

IN THE SUPREME COURT OF GIBRALTAR
2021/CRIM/016

BETWEEN

REGINA

V

VIRGINIA OSUNA GIL

Mr P Canessa for the Crown.

Mr S Danino for the Defendant.

SENTENCING

DUDLEY CJ: The Defendant who is 31 years of age has entered guilty pleas to one count of burglary and one count of theft.

The facts are essentially these.

The victim of count 2 which is that of theft, is an 89 year old lady. The Defendant who had previously worked for a company providing domiciliary care services, was engaged directly by the victim's daughter, generally working night shifts. On an unknown date between 26 August 2019 and 1 July 2020 she stole a significant number of items of jewellery valued at approximately £100,000.

Count 1 which is for burglary, relates to a burglary in the daughter's flat. The daughter lives in a separate residence, in the same building as her mother. Again, sometime between 26 August 2019 and 1 July 2020 the Defendant entered upon the flat and stole items of jewellery valued at approximately £30,000 and 262,000 Venezuelan Bolivars in cash. As I understand it the value of the cash is trivial.

The jewellery was sold by the Defendant in two pawn shops in La Linea. When interviewed for the purposes of the Pre-Sentence Report, the Defendant informed the Probation Officer that she received almost 7000 euros for the jewellery.

When arrested and interviewed a third time, the Defendant admitted the theft and the burglary.

There are before me Victim Personal Statements from mother, daughter and grandson. As regards mother they evidence that the theft has had a significant impact upon her. Many of the items stolen had sentimental value which transcended their significant financial value. By way of example, her own mother's engagement ring. Moreover, at a stage in her life when she needs care and support from others, she now finds herself distrusting people and not able to establish relationships with her carers.

As regards daughter, she feels that her home has been violated; it has engendered a sense of distrust and the offending has impacted upon the provision of care for her mother. Items stolen from her also had great sentimental value. The experience has and continues to have a negative psychological impact upon her, which has required professional psychological help.

For the Defendant it is said that she committed the offences because she was in a precarious financial position. That although the offences were pre-meditated they were not sophisticated, in the sense that she lacked awareness of the value of the jewellery she stole. At the time she was married with two young daughters, she had two personal loans which she had to pay, together with rent and other outgoings and she could not make ends meet from her and her husband's income. Since her arrest and remand her marriage has come to an end, with her husband seeking a divorce. The Defendant is previously of good character and letters from friends, neighbours and former work colleagues evidence that she is a caring, helpful and hardworking individual. According to the Pre-Sentence Report she has expressed regret and in part because she is unlikely to obtain future employment in a caring capacity in Gibraltar, she is assessed as being at low risk of re-offending.

Dealing with each offence in turn in the context of the applicable guidelines. As regards the theft, by virtue of the fact that there was evidently a breach of a high degree of trust and that the victim was by virtue of her age and need for care a vulnerable individual, this is a case involving high culpability. The Defendant's dire financial situation may provide mitigation but it does not reduce the culpability from falling within the "high" bracket. As regards harm it is evidently a category 1 case, not only because it is just on the £100,000 entry point, but also because the sentimental value which the jewellery had and the impact of the offending upon the victim, has resulted in additional harm.

For this type of offending the guidelines indicate an entry point of 3 years 6 months' custody and a range between 2 years and 6 months' and 6 years

custody. In my judgment the appropriate entry point is 4 years custody. But, taking account of the circumstances leading to the offending; the lack of previous convictions and evidence of good character, had the matter proceeded to trial the appropriate sentence would have been of 3 years and 6 months' custody.

As regards the burglary, this is a case which also falls in the "greater harm" bracket. Although the financial value is evidently less than in the theft, it is nonetheless substantial and items also had sentimental value. Although there was no ransacking or such like, the burglary has had a significant psychological impact upon the victim. As regards culpability, this is a case which also evidently involved a serious breach of trust. This is a category 1 case which has a starting point of 3 years' custody and a range of 2-6 years custody. In my judgment the 3 years' entry point is appropriate. Taking account of the mitigating circumstances I have previously referred to, had the matter proceeded to trial the appropriate sentence would have been of 2 years 6 months' custody.

Pleas were not entered at the earliest opportunity, but rather in the Supreme Court after various plea and case management hearings. In the circumstances I shall reduce the sentences by $\frac{1}{4}$.

Although there is a factual nexus between both offences they are distinct and require separate recognition and therefore in my judgment consecutive sentences are appropriate.

In respect of the theft I would impose a sentence of 2 years 7 months' custody. In respect of the burglary I would impose a sentence of 1 year and 10 months' custody. That would total 4 years 5 months' custody.

Applying the totality principle I reduce the overall sentence by 5 months and therefore:

- (i) in respect of count 2, the theft, I impose a sentence of 2 years 5 months; and
- (ii) in respect of count 1, the burglary, I impose a sentence of 1 year 7 months.

The sentences are to run consecutive to each other and therefore I impose a total sentence of 4 years' custody.

Account is to be had of the time served on remand.

Anthony Dudley
Chief Justice
20 September 2021