



IN THE COURT OF APPEAL  
CRIMINAL DIVISION

Royal Courts of Justice  
The Strand  
London  
WC2A 2LL

ON APPEAL FROM THE CROWN COURT AT KINGSTON UPON THAMES.  
(MR RECORDER M HUNTER) [01WW1074523]

Case No 2024/02346/A4

[2024] EWCA Crim 1030

Wednesday 14 August 2024

**B e f o r e :**

**LORD JUSTICE WARBY**

**MR JUSTICE CAVANAGH**

**MR JUSTICE WALL**

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**R E X**

**- v -**

**RICHARD BUTLER**

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**Miss L Collier** appeared on behalf of the Appellant

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

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Wednesday 14 August 2024

**LORD JUSTICE WARBY:** I shall ask Mr Justice Wall to give the judgment of the court.

**MR JUSTICE WALL:**

1. On 14 June 2024, in the Crown Court at Kingston Upon Thames, the appellant (a man aged 24 and of good character) was sentenced by Mr Recorder M Hunter to two years' imprisonment for five offences of possessing a controlled drug of Class A with intent to supply them to another. On the same occasion, he was sentenced to one year's imprisonment for two offences of possessing a controlled drug of Class B with intent to supply, and to one year's imprisonment for one offence of possessing a controlled drug of Class C with intent to supply. All sentences were ordered to be served concurrently. The total sentence was, therefore, one of two years' imprisonment. He had pleaded guilty to all of those offences on 15 February 2024 at Wimbledon Magistrates' Court.

2. The appellant appeals against his sentence by leave of the single judge.

### **The Facts**

3. On 26 August 2022 (when he was aged 22), the appellant was stopped by the police while riding a moped. He was found to be in possession of five types of Class A drug, namely psilocin, psilocybin 2, LSD, MDMA and cocaine. He also had quantities of ketamine and cannabis (Class B drugs), and bromazolam (a Class C drug). He was further in possession of £2,160 in cash.

4. The police found mobile telephones, SIM cards, snap bags and scales at his home when it was searched.

5. The appellant had a difficult upbringing. The pre-sentence report revealed him to be a man who had lacked appropriate parental support during his youth, which resulted in him being sent to the United Kingdom from his native Brazil at an early age. He claimed to the author of the report to have been led into the offending by older, more experienced acquaintances.

### **The Recorder's Approach to Sentence**

6. The appellant was a street dealer. He therefore fell to be sentenced as someone falling into category 3 of the Sentencing Council Definitive Guideline for these offences. His was agreed to be a "significant role". The starting point for each offence relating to Class A drugs was four years and six months' custody. The sentencing range was between three and a half and seven years' custody.

7. The Recorder took into account the appellant's particular role in this offending and his significant mitigation, most particularly his good character and the delay between the time of his arrest and charge, and moved downwards from the starting point to three years, before applying a full discount for the guilty plea. He then ordered that the sentences should be served immediately, rather than suspended.

8. The sole ground of appeal is that it was wrong in principle for the Recorder not to have suspended the sentences. Miss Collier, who has represented the appellant today with great skill, stressed that these charges all related to a single date; that the appellant was aged only 22 when he offended; that there had been a delay of 22 months in bringing this case to court; that the appellant had sought to address his offending behaviour in that time; and that his remorse was genuine.

### **Our Conclusions**

9. We reject the appeal. The Recorder showed great mercy to the appellant by moving down from the starting point to three years, before applying the guilty plea discount. The figure of three years is outside of the normal sentencing range for these offences. It was a generous reduction, designed in particular to reflect the delay in bringing the case to court.

10. The decision as to whether to suspend a sentence which is capable in law of being suspended is one for the sentencing judge to make. This court is a court of review. It will rarely interfere with a decision not to suspend a sentence where the judge has properly weighed up the factors relevant to the taking of the decision set out in the Sentencing Council Guideline on Imposition of Community and Custodial Sentences, and has reached a decision that is not irrational.

11. The Recorder was obviously aware, when he passed this sentence, that the appellant had strong personal mitigation and had a reasonable prospect of being rehabilitated. He had not offended before this offending, and had not re-offended between the time at which he committed this offence and the sentencing hearing. There is no evidence that he posed an ongoing danger to the public. These are all factors in favour of suspending the sentence. Many of those factors had been factors employed by the Recorder in reducing the custodial term to one of only two years' imprisonment. However, it cannot be said that he was wrong to find that, despite the presence of these factors, the only appropriate sentence was one of immediate custody. That is a factor indicating that it would not be appropriate to suspend the sentences of imprisonment.

12. The appellant was a man who was out on the street supplying a variety of drugs, many of Class A, to the public. The Recorder remarked on the dangers involved in taking Class A drugs: the harm to health they cause; their addictive nature; and the fact that drug addicts are often driven to commit further serious crime to feed that addiction. The Recorder was

entitled to find that there had to be a deterrent element to his sentence.

13. We find that the Recorder neither failed to take into account relevant factors, nor reached a decision which was not properly open to him having weighed up those factors.

14. The case of *R v Ali* [2023] EWCA Crim 232, which was cited to us in support of the submission that the sentence should have been suspended, is authority for the proposition that the current overcrowding in prisons is a factor which might be relevant to the decision as to whether to suspend a sentence of imprisonment in exceptional circumstances. It is not, of course, authority for the proposition that all custodial sentences which are capable in law of being suspended should be suspended. That is primarily a matter for the judgment of the sentencing tribunal. It is a factor to be weighed up alongside the other mitigating features of the case and, importantly, the seriousness of the criminal conduct involved.

15. It cannot be said, in our judgment, that the circumstances here were so exceptional that the decision not to suspend the sentence was an error of law, or rendered the sentence manifestly excessive, even with the factor of prison overcrowding in mind.

16. Given that we cannot say that the Recorder erred in any way in his approach to this sentencing exercise, we dismiss the appeal.

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

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