Court sentencing powers in respect of those offences to that of the Magistrates' Court under section 7(1) of the 2000 Act. As all but one of those offences were offences triable either way, the provisions of section 78(1) of the 2000 Act and section 133(2) of the Magistrates' Court 1980 meant that the maximum sentence would have been 6 months custody in respect of any one offence and, a sentence of 12 months custody in total. The maximum sentence for the summary offence of obstruction, contrary to section 89(2) of the Police Act 1996 was 1 month custody.

10. However, the certificate of committal failed to record the committal of the appellant in respect of the breach of the suspended sentence order, and purported to commit the appellant to the Crown Court in respect of the remaining offences under paragraph 8(6) The Crown Court not only failed to appreciate of Schedule 12 to the 2003 Act. the error in the certificate of committal, but proceeded to pass sentences of custody in respect of the

remaining offences which exceeded the sentencing powers of the Magistrates' Court. It also failed to appreciate under paragraph 8(2) of Schedule 12 to the 2003 Act, it was precluded from taking "no action" in respect of the breach of the suspended sentence order, and was obliged to deal with him in one of the ways set out in that subparagraph. Furthermore, the court lacked any power to impose a victim surcharge order. This was because the court was dealing with a situation in which one of the offences was committed between 1st April 2007 and 30th September 2012, namely the original offence for which the appellant had received the suspended sentence order. Therefore, the Criminal Justice Act 2003 (Surcharge (No 2)) Order 2007 applied; such it was that only if the original sentence had included a fine, which was not the case, that the Crown Court was empowered to impose a victim surcharge order - see *R v Hemsworth* [2013] EWCA Crim 916. SMITH BERNAL WORDWAVE

11. This is not the first occasion upon which constitutions of this court have been faced with the problem of defective certificates of committal. A review of the various authorities was made by the then Lord Chief Justice in *R v Murat Ayhan* [2011] EWCA Crim 3184. He concluded that the position established by the previous decisions was that: 12. 13. 14. "In short, therefore, on the basis of these decisions, which were then followed for a number of years, the correct approach to issues like these was to examine the question whether the magistrates' court was vested with the necessary jurisdiction to commit to the Crown Court. If it was, then an omission from, or an inaccuracy in, the memorandum of conviction about the statutory powers which were exercised, or which were available to be exercised, did not affect the validity of the committal." It was noted that more recent constitutions of this court had taken differing views on this issue. However, the court in *Ayhan* determined the approach of the old authorities should prevail. In the present case there is no issue but that the South Worcestershire Magistrates' Court did have jurisdiction to commit both the breach of the suspended sentence and the remaining offences to the Crown Court. Therefore, we are satisfied that despite the error on the face of the certificate for committal all of these matters were properly before the Crown Court. However, in view of the Magistrates' determination that, had it not been for the breach of the suspended sentence order they would have proceeded to sentence the appellant in the accordance with their own sentencing powers, we are equally satisfied that the Worcester Crown Court's powers of sentence in relation to the remaining offences was similarly limited.
15. We feel bound to observe that had it not been for the limitation on the sentencing powers of the Crown Court, in view of the persistence and professionalism of the appellant's offending, we are far from convinced that the total sentence in this case was manifestly excessive. However, the sentences of theft and going equipped are unlawful as they exceed the Magistrates' powers and therefore must be quashed. In addition it will be necessary, for the reasons we have set out, for some action to be taken in respect of the breach of the suspended sentence. Moreover, as the Crown Court lacked any power to impose a victim surcharge order, that too must be quashed.

16. What we propose to do therefore is to substitute the following sentences: on the two theft offences, there will be concurrent terms of 6 months' custody; on the going equipped offence, a consecutive term of 6 months' custody.
17. We pause there to observe that, lest it be considered that, bearing in mind the limitation on the Magistrates' court's powers, we have not taken into account the fact that the appellant pleaded guilty: firstly, we consider that it would have been open to the Magistrates' Court to consider that this offending would have justified a post trial SMITH BERNAL WORDWAVE starting point in excess of their jurisdiction, namely 18 months custody, but that after giving credit to reflect the pleas of guilty, impose a sentence within its sentencing powers of 12 months custody and therefore proceed in any event to have sentenced the appellant rather than commit him for sentence to the Crown Court under section 3; Secondly, we understand that the Magistrates' Court had not had the opportunity of considering the schedule of 10 other offences. That was first brought to the attention of any court at the Crown Court hearing. We anticipate that had the matters on the schedule been known to the Magistrates' Court, they may well have decided to commit the appellant to the Crown Court under section 3, which would have of course increased the sentencing powers of the Crown Court.
18. The suspended sentence will be activated. However, in view of the fact that there has been some compliance with its terms the period of custody will be reduced to 6 months, which will run consecutively to the other periods, making a total sentence of 18 months' imprisonment.
19. We confirm the order for "no separate penalty" on the obstruction offence and, as we have said, we will quash the surcharge order.
20. Before leaving this case we would make a further observation namely, that if these matters had been appreciated within the requisite period, then they could have been rectified by the Crown Court, without the need to trouble this court by way of appeal. It is to be regretted that this was not done.
21. However, that matter apart, and to the extent that we have already indicated, this appeal succeeds. SMITH BERNAL WORDWAVE

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://caselaw.nationalarchives.gov.uk/ewca/crim/2014/797>

CASE PAGE <https://chat.esheria.ai/case-law/england-and-wales/anderson-r-v-2014>

Prepared on 26 October 2026 · Esheria