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IN THE COURT OF APPEAL
CRIMINAL DIVISION
[2023] EWCA Crim 1556
CASE NO 202301892/A5



Royal Courts of Justice
Strand
London
WC2A 2LL

Tuesday 5 December 2023

Before:

LADY JUSTICE WHIPPLE DBE

MRS JUSTICE McGOWAN DBE

HER HONOUR JUDGE MORELAND
(Sitting as a Judge of the CACD)

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MR A GOSCIMSKI appeared on behalf of the Appellant.

J U D G M E N T

LADY JUSTICE WHIPPLE:

1. On 10 May 2023, the appellant was sentenced, following guilty pleas, to a total of 9 years' imprisonment by HHJ Rosa Dean, sitting at Snaresbrook Crown Court. That total was made up of 6 years for two counts of possession of a prohibited firearm together with concurrent sentences for possessing a prohibited weapon and possessing ammunition without a certificate; and 3 years for each of two counts of possession with intention to supply Class B drugs and one count of concealing criminal property, those sentences to be served concurrently inter se but consecutive to the firearms sentence. The appellant now appeals with the leave of the single judge.

The Facts

2. On 9 February 2023, the police executed two search warrants, the first at the appellant's home and the second at a storage unit near his home. The appellant was arrested the same day and found in possession of the key to the storage unit. At the appellant's property, officers found cash, drugs and drug paraphernalia including two sets of scales, small zip bags, a glass jar containing powder that the appellant said was cocaine (which was not included on the indictment), between £10,000 and £15,000 in a cupboard, approximately 600 grams of cannabis in a whey protein container, a 987 gram block of amphetamines in the kitchen freezer and self-sealed bags containing smaller quantities of white powder. The total street value of all the drugs was around £12,494. Mobile telephones and electronic devices were seized. Inside the storage unit were various items of furniture and tools. There were two safes in the back. Inside the first safe was £332,500 in cash and the key to the other safe. In the second safe was gold jewellery,

SIM cards and correspondence. On a shelf in the unit were firearms. Those firearms were first, an unloaded Webley & Scott .32 calibre self-loading pistol, secondly, a Baikal sawn-off shotgun, and third, a 9 mm PAK calibre Italian Bruni blank firing pistol. There was also a plastic bag with five unfired .32 calibre cartridges fitting the Webley & Scott self-loading pistol and four unfired 12-gauge shotgun shells inside. The box contained 27 unfired 9 mm PAK cartridges. There was also a small hydroponics tent.

3. The forensic expert examined the firearms. The sawn-off shotgun was corroded and in poor condition. It was operable but only after the expert had sprayed externally accessible parts with WD40 and cleaned various parts of the gun.

The Sentencing Hearing

4. The prosecution opened the case, describing the weapons. This Court has been provided with a transcript of that part of the hearing, as well as the judge's sentencing remarks.
5. The self-loading pistol and the sawn-off shotgun were prohibited firearms within section 5(1)(aba) of the Firearms Act 1968 (counts 1 and 2). The pistol was a prohibited weapon only capable of firing blanks (count 3). Five bullets were retrieved which were for the self-loading pistol (count 4). These were the "firearms offences".
6. The remaining offences related to possession of cannabis and amphetamines, both Class B drugs and both charged on the basis of intent to supply (counts 5 and 6), and the concealment of £332,550 in cash as criminal property (count 7). These were the "drugs offences".
7. In passing sentence, the judge indicated that she would give 25 per cent credit for the guilty plea, as to which no issue now arises. She described the picture as one of a substantial drugs operation with substantial earnings from drugs and firearms

demonstrated by the “treasure trove” found at the appellant’s house and in the lockup. The self-loading pistol was not loaded but there were five bullets for it. The sawn-off shotgun was in a poor state, but it was operable after it had been cleaned up. The judge noted the appellant’s previous good character with no previous convictions. He was a family man with a young daughter and a teenage son. There were references to attest to the fact that he was well regarded and a much-loved friend and family member. He had expressed remorse for what he had done. She said that the two firearms in working order were type 1 with high culpability and category 3 harm, giving a starting point under the guideline of 6 years within a range of 5 to 7 years’ imprisonment. Possession of the self-loading pistol was aggravated by the possession of live ammunition. The sawn-off shotgun also had a 6-year starting point under the guidelines, but the judge took into account it was not operable until cleaned up, and in relation to that gun there was no ammunition. So far as the blank firing pistol was concerned, on its own that would attract a community order as a starting point and the bullets for that would have led to a 1-year starting point. Turning to the drugs offences, she thought there was an argument that the appellant had played a *leading role* given the “vast quantity” of equipment found at his premises. He was buying amphetamines in bulk and profiting from that, but there were also elements of *significant role*. But the drugs offences were aggravated by the presence of children at the appellant’s home. On the money, which was subject of the concealment count, the judge noted the Crown’s case that this was a high culpability offence with a starting point of 5 years. Totality was relevant.

8. She took a notional sentence, after trial, of 8 years on the firearms offences, which came down to 6 years once adjusted for credit for plea. She imposed a concurrent sentence of 2 months for the blank firing pistol and a concurrent sentence of 9 months for the

ammunition for the self-loading pistol. On the drugs offences she thought the starting point would be a sentence of 5 years before looking at any mitigation, but having taken totality into account, alongside the personal mitigation, she took a notional sentence after trial of 4 years which came down to 3 years once adjusted for plea. That sentence was to be served consecutively to the sentence for the firearms offences but with each of the drugs sentences being served concurrently inter se. She considered but did not make any further reduction for totality. The total was a sentence of 9 years' imprisonment. She set a timetable for confiscation proceedings.

The grounds of appeal

9. It is accepted that the judge was correct to pass consecutive sentences in respect of the firearms offences and the drug offences, but it is said that the overall sentence passed was manifestly excessive. More specifically, the grounds advanced are as follows:
 - a. Ground 1, the starting point of 8 years for the self-loading pistol was too high but was an antique, unloaded and it was locked away.
 - b. Ground 2, the starting point of 8 years for the sawn-off shotgun was also too high. It was inoperable in the state in which it was found. It too was unloaded and locked away.
 - c. Ground 3, it was wrong not to distinguish between a firearm which was in working order, under count 1, and a firearm which was not under count 2. The sawn-off shotgun needed repair, not just cleaning to make it operable.
 - d. Ground 4, the judge was wrong to find that the appellant had a *leading role* in the drugs offences, solely because of the large amounts of cash and potential for profit. Cash is a normal incident of involvement with drugs and should not have

been treated as an aggravating factor.

- e. Ground 5, 4 years, after trial, for the concealment offence was manifestly excessive given that no category A features were present for this offending. The money was earned by drug dealing and placed in a safe. This was basic offending without sophisticated elements.
 - f. Ground 6, the judge failed to make an appropriate adjustment for totality, noting the approach of this Court in R v Baptiste [2007] EWCA Crim 2772.
10. In oral submissions before us this morning, Mr Goscimski has stressed in particular the point made as part of ground 6. We are grateful to him for his helpful submissions.

Discussion

11. We have regard to four guidelines produced by the Sentencing Council: first, the Guideline on Firearms; secondly, the Drugs Guideline; thirdly, the Money Laundering Guideline; and fourth, the Overarching Guideline on Totality.
12. We start with a review of the sentences imposed for the firearms offences. The self-loading pistol was in working order with bullets. The sawn-off shotgun required a little attention - in the form of cleaning and WD40 - before it was operable. These were two firearms which were capable of being used to devastating effect in the community. We reject the submission that the sawn-off shotgun was not a working firearm: it was capable of being operated with only modest cleaning and associated work. Applying the guideline, they were both type 1 firearms. The culpability bracket was A given the intended use as part of the drugs business. The harm was category 3. Thus, the starting point was 6 years for each with a range of 5 to 7 years. These offences were aggravated in that there were multiple weapons kept (including the third weapon, the blank firing

pistol) and one (the self-firing pistol) had ammunition. The mitigation was the same for all offences consisting of personal factors going to the appellant as an individual.

13. We are not persuaded that a notional sentence for these offences of 8 years, before credit for guilty plea, taking account of all four firearms offences, was manifestly excessive.

We reject grounds 1, 2 and 3.

14. We turn to a review of the sentence imposed for the drug offences. The quantity of amphetamine was 987 grams, which put it in category 3 of the guideline. The quantity of cannabis was not specified but it was clear that the appellant was selling to users and the judge plainly drew that inference. The judge concluded that the appellant occupied a *leading role*. Given the paraphernalia found at his house (the “treasure trove” as the judge called it), it was reasonable to infer that his role was more than *significant*.

Moreover, the amount of cash that he was holding, both at home and in the safe, indicated that he had an expectation of substantial financial advantage, which put him in the leading category. As the judge noted, the starting point for Class B category 3 *leading role* is 4 years within a range of 2½ years to 5 years’ custody. There were two drugs offences to take into account. The mitigation for each was the same personal mitigation as already discussed. We reject ground 4.

15. Count 7 was for concealing criminal property. The judge did not make any express finding of where that offence fell under the guideline, simply noting the Crown’s submission that it had a notional 5 year starting point. It is helpful to record how the Crown had got to 5 years. The Crown’s submission was that this offending was culpability B, which is medium culpability, harm A category 4 (based on a starting point of £300,000 which was a little less than the amount concealed by the appellant), and thus had a starting point of 3 years in a range of 18 months to 4 years; but there needed to be

an upwards adjustment (required by the guideline, under harm B) to reflect the harm associated with the underlying drug dealing offences. It was that adjustment which took the offending into a higher guideline category with a starting point of 5 years in a range of 3 to 6 years custody (that is, culpability B, category 3 or culpability A, category 4 – the Crown did not specify which of those two categories it had in view and it does not matter because they are the same). By his ground 5, the appellant argues that there were no features of sophistication and no features which were capable of putting this criminal concealment offence into culpability category A. But that is to miss the point: the Crown (and implicitly the judge) accepted that this offending was, taken alone, culpability category B, precisely because it did not involve sophistication, but the fact that the money was associated with the underlying drugs activity meant that there had to be an upwards adjustment which is why the 5 year starting point came into view. The judge then discounted that notional starting point to reflect totality and personal mitigation, to arrive at a notional sentence after trial of 4 years, the same as the other two drugs offences. That lay well within the bounds of what was reasonable on any view. We therefore reject ground 5.

16. Finally then, we turn to what is, as we understand it, the core of the appellant's case, which is that 9 years was just too long bearing in mind totality. This is ground 6. The judge took totality into account in reducing the notional term for the drugs offences, and she considered making a further adjustment to the overall terms in light of totality, but concluded that was not necessary because she had discounted as she had gone along, and made a number of sentences concurrent with each other. We are not persuaded that the judge was in error in reaching this conclusion, and we therefore refuse ground 6.

Conclusion

17. The overall sentence of 9 years was, in our judgment, appropriate to mark the seriousness of the various offences. It reflected the totality of the offending. We wish to commend the judge for adopting an attractively simple approach and explaining her sentence in succinct and clear terms. We dismiss this appeal.

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

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