

JERSEY / JUDGMENT

The Attorney General v Stephen George King

COURT

Royal Court

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Inferior Number Sentencing – breaking and entering – larceny.**[2013]JRC048****Royal Court****(Samedi)****1 March 2013**

Before :

J. A. Clyde-Smith, Commissioner, and Jurats

Le Cornu and Milner.

The Attorney General

-v-

Stephen George King

Sentencing by the Inferior

Number of the Royal Court, following guilty pleas to the following charges:

2 counts of:

Breaking and entering and larceny (Counts 1 and 3).

2 counts of:

Larceny (Counts 2 and 4).

Age: 35.

Plea: Guilty.

Details of Offence:

Count 1:- The defendant took his

elderly neighbour's key whilst she was visiting his mother, entered her flat, stole her Fentanyl medication and replaced the key. The victim was unaware of the burglary,

noticing only that her medication was missing.

Count 2:- Shortly after Count 1, he

intercepted his mother's mail containing a prescription for

Fentanyl. He presented it to a

pharmacist, purporting to collect it on his mother's behalf, but used the medication himself. His mother did

not notice that the prescription had gone missing.

Count 3:- One week after the first

break-in, the defendant again entered his elderly neighbour's flat, this time at night, whilst she slept. He

broke into a key-safe and let himself in with the key, stealing a strongbox containing her Fentanyl medication and leaving the flat with the door ajar. The elderly victim later awoke to discover the burglary, suffered shock and subsequently lost her self-confidence and withdrew from social life.

Count 4:- The defendant stole Fentanyl and other medication belonging to his parents (with whom he lived) by breaking into their electronic safe.

His mother attributed the absence of the medication to her failing memory.

The defendant was initially arrested for Count 3 but denied any involvement and was released pending further investigation. He subsequently admitted to his parents that he had stolen their medication and admitted to the burglaries during interview.

Details of Mitigation: Pleas, remorse, highly co-operative with the police after initial denial. A difficult childhood including sexual abuse, leading to a series of addictions to alcohol and drugs; some mental health history.

Previous Convictions: 27 offences including breaking and entering, with larceny in 1994, larceny in 1999, and receiving stolen goods in 2002 and 2007. 5 year sentence of imprisonment for drug trafficking in 2008.

Conclusions:

Count 1: 2 years' imprisonment.

Count 2: 3 months' imprisonment, concurrent.

Count 3: 3½ years' imprisonment, concurrent.

Count 4: 3 months' imprisonment, concurrent.
Total: 3½ years' imprisonment.

Sentence and Observations of Court: Conclusion granted.
D. J. Hopwood, Esq., Crown Advocate.
Advocate C. M. Fogarty for the Defendant.

JUDGMENT

THE commissioner: 1. The defendant stands to be sentenced for two counts of larceny of medicines prescribed to his parents, and to two counts of breaking and entry into the home of his parents' elderly and sick neighbour and larceny of medicines prescribed to her. The defendant used the stolen medicines to feed his drug dependency. The medicines themselves were of no great monetary value. 2. The defendant, who is 35, was opiate-dependent with a history of illicit drug use, offending behaviours and mental health problems. He described to the Alcohol and Drug Service a difficult childhood marred by parental alcohol misuse, sexual abuse, feelings of

rejection and conduct disorder, for which he has self-medicated with either drugs or alcohol. Since leaving school at 16 with no qualifications, he has been mostly unemployed. At the present time he is not under the care of the psychiatric department and Alcohol and Drugs Service have no concerns as to his current mental health. He is assessed by the Probation Department at a high risk of re-offending and at a moderate risk of harm to himself and others. 3. Count 3 involved breaking and entry at night when the neighbour lay sleeping, a neighbour who was both elderly and sick as we have just said, and whose flat he had burgled whilst she was with his parents only a week before. Although the neighbour did not wake to find herself facing the defendant, discovery of the burglary and the mess created and the objects removed, led to her becoming very distressed, so much so that she began to hyperventilate and an ambulance had to be called. We have read her statement and have seen the devastating effect of these offences on her life. 4. Whelan on Aspects of Sentencing in the Superior Courts of Jersey 3rd Edition, says at page 247 as follows:- "It remains importantly true that the offences of breaking and entering and larceny are not susceptible to a rigid sentencing structure because they are so various in form and circumstance." At page 248 the author summarises the guidance given in AG-v-Da Silva [1997] JRC 218, described in AG-v-Moreira

[2003] JRC 083A as the clearest guidance for sentencing for offences of breaking and entering:- "Burglary of a dwelling house is a serious offence, because of the distress caused by the violation of householders' privacy and security. Without the mitigation of a guilty plea, the proper sentence for burglary of an unoccupied dwelling-house by an accused with a record of similar offences is likely to be around 3 years' imprisonment; with such a plea, the proper sentence is around 2 years. If the house is occupied, an offence committed at night will normally merit at least 3 years' imprisonment with mitigation for a guilty plea, or 4 years without." 5. In Da Silva the Court referred to the earlier comments of the Superior Number sitting on appeal in Allo and Collins-v-AG (1983) JJ 85:- "It is common knowledge that breaking into a private dwelling has a most distressing effect invariably on the occupiers of the dwelling. Sometimes that effect takes a form of fear and in all cases it takes a form of distress. And we believe that that is an element of this offence which is not always sufficiently appreciated by some Courts but certainly it is appreciated by this Court, and this Court has always tried to make clear, and we make it clear again today, the distress element, which is an aggravating factor." 6. The Court also made reference with approval to the English Court of Appeal case of R-v-Brewster

[1998] 1 Cr. App. R. (S) 181, in which it was said that:- "The loss of material possessions is, however, only part (and often a minor part) of the reason why domestic burglary is a serious offence. Most people, perfectly legitimately, attach importance to the privacy and security of their own homes. That an intruder should break in or enter, for his own dishonest purposes, leaves the victim with a sense of violation and insecurity. Even where the victim is unaware, at the time, that the burglar is in the house, it can be a frightening experience to learn that a burglary has taken place; and it is all the more frightening if the victim confronts or hears the burglar. Generally speaking, it is more frightening if the victim is in the house when the burglary takes place, and if the intrusion takes place at

night...” We also note the following comment of the English Court of Appeal in the Brewster case in relation to burglaries committed by those who are drug addicts:- “It is common knowledge that many domestic burglars are drug addicts who burgle and steal in order to raise money to satisfy their craving for drugs. This is often an expensive craving, and it is not uncommon to learn that addicts commit a burglary, or even several burglaries, each day often preying on houses in less affluent areas of the country. But to the victim of burglary the motivation of the burglar may well be of secondary interest. Self-induced addiction cannot be relied on as mitigation. The courts will not be easily persuaded that an addicted offender is genuinely determined and able to conquer his addiction.” 7. A particular feature of this case, as the Crown have pointed out, is the breach of trust on the part of the defendant both in relation to his own parents, with whom he was living at the time, and in relation to the neighbour to whom he was an honorary grandson. The defendant is not of good character with eleven convictions for twenty-seven offences, including offences of dishonesty, and one of burglary, albeit some time ago. To his credit the defendant did confess to his parents and then to the police and has pleaded guilty and he has, as Advocate Fogarty has said, been very cooperative with the police. As he said in his letter to us, he was in a dark place and his craving was such that he gave no thought to his victims. Now that he is drug free, he says that he is deeply ashamed by his actions and very remorseful. 8. We have considered all of the mitigation put forward by Advocate Fogarty and the letters written to us and we have given consideration to whether a community-based sentence might be possible here, but in our view, these offences are too serious and the effects too distressing to permit that. We are therefore going to grant the conclusions of the Crown. 9. In relation to Count 1; 2 years’ imprisonment, Count 2; 3 months’ imprisonment, Count 3; 3½ years’ imprisonment, Count 4; 3 months’ imprisonment, those sentences are to be concurrently which gives rise to a total sentence of 3½ years’ imprisonment. Authorities Whelan on Aspects on Sentencing in the Superior Courts of Jersey 3rd Edition. AG-v-Da Silva 1997/218. AG-v-Moreira [2003] JRC 083A. Allo and Collins-v-AG

(1983) JJ 85. R-v-Brewster

[1998] 1 Cr. App. R. (S) 181.

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