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[2023] EWCA Crim 406

IN THE COURT OF APPEAL

CRIMINAL DIVISION



CASE NO 202203599/A4

Royal Courts of Justice

Strand

London

WC2A 2LL

Wednesday 15 March 2023

Before:

LADY JUSTICE CARR DBE

MR JUSTICE JEREMY BAKER

HIS HONOUR JUDGE TIMOTHY SPENCER KC

(Sitting as a Judge of the CACD)

REX

V

MICHAEL HARVEY

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MISS L SPADA appeared on behalf of the Appellant

**J U D G M E N T**

## LADY JUSTICE CARR:

### Introduction

1. The appellant, now 52 years old, pleaded guilty on 4 May 2022 to possession of a class A drug (cocaine), contrary to section 5(2) of the Misuse of Drugs Act 1971. He was sentenced on 10 November 2022 by Ms Recorder Presland ("the judge") to four weeks' imprisonment. A victim surcharge, forfeiture and destruction orders were made and 109 days were ordered to count towards the sentence (pursuant to section 325 of the Sentencing Act 2020).
2. This is his appeal against sentence, for which purpose he has had the benefit of representation by Ms Spada.

### The facts

3. In the early morning of 22 March 2022 a warrant under section 23 of the Misuse of Drugs Act 1971 was executed on an address and entry gained. The appellant was found inside the premises, which did not belong to him, with a small amount (0.656 kilograms) of crack cocaine near him. He admitted that the drug belonged to him and claimed that it was worth around £5.
4. In interview he provided a prepared statement to the effect that the drugs were for his own personal use and that the cash that the police had seized was his benefit money.
5. The appellant was placed on bail subject to a qualifying curfew condition (from 9.00 pm to 6.00 am), and an electronic monitoring condition (both as defined in section 326(3) of the Sentencing Act 2020). By the time of sentence he had been subject to those conditions for 219 days.

### The sentence

6. The appellant had 48 previous convictions for 125 offences spanning between July 1985 and March 2022, including for burglary, theft and robbery, driving offences and assault. He also had convictions for seven drug offences, the most recent in 2018.
7. The judge sentenced the appellant without a pre-sentence report and we agree that one was unnecessary. She afforded him a full one-third credit for his guilty plea. She stated that, following trial, because of the appellant's offending record, she would have imposed a custodial sentence of six weeks. After credit for guilty plea the term would be one of four weeks' custody. Accordingly she sentenced the appellant to a term of four weeks' imprisonment. She emphasised, however, that that would be "time served", the appellant having already served the equivalent of 109 days in custody.

### Grounds of appeal

8. Ms Spada submits that, given the small quantity and value of drugs recovered, coupled with the appellant's guilty plea, the sentence was simply too high. The offending was low-level

and the custody threshold was not passed. Even if it was passed, a shorter term of imprisonment should have been imposed. She emphasises in particular the mitigation available to the appellant, not only in terms of the quantity and value of drugs involved, but also the steps being taken by the appellant to address his drug addiction. He had been off drugs for some five months, seeking assistance from the Harbour Project in Lambeth.

### Discussion

9. As is common ground, the relevant starting point under the Sentencing Council Guideline for Drug Offences was a Band C fine, with a range of a Band A fine up to 51 weeks' custody. Despite the small quantity and low value of the drugs in question, taking into account the appellant's offending record as a whole, the judge was fully entitled to reach the conclusion i) that the custodial threshold was passed and ii) that a term of six weeks' custody before credit for guilty plea was justified. It was well within the relevant sentencing range, as set out above.
10. The judge reached that conclusion independently of the fact that the appellant had served time on qualifying curfew. The appellant's offending record, as we have indicated, included not only multiple drug offending but also other serious offending, including for offences of dishonesty. Taken in context and as a whole, we do not consider that there is any legitimate criticism to be made of the ultimate outcome.
11. For these reasons we dismiss the 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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