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[2022] EWCA Crim 1044

IN THE COURT OF APPEAL

CRIMINAL DIVISION



CASE NO 202201441/A1

Royal Courts of Justice
Strand
London
WC2A 2LL

Wednesday 13 July 2022

Before:
LADY JUSTICE CARR DBE
MR JUSTICE FRASER
SIR NIGEL DAVIS

REFERENCE BY THE ATTORNEY GENERAL UNDER
S.36 OF THE CRIMINAL JUSTICE ACT 1988

REGINA
V
UMAR ABDULLAH HAMID

Computer Aided Transcript of Epiq Europe Ltd,
Lower Ground, 18-22 Furnival Street, London EC4A 1JS
Tel No: 020 7404 1400; Email: rcj@epiqglobal.co.uk (Official Shorthand Writers to the Court)

MISS C PATTISON appeared on behalf of the Attorney General
MR A ALTY appeared on behalf of the Offender

J U D G M E N T

LADY JUSTICE CARR: The provisions of the Sexual Offences (Amendment) Act 1992 apply to the sexual offences to which we refer below. Under those provisions, where a sexual offence has been committed against a person, no matter relating to that person shall, during that person's lifetime, be included in any publication if it is likely to lead members of the public to identify that person as the victim of that offence. This prohibition applies unless waived or lifted in accordance with section 3 of the Act.

Introduction

1. We have before us an application by Her Majesty's Attorney General for leave to refer a sentence on the ground that it is unduly lenient. We grant leave.
2. The offender, now 31 years old, is Umar Abdullah Hamid ("Hamid"). On 13 April 2022 he was sentenced by His Honour Judge Medland QC ("the judge") sitting at Preston Crown Court for the following three offences to which he had earlier pleaded guilty: conspiracy to supply a class A controlled drug (heroin and cocaine) (count 1); conspiracy to supply a class A controlled drug (cocaine and MDMA) (count 2); conspiracy to supply a class B controlled drug (cannabis) (count 3).
3. Between 1 December 2018 and 31 May 2020 Hamid had conspired, together with his partner, Khadija Hamid ("Khadija"), Charles Robertshaw ("Robertshaw"), Joshua Haslam ("Haslam") and others to supply class A and B drugs in the Hyndburn, Rossendale and Blackburn areas. Hamid had headed up two drug dealing networks identified in the investigation as being, firstly, the cocaine, cannabis, pills and powder drug dealing network ("the CCPP line") and the "Felix line", supplying cocaine and heroin. Count 1 related to the Felix line; counts 2 and 3 related to the CCPP line. Hamid had played a leading role in each of these conspiracies, initially directing operations whilst a serving prisoner, and continuing to do upon his release on 17 September 2019.
4. Hamid plead not guilty at the plea and trial preparation hearing but was subsequently re-arraigned and pleaded guilty to all three counts in May 2021. Just under a year later, the judge sentenced him to an overall sentence of 10 years and 10 months' imprisonment ("the 2022 sentence"). The 2022 sentence comprised 10 years and 10 months' imprisonment on count 1; 10 years and 10 months' imprisonment on count 2; and five years' imprisonment on count 3. All the sentences were to run concurrently.
5. The judge referred in his sentencing remarks to the imposition of a victim surcharge. No corresponding order was recorded in the Crown Court Record. We confirm that a surcharge in the sum of £170 should be applied and be recorded accordingly.
6. The 2022 sentence was directed by the judge to commence on the day that it was imposed ("the commencement direction"). As a consequence, it operated at the same time as earlier

sentences that had been imposed on Hamid by His Honour Judge Potter, again sitting in Preston Crown Court on 26 February 2021 ("the 2021 sentences").

7. The 2021 sentences were for wholly unrelated, violent and sexual offences involving Hamid's former partner: six years' imprisonment for wounding with intent to cause grievous bodily harm and, to run consecutively, an extended determinate sentence of 16 years' imprisonment comprising a custodial term of 11 years' imprisonment with a licence extension period of five years for the rape of a female aged 16 years or over. This conviction was on a specimen count (count 16) relating to offending spanning the period November 2007 to 2020. Further sentences for additional offences were imposed, ranging from nine months' imprisonment to nine years' imprisonment, such sentences all running concurrently. They included sentences for three offences of assault occasioning actual bodily harm; one offence of wounding with intent to cause grievous bodily harm; three offences of rape of a female aged 16 years or over; and two offences of possession of a firearm with intent to cause fear of violence. This additional offending had been committed on various dates between November 2007 and May 2020.
8. The effect of the commencement direction was that the 2022 sentence was entirely subsumed by the 2021 sentence.
9. The short point on this Reference arises out of the commencement direction. There is no complaint about the length of the sentences imposed on each of the three drug offending counts. But the Attorney General submits that the judge fell into error by directing that the 2022 sentence should commence on the day that it was imposed, rather than directing that it should run consecutively to the 2021 sentence.

The facts

10. At the commencement of each conspiracy Hamid was a serving prisoner, having been recalled on licence on 8 June 2017. Whilst there he used a mobile telephone to contact others including Haslam, one of his associates. He entrusted Haslam to run the CCPP line. Batch messages were sent out advertising the sale of cocaine, MDMA and cannabis alongside other drugs. Police subsequently recovered the messages along with a tick list from Haslam's telephone entitled "debt list". Hamid directed operations from prison until his release in September 2019.
11. Upon release Hamid was then involved in the establishment of the Felix line, involving the sale of heroin and crack cocaine. On 23 September 2019, only six days after his release, the first Felix line number was used. The Felix telephone numbers would change regularly in order to avoid detection. Hamid controlled the Felix line numbers and was responsible for sending out batch texts on an almost daily basis advertising the sale of the drugs. Between some 50 and 100 messages were sent out at a time.

12. Hamid also directed others who were working for him and used vulnerable class A drug users, including Robertshaw and Dominic Edwards ("Edwards"). Robertshaw and Edwards purchased heroin and crack cocaine via the Felix dealer line numbers. On occasion Hamid would give Edwards free drugs so that Edwards could test their quality and provide feedback.
13. On 6 November 2019 a search warrant was executed at Hamid's home address. The SIM card for a Felix dealer line was found in the pocket of his dressing gown. The handset was also recovered. Hamid was released pending further investigation. This incident did not deter Hamid from continuing his drug-dealing activities. Indeed on 22 November 2019 a new Felix line number was activated.
14. On 12 January 2020 Hamid was stopped by police in his BMW. He was with Khadija. They were not arrested. Usage of the Felix dealer line mirrored movement of Hamid's telephone and the BMW. The Felix line was in contact with Hamid's telephone throughout the evening and into the early hours of 13 January 2020. On that day Haslam was arrested. Police recovered 20 bags of heroin, five bags of crack cocaine and a dual SIM handset that had previously been used for one of the Felix dealer line numbers.
15. In the early hours of 21 January 2020 police again stopped Hamid's BMW. Haslam, Khadija and another known drug user were inside the vehicle. They were not arrested. Telephone activity continued between Haslam's telephone, a Felix dealer line, the CCPP line and Hamid's telephone.
16. On 29 January 2020 the last Felix line was activated. Regular bulk drugs adverts were sent out in text messages. Contact between Hamid and the CCPP line continued. Hamid's involvement in both networks carried on until the end of May 2020.
17. The Felix network was calculated to have made in the region of £69,000 profit based on an average of 40 calls and/or texts to the Felix line numbers per day. The overall value of drugs recovered by police in connection with the CCPP line was £4,535.
18. At the time of the 2022 sentence Hamid had 14 convictions for 33 offences dating back to when he was only 15 years old. Those convictions included convictions for the matters the subject of the 2021 sentences drug offences, rape, violence and threatening behaviour, offences of dishonesty, driving offences, firearms and failing to surrender.
19. The 2021 sentences were imposed for offences for which Hamid had been convicted after trial on 18 December 2020. Those convictions were for four offences of rape, two offences of wounding with intent, three offences of assault occasioning actual bodily harm and two offences of possession of a firearm with intent to cause fear of violence. The

victim of the offending was Hamid's ex-partner. The offending spanned an overall period of 14 years. In respect of two of the offences Hamid had been under the age of 18 and the victim 19. In respect of the other offences Hamid had been in his early twenties.

20. Alongside the details of Hamid's offending history, the judge had before him a pre-sentence report which had been prepared for the 2021 sentencing hearing. We have also seen an updated report dated 21 June 2022 from Hamid's current Prison Offender Manager. There have been significant concerns recorded regarding his custodial behaviour, with three proven adjudications and 21 negative behaviour entries, alongside two positive behaviour entries.

The sentence below

21. The judge sentenced Hamid on the basis that this was Category 2 offending for the purpose of the Sentencing Council Guideline for Drug Offences, with involvement in the supply of class A and class B drugs over a long period of time, some 16 months. Hamid had played a leading role. He had the expectation of a substantial financial advantage, had substantial influence on others within a chain and was directing the sale of drugs on a commercial scale. He controlled the Felix line numbers. He directed others. Messages showed that others were making money for him. The almost daily bulk text messages sent out over a number of months demonstrated that this was an enterprise on a commercial scale. Hamid used a vulnerable drug user to test the drugs that he was selling and despite police intervention he continued in his criminality. The judge stated:

"As I have observed during these proceedings, anybody who needs to consider how catastrophic drugs are in people's lives need look no further than, for example, Joshua Haslam and Charles Robertshaw. Class A drugs destroy people's lives. They corrode society, they break up families, they destroy people's health, mental welfare, their ability to work and it ends up all too often with people facing very long sentences of custody ... but the courts can only continue to say this in the hope that at some point people will finally understand it because of the terrible effects which these drugs have ... and also because of the way in which they are apt to promote the actions of serious organised criminals and serious determined criminals such as Umar Hamid, the courts have to take a very serious view of them ...

In Umar Hamid's case he was the boss of bosses within the context of this particular case. He is 31 years old with an absolutely appalling criminal record for some very, very serious offences... "

22. The judge went on to identify aggravating and mitigating factors. He allowed credit of one-sixth for Hamid's guilty pleas.

23. As for totality, the judge said this:

"I bear in mind he is already serving a very, very long prison sentence for other matters which are nothing to do with this. There has been considerable discussion during the sentencing hearing as to whether the proper approach is for me to put myself in the shoes of Judge Potter back in February 2021 and ask myself what the sentence would have been if Judge Potter had been faced with these matters as well ... In my judgment it is an altogether artificial process which is apt to go wrong. The proper approach here is for me to ask myself what is the sentence I would have imposed, and that sentence upon conviction is 13 years imprisonment. From that I deduct one-sixth. The end result is a sentence in his case of ten years and ten months imprisonment, which begins today. That is on counts one and two. On count three there is a concurrent sentence of five years imprisonment. The overall sentence is ten years and ten months."

24. The central question on this Reference is whether the judge's approach on the question of totality was the correct one.

The parties' submissions

25. For the Attorney General, Miss Pattison submits that the consequence of the commencement direction is that the 2022 sentence operated at the same time as the 2021 sentence. Despite the seriousness of the drug offences and the judge's recognition that the offending merited a sentence of 10 years and 10 months' imprisonment, Hamid has not in effect received any additional sentence for the drug offences. It is said that had His Honour Judge Potter been dealing with all of the offences on the same occasion then the sentence passed would in all likelihood have been longer to reflect the completely different nature of the offences committed, the period of offending and the overall seriousness of the offending. It is said that the drug offences merited a consecutive sentence. They were very serious offences of a completely different nature and, save for a limited overlap, committed at a different time to the offences for which Hamid was sentenced in 2021. Taking into account credit for a guilty plea, it is said by Miss Pattison that the judge's decision has resulted in an overall sentence that is not just and proportionate to the overall seriousness of the offending.

26. For Hamid, Mr Alty submits that the 2022 sentence was not unduly lenient in all the circumstances. This highly experienced judge considered what was the just and proportionate sentence to pass, specifically noting that Hamid was already serving a very long sentence, as indeed he was. Even if lenient, the 2022 sentence was not unduly so. The threshold is a high one. Had Hamid been sentenced for all offences on the same occasion it is unlikely that he would have been required to serve "much longer" given the overall length of the 2021 sentence.

27. Alternatively, Mr Alty urges upon the court the need to make an appropriate adjustment for totality in so far as there is any consecutive sentence to be imposed. Mr Alty relies on the principle of double jeopardy and refers to Hamid's repeated attempts to be sentenced for the 2022 matters earlier than he was. The result of the delays in sentencing are that Hamid has been serving time on remand which will not count towards the period to be served on the 2022 sentence.

Discussion

28. References under s.36 of the Criminal Justice Act 1988 are made for the purpose of the avoidance of gross error, the allaying of widespread public concern at what may appear to be an unduly lenient sentence, and the preservation of public confidence in cases where a judge appears to have departed to a substantial extent from the norms of sentencing generally applied by the courts in cases of a particular type: see Attorney General's Reference No 132 of 2001 (R v Johnson) [2003] 1 Cr.App.R (S) 41 at [25].
29. The position on the facts here seems to us to be both stark and simple. Hamid committed drugs offences which warranted a very significant custodial sentence of more than 10 years, yet he received no meaningful custodial penalty for the offending at all. That is not a sustainable result. It was unduly lenient, in effect robbing the 2022 sentences of all substance.
30. It is unfortunate that sentencing in 2021 was not postponed to await the outcome of the proceedings against Hamid for the drugs offences, which proceedings were well on foot at the time Hamid was convicted of the matters the subject of the 2021 sentences. Indeed Hamid in fact pleaded guilty to the drugs offences only a few months after the 2021 sentences were imposed. Had the drugs convictions been before the judge sentencing in 2021 it is inevitable that that judge would have imposed materially longer sentences than the 2021 sentences.
31. But that is not what happened. It left the judge in an unusual situation. Amongst other things he was faced with the unhappy, although not unlawful option, of imposing a determinate sentence after and consecutive to an extended sentence. It is well-established that a sentencing court can impose a determinate sentence to run consecutively where an offender is already serving an extended determinate sentence: see R v JD [2017] EWCA Crim 2509; R v Hibbert [2015] EWCA Crim 507. A sentencing judge should consider whether the total custodial period that the offender would have to serve before he could be considered for release is just and proportionate to the totality of the offending: see JD at [33]. Further, as confirmed in JD at [28] to [32], Hibbert does not stand as authority for the proposition that where a determinate sentence is ordered to run consecutively to an extended sentence, the length of the determinate term should automatically be reduced in recognition of the release regime. However, if a sentencing judge does consider the total custodial period that the offender would have to serve before being considered for release

is not just and proportionate to all of the offending, then the sentence can be adjusted accordingly.

32. The judge clearly thought carefully about his options. However, he reached the wrong result. On the basis of the commencement direction the earliest date when Hamid could be considered for release is 11 years and 4 months. Had the judge ordered the 2022 sentence to run consecutively without adjustment to the 2021 sentences, the total custodial period before Hamid could be considered for release would be 15 years and nine months' imprisonment. We ask ourselves whether a total custodial period of 11 years and 4 months before Hamid could be considered for release is just and proportionate to all of his offending, including the drugs offending. It does not appear to us that it could be, falling short by some considerable margin.
33. There was, contrary to the judge's view, and is nothing wrong in considering what the total sentence would have been had all matters come for sentence together. In fact it was appropriate to do so. Notwithstanding the heavy sentences that had been imposed in 2021 for the very serious violence and sexual offences committed by Hamid, a significant further imposition of a custodial term was warranted.
34. The overall term of 10 years and 10 months for the drugs offences cannot, as we have identified, be criticised in isolation. However, the principle of totality means that it must be reduced when imposed as an overall consecutive sentence to the 2021 sentences.
35. We cannot exactly reproduce the exercise that would have been carried out at a single sentencing hearing in terms of totality. However, doing the best that we can, we have reached the conclusion that a determinate sentence of six years' imprisonment on each of counts 1 and 2 would be appropriate. The sentence on count 3 does not need adjustment. Each of those sentences would run concurrently to each other, but consecutive to the 2021 sentences.
36. In making this adjustment we take account of the time spent by Hamid on remand awaiting sentence for the drugs offences. We are not however persuaded that there was any need to adjust for the principle of double jeopardy. That principle has been reviewed exhaustively in the authorities. It is clear that in a case such as this, where Hamid was subject to very lengthy custodial sentences and nowhere near his earliest date of release, considerations of double jeopardy have no meaningful part to play.

Conclusion

37. For these reasons we allow the Reference. The sentences imposed in 2022 will be quashed and replaced by sentences of six years' imprisonment on counts 1 and 2 and five years'

imprisonment on count 3 to run concurrently with each other but consecutive to the 2021 sentences.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

Lower Ground, 18-22 Furnival Street, London EC4A 1JS
Tel No: 020 7404 1400
Email: rcj@epiqglobal.co.uk