

Neutral Citation Number: [2018] EWCA Crim 449

No: 201703472/A1

IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
Strand
London, WC2A 2LL

Thursday, 15 February 2018

B e f o r e:

LORD JUSTICE GROSS

MR JUSTICE SWEENEY

HIS HONOUR JUDGE BURBRIDGE QC
(Sitting as a Judge of the CACd)

R E G I N A

v

LEJUAN WILSON

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Mr H Grayson (Solicitor Advocate) appeared on behalf of the Appellant

J U D G M E N T (Approved)

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1. MR JUSTICE SWEENEY: This is an appeal against sentence by leave of the single judge.
2. On 27 January 2017, in the Crown Court at Swindon, the appellant, who is now aged 22, pleaded guilty to possession of crack cocaine with intent to supply (Count 1) and to possession of heroin with intent to supply (Count 2). On 28 July 2017, in the same court, he was sentenced by Mr Recorder Bebb QC to 6 years' imprisonment on each count concurrent, making a total sentence of 6 years' imprisonment.
3. The sole ground of appeal is that the sentence was manifestly excessive, as it was wrong in principle for the appellant to be deprived of all credit for his early guilty plea in circumstances where he was entitled to a full one-third discount.
4. The facts, in short, are these. In August 2015, in London, the appellant was concerned in the possession of heroin with intent to supply and in facilitating the acquisition or possession of criminal property. He was arrested for those offences and then granted bail in relation to them.
5. On 18 February 2016, whilst still on bail, the appellant hired a car in London and subsequently travelled to Swindon in order to supply drugs there. He was accompanied by his co-accused, a man called Obasi. In passing sentence, the Recorder concluded that they were in a team and had taken drugs and drug dealing equipment with them from London to Swindon. They moved into an address and began a form of what is known as

“cuckoo-ing” - that is filling a drug supply vacuum or taking over an area in order to street deal.

6. On 7 March 2016 the appellant failed to attend the Blackfriars Crown Court in respect of the August 2015 offences in London, and a warrant was issued for his arrest.
7. On 14 March 2016 police officers saw the appellant leave the house in Swindon and get into the driver's seat of the hired car. Unbeknown to the officers, the appellant had with him a white package which contained 16 wraps of cocaine weighing a total of 1.66 grams at 85% purity and 16 wraps of heroin weighing a total of 1.7 grams at 54% purity. The drugs were worth in all around £320.
8. When the officers tried to stop the car they then saw that the appellant had the package and indeed that he appeared to be trying to swallow it. At all events the appellant managed to drive off and unseen to jettison the package out of one of the car's windows. He was however pursued by the police and was stopped shortly thereafter.
9. The appellant was initially taken to hospital as it was feared he had swallowed the package. However, he was later taken to a police station and eventually bailed, as it was clearly not realised that at that time that he was wanted at Blackfriars. In the meanwhile, police officers had entered the house and found and arrested Obasi there. They had also retrieved the package that the appellant had jettisoned from the car.
10. After the appellant had been released on bail he was observed to go by taxi to the area where he had jettisoned the package and search for it in vain.
11. On 12 July 2017 both the appellant and Obasi failed to answer bail at the Swindon police

station.

12. However, the appellant was later arrested, and on 31 August 2016 in the Crown Court at Blackfriars, for the two London offences committed in August 2015, and for the failure to surrender on 7 March 2016, he was sentenced to a total of 43 months' imprisonment.
13. On 16 November 2016, whilst serving that sentence, the appellant was interviewed in relation to the instant offences but made no comment. However, as we have already touched on, the appellant pleaded guilty to those offences on 27 January 2017. Obasi however pleaded not guilty and in the summer of 2017 was tried before Mr Recorder Bebb QC in the Crown Court at Swindon. The appellant gave evidence on Obasi's behalf. Obasi was nevertheless convicted.
14. When he sentenced the appellant and Obasi on 28 July 2017 the Recorder observed that the appellant had given lying evidence during Obasi's trial - in an attempt to secure the acquittal of his friend. The Recorder went on to say that he had no doubt that the appellant and Obasi were reasonably accomplished street dealers in Class A drugs and had come from London as a team to deal on the streets of Swindon bringing, as we have touched on already, drugs and drug supplying equipment in a form of "cuckoo-ing". They had, said the Recorder, a dealer's phone and they were looking to make a substantial profit.
15. The Recorder went on to indicate that, but for the fact that the appellant had come to court in Obasi's trial and given a false account, he would have given full discount for the appellant's pleas. However, as the appellant had given false evidence, said the Recorder, he had foregone his entitlement to any discount for plea at all.

16. Albeit not relied on in mitigation, the Recorder also made clear that he rejected the appellant's evidence in Obasi's trial to the effect that he had come down to Swindon to see some girls and had only begun dealing after meeting someone in Swindon. Both the appellant and Obasi, the Recorder concluded, were street dealers in a significant role and under the relevant guideline, therefore subject to a starting point of four-and-a-half years with a range of three-and-a-half to 7 years.
17. The aggravating features in relation to the appellant were that the case involved “cuckoo-ing”, targeting vulnerable individuals, that he had been on bail at the time and that he had attempted to dispose of evidence.
18. In Obasi's case, the aggravating features were his previous convictions and the “cuckoo-ing”. The total sentence on Obasi, who also fell to be dealt with for another offence was, as in the case of the appellant, one of 6 years' imprisonment.
19. As to the appellant, the Recorder made clear, towards the end of his remarks, that he could have imposed a sentence that was consecutive to the earlier sentences imposed in the Blackfriars Crown Court in August 2016, but that given the appellant's age and the principle of totality, he had decided that if he did so, the sentence would be too long and therefore ordered the 6 years to commence from the day of sentence.
20. We observe that there is a line of authority including R v Lawless [1998] 2 Cr App R(S) 176; R v Hickman [2002] 2 Cr App R(S) 171; R v Gray [2004] EWCA Crim 2376; R v Lindsay [2006] EWCA Crim 2831; R v Abdul and Ors [2013] EWCA Crim 926 and R v Mohammed [2017] EWCA Crim 655, which establishes that (i) as a matter of principle it is wrong to reduce or remove credit for plea solely because the defendant has given lying

evidence in support of another in a trial; and (ii) that may be different if the evidence is relied upon by way of a dishonest pre-sentence attempt to reduce the defendant's own culpability.

21. Mr Grayson, on the appellant's behalf, submits, in effect, that the appellant's case comes firmly within the first category. With that, we agree. Using the Recorder's figures, that would normally result in a reduction for plea from 6 years to 4 years.

22. But that, in our view, is not the end of the matter. That is because the Recorder fell into further significant error in failing to make the sentence consecutive – which, albeit reduced to respect the principal of totality, is plainly what it should have been. We cannot make it so now, because that would risk imposing a more severe sentence upon the appellant than that which he is already facing. However, and albeit inadvertently, the sentence imposed by the Recorder does result in an overall sentence that is within the appropriate range, whereas if we were to allow the appeal the resulting overall sentence would clearly be below the appropriate range. Accordingly, in our view, it is not appropriate for us to reduce the sentence as to do so would result in an outcome which, viewed overall, would be unjust.

23. Therefore, in the unusual circumstances of this case, and whilst it is correct that the Recorder should not have withheld discount for plea for the reason that he gave, the appeal fails and is dismissed.

WordWave International Ltd trading as DTI hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

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