

BURGLARY NO 2 VOLUME 2

221.19 Dwelling, Occupied More than one offence

R v Casey 2019 EWCA Crim 969 D pleaded to conspiracy to commit dwelling house burglary. During a two-week period, a campaign of burglaries took place in Surrey and Middlesex. Most of the burglaries followed a pattern of crude entry and untidy searches of properties had been conducted before items were stolen. There were 6 burglaries and one attempted burglary. Two of the properties were occupied and the rest were not. CCTV showed that a white BMW was used to leave a traveller site where D lived at the appropriate time and would be driven to a VW Golf a short distance away. The Golf had been stolen in the first burglary and was then used to commit the other burglaries. False number plates had been used and had been changed regularly. When the Golf was eventually found by police, CCTV showed three men including D leaving the vehicle. A crowbar was found inside the car which had been used in at least four of the burglaries. D's basis of plea was that he joined the conspiracy when it began in April 2016 when he was aged 17. D was not directly involved in every one of the burglaries and he was subject to a degree of pressure from older individuals which did not amount to duress. D is now aged 20 and has some previous convictions for vehicle related offences. The Judge observed that the offending had caused enormous distress to the victims, some of whom were in their 80s and 90s. Items of sentimental value had been frequently stolen. The Judge placed the offences in Category 1 and considered that there was greater harm due to the ransacking and the use of tools and higher culpability because of the significant degree of planning and organisation. He also considered the fact that two of the burglaries were committed whilst D was on bail as an aggravating factor. In mitigation, the Judge noted D's remorse and his desire to turn his life around for the sake of his wife and child. As D was 19 at the time of sentencing, the guidelines for dealing with children and young people did not apply, but as D was 17 at the time of the offences, the Judge was satisfied that it would be appropriate to approach the sentence in accordance with those guidelines. The Judge started at 15 years and then halved it to reflect D's young age. He also gave a 20% discount for the plea. Held. We start at 10 years and make a reduction of one third to account for the youth and strong personal mitigation including the direct pressure from older individuals to take part in the offending. With 20% for plea, **5 years YOI** not 6 years YOI.

Note: The starting point of 15 years was wrong as it was in excess of the 14-year maximum for burglary. Secondly the Judge and counsel should have agreed the number of offences D was involved with which does not appear to have happened. Ed.

221.20 Dwelling, Unoccupied etc.

R v Szutowski 2019 EWCA Crim 645 D pleaded to four offences of dwelling-house burglary, two of which were committed in January and February 2018 and two in July 2018. The offences occurred during the day and D gained entry to the properties by breaking windows or doors. In the first pair of burglaries, D took a laptop computer, jewellery, sunglasses and other items to the value of around £3,000. In the second pair, D took a mirror and a grandmother clock with a combined value of around £4,000 and some jewellery. D was linked to the offences because his blood was found in two of the properties and a CCTV camera recorded the number plate of his car. He was stopped by police on the same day as the last burglary. When his car was searched, he was found in possession of £500, various tools and the mirror from the previous burglary. D is now aged 36. The Judge considered that these were Category 1 offences (starting point 3 years and range of 2-6 years). The Judge noted elements of greater harm, namely significant loss to the householders with messy searches in two of the burglaries. The aggravated factors were the first set of offences were committed within a very short time of the imposition of a community order for going equipped for theft. The Judge started at 4 years which he reduced by 25% for the guilty pleas. Held. The overall sentences failed to take sufficient account of the personal mitigation (D's first custodial sentence, in 2015 following a brain haemorrhage, D had a

breakdown and lost his marriage as a result and the offences lacked many of the aggravating features which are so often present in dwelling-house burglaries, not least the fact that none of the houses were occupied at the time and that all the offences were committed during the day). Therefore 27 months for each pair of burglaries. As before, the sentences on counts 1 and 2 will be concurrent with each other, as will the sentences on counts 3 and 4 but each pair of sentences will run consecutively to each other making a total of **54 months**, not 6 years.

221.55 Types of burglar Defendant aged under 18 Cases

R v Casey 2019 EWCA Crim 969 D pleaded to conspiracy to commit dwelling house burglary. During a two-week period, a campaign of burglaries took place in Surrey and Middlesex. Most of the burglaries followed a pattern of crude entry and untidy searches of properties had been conducted before items were stolen. There were 6 burglaries and one attempted burglary. Two of the properties were occupied and the rest were not. CCTV showed that a white BMW was used to leave a traveller site where D lived at the appropriate time and would be driven to a VW Golf a short distance away. The Golf had been stolen in the first burglary and was then used to commit the other burglaries. False number plates had been used and had been changed regularly. When the Golf was eventually found by police, CCTV showed three men including D leaving the vehicle. A crowbar was found inside the car which had been used in at least four of the burglaries. D's basis of plea was that he joined the conspiracy when it began in April 2016 when he was aged 17. D was not directly involved in every one of the burglaries and he was subject to a degree of pressure from older individuals which did not amount to duress. D is now aged 20 and has some previous convictions for vehicle related offences. The Judge observed that the offending had caused enormous distress to the victims, some of whom were in their 80s and 90s. Items of sentimental value had been frequently stolen. The Judge placed the offences in Category 1 and considered that there was greater harm due to the ransacking and the use of tools and higher culpability because of the significant degree of planning and organisation. He also considered the fact that two of the burglaries were committed whilst D was on bail as an aggravating factor. In mitigation, the Judge noted D's remorse and his desire to turn his life around for the sake of his wife and child. As D was 19 at the time of sentencing, the guidelines for dealing with children and young people did not apply, but as D was 17 at the time of the offences, the Judge was satisfied that it would be appropriate to approach the sentence in accordance with those guidelines. The Judge started at 15 years and then halved it to reflect D's young age. He also gave a 20% discount for the plea. Held. We start at 10 years and make a reduction of one third to account for the youth and strong personal mitigation including the direct pressure from older individuals to take part in the offending. With 20% for plea, **5 years YOI** not 6 years YOI.

Note: The starting point of 15 years was wrong as it was in excess of the 14-year maximum for burglary. Secondly the Judge and counsel should have agreed the number of offences D was involved with which does not appear to have happened. Ed.

221.58 Types of burglar Persistent burglar One offence

R v Foord 2019 EWCA Crim 631 D was convicted of burglary of a dwelling house. The house owners returned home in the early evening to find that they had been burgled. Their front door had signs of having been forced and all the drawers in the bedroom were open with many items having been scattered on the floor. Items stolen included jewellery, photographs and children's bracelets. The overall loss was about £1,000 with a further £700 for a new front door. D dropped a water bottle at the scene which carried his DNA. Police arrested D two days later and found him asleep surrounded by some of the stolen items. D was now aged 40 and has 23 previous convictions, mostly for burglary. He had also received a 3-year prison sentence for an aggravated burglary and a 5-year sentence for three non-dwelling burglaries, one attempted robbery and one offence of ABH. The Judge was satisfied that the premises had been targeted and ransacked and noted that D used his heroin addiction as an excuse and showed no remorse. The Judge placed the offence in Category 1 and stated that this was of less

significance than the background. Further the public, the victims and the courts had had enough of him. Held. The offence was Category 2 not 1. It needed an upward adjustment due to the previous convictions and that D was on license at the time. Whilst the striking feature of the case is D's antecedent history, the sentence imposed was not sufficiently related to the circumstances of the offence. **5 years**, not 7.