

319.32 Shops, petrol stations etc. More than one offence

Att-Gen's Ref 2019 Re Wain 2019 EWCA Crim 775 D was convicted of robbery, attempted robbery and having an article with a blade in a public place. At 11 pm, D and another man entered a branch of Tesco Express. V was behind the tills and preparing to close the store. D was holding a kitchen knife with an 8 to 10-inch blade and both men had their faces covered. They went to the till area and D pointed the knife at the till and said "Open the fucking till now." V did so and stood back as the men took the cash and put it in a blue bag that they had brought with them. The men opened and emptied another till and then left the shop having stolen around £900. A week later, D entered a branch of Betfreds Bookmakers at 8.45 pm. He was wearing a dirty balaclava and was carrying an item that looked like a bottle of energy drink. He approached V2 who was behind the counter and mumbled words to the effect of "I want your money or I'm going to light this. There's petrol in here." V2 explained that she had already taken the proceeds to the post office and she pressed an alarm button. D ran off. He was arrested and answered no comment to all questions. In a second interview D gave a mixture of no comment and untrue answers. V1 described her fear of being robbed by two masked men, one of whom was carrying a knife. V2 spoke of the considerable impact the offence had had on her. D is now aged 41 and has been convicted on 56 occasions for a total of 128 offences. He has received suspended and immediate sentences of imprisonment and has a history of offending whilst on bail for previous offences. The robbery and attempted robbery in question were committed whilst D was on bail for two offences of theft. He has no previous convictions for robbery. D suffered from very severe chronic obstructive pulmonary disease, entirely related to previous smoking. He also suffers from severe depression and has a heroin addiction although, to his credit, the addiction has been addressed and managed through a Methadone Replacement Program. The Judge started at 4 ½ years as a mid-point between the Category 2A and 2B starting points. She increased the starting point to 5 years with reference to the aggravating features and then, having considered the mitigation, reduced the sentence in relation to the robbery to 2 ½ years. The Judge imposed a 2-year concurrent sentence for the attempted robbery and a 6-month concurrent sentence for the bladed article. She said that she had "taken an exceptional course and made a greater than normal reduction to reflect the particular mitigation in [D's] case." Held. We acknowledge that the Judge had the benefit of conducting the trial and her human concern for D's health and other matters. However, the sentence failed by a very clear margin to reflect D's criminality. The robbery came plainly within Category 2A. A large kitchen knife was brandished and was used to threaten violence. D was on bail and had a disgraceful record, even if not for robbery. With regards to mitigation, we part company with the Judge in so far as she considered this an exceptional case. Some credit must be given to D for addressing his drug addiction and allowances made for his significant physical and mental health problems and the delay but they do not begin to justify the massive reduction in sentence given. The deduction should have been 1 ½ years. We substitute 6 ½ years, for the robbery, 3 years for the attempted robbery concurrent and we do not interfere with 6 months concurrent for the bladed article. Therefore **6 ½ years** not 2 ½.