

This Transcript is Crown Copyright. It may not be reproduced in whole or in part other than in accordance with relevant licence or with the express consent of the Authority. All rights are reserved.

IN THE COURT OF APPEAL  
CRIMINAL DIVISION  
[2022] EWCA Crim 1867



No. 202103892 A2

Royal Courts of Justice

Wednesday, 14 September 2022

Before:

LORD JUSTICE SINGH  
MR JUSTICE FRASER  
MR JUSTICE HENSHAW

REX  
V  
JOSHUA JASON PORTER

---

Computer-aided Transcript prepared from the Stenographic Notes of  
Opus 2 International Ltd.  
Official Court Reporters and Audio Transcribers  
5 New Street Square, London, EC4A 3BF  
Tel: 020 7831 5627 Fax: 020 7831 7737  
CACD.ACO@opus2.digital

---

MS S QUINTON-CARTER appeared on behalf of the Appellant.

---

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

MR JUSTICE FRASER:

- 1 This is a renewed application for permission to appeal against sentence following refusal by the single judge. The applicant also requires an extension of time of 106 days for the renewal of the application for permission, a point to which we shall return at the end of this judgment.
- 2 The applicant has been most ably represented today by Ms Quinton-Carter of counsel who has been appearing on his behalf pro bono. We are very grateful to her for her succinct and helpful submissions, which we have found of great assistance.
- 3 On 2 July 2021 the applicant was committed to the Crown Court for sentence by the Magistrates' Court, having pleaded guilty to two counts of drugs possession contrary to s.5(2) of the Misuse of Drugs Act 1972. One of these counts was for possession of Class A drugs, namely cocaine, and the other for possession of Class B, namely cannabis. He also pleaded guilty to an offence of possession of a bladed article contrary to s.139(1) and (6) of the Criminal Justice Act 1988.
- 4 On 27 September 2021 he refused to appear at a Plea and Case Management Hearing on three other charges and not guilty pleas were entered on his behalf to each of those charges. He did, however, plead guilty to them on 12 November 2021. Those other charges were all of his being concerned in the supply of a controlled drug contrary to s.4(3)(b) of the Misuse of Drugs Act 1971. Two of these charges were for Class A drugs, namely crack cocaine and diamorphine, and one for Class B, namely cannabis.
- 5 He was sentenced by Mr Recorder Eissa QC in the Crown Court at Basildon on 12 November 2021 in respect of all of these charges. The sentencing judge in the Crown Court sentenced the applicant without a pre-sentence report, although a short report was available from the Probation Service in respect of his response to earlier community disposals for previous convictions. Section 33 of the Sentencing Act 2020 states that the full court must now obtain a report, unless it agrees one was unnecessary or is not now necessary. We do not consider such a report is necessary and we state that expressly here.
- 6 Before reciting the sentences passed on each of the counts, we should explain that the two counts contrary to s.4(3)(b) of the Misuse of Drugs Act are characterised by s.313(5) of the Sentencing Act 2020 as Class A trafficking offences. Previous convictions that the applicant had included offences that are also characterised as previous drug trafficking offences. Those convictions are those dated 21 January 2014 and 7 February 2019. Accordingly, and in accordance with s.313 of the Sentencing Act 2020, the sentencing judge was obliged to impose an appropriate custodial sentence of seven years, which applied unless the court was of the opinion that there were particular circumstances which related to any of the offences or the offender that would make it unjust to do so in all the circumstances. Discounts to that statutory minimum for pleading guilty are permitted, but by s.73(3)(a) of the Sentencing Act 2020 credit for a guilty plea in such circumstances to be applied must not reduce the appropriate custodial sentence below 80 per cent of that minimum of seven years. The judge in his sentencing remarks did not find any circumstances that would make it unjust for him to impose the minimum term, but stated that he would reduce it by the maximum permissible period.
- 7 He went on to pass the following sentences on the different counts. For the two counts of being concerned in supplying a controlled drug of Class A to another, he passed sentences of imprisonment of five years and six months on each. Those sentences were ordered to run concurrently. On the third count of being concerned in supplying a controlled drug of Class B to another, he passed a sentence of 18 months' imprisonment, also to run concurrently.

On the two possession of drugs counts, namely possessing a controlled drug of Class A and possessing a controlled drug of Class A diamorphine, he passed two sentences, each of one month of imprisonment, also to run concurrently; and for possessing a bladed article he passed a sentence of five months' imprisonment, also concurrent. The overall total sentence was therefore one of five years and six months' imprisonment. He also made other relevant orders, including imposing a statutory surcharge order and one for forfeiture, destruction and disposal of the drugs and for the mobile telephone seized upon arrested. In calculating the relevant period for the two most serious charges of being concerned in the supply of Class A drugs, the judge fell into arithmetic error and passed sentences that fell below the 80 percent minimum required under s.73(3)(a) of the Sentencing Act 2020. This is a point to which we will return.

- 8 The facts of the offending are as follows. For the offences to which he first pleaded guilty, these arose on 24 August 2019 when police on a patrol in the Chalvedon area of Basildon received reports of someone drug dealing in the area. They saw the applicant a short distance away from them and concluded that he matched the description given. They stopped him and found upon his person a gold tin containing one small package of cocaine and one of heroin with a combined weight of 0.2 grams. The applicant had a rucksack with him which was found to contain a small bladed scalpel. The applicant was arrested and made full admissions in interview about the drugs and said he simply forgot he had the bladed article with him in the bag. We have seen the photograph of the bladed article and it is a sharp scalpel or box cutter-type knife.
- 9 For the more serious offences, police officers were looking at a telephone belonging to a known Class A drug user and they saw offers to purchase drugs from a number which ended with the digits 983. Further enquiries were made into that number and it was found that over a period of about six weeks between the start of May 2021 and the end of June 2021 that number had sent out a total of 138 bulk messages with offers to supply both cocaine and heroin. From those messages offering drugs, there was a take up of just under one half.
- 10 On 25 August 2021, which is the day after the possession offences which we have just explained, police officers attend the applicant's address. He was not present and they did not find any drugs, but they did find a set of scales. Later that day he contacted the police to find out why his property had been searched. Officers attended once more and found that the applicant had on his person a mobile telephone that ended with the digits 983. Checks on the telephone showed there were 11 bulk messages sent out advertising cannabis for sale. He was arrested and provided a full comment interview, saying it was his telephone but he had lent it to a friend. By his guilty pleas, he accepted that he was involved in drugs supply of both Class A and Class B drugs.
- 11 His previous convictions are that prior to these six offences he had nine convictions for 26 offences between 21 January 2014 and 20 October 2020. These included two offences of conspiracy to supply a controlled drug of Class A and one of producing a controlled drug of Class B. For these he received a suspended sentence order of eighth months' imprisonment suspend for 12 months and that was imposed on 21 January 2014. He also had two offences of possessing a controlled drug of Class A with intent to supply, three of committing a supply of controlled drugs of Class A on the premises and one of possession of a bladed article. For these offences, he had received a two-year Community Order with a drug rehabilitation requirement and an unpaid work requirement, that sentence being imposed on 7 February 2019. Prior to these offences, he had not previously served a custodial sentence. As we have noted, importantly these previous convictions included two for Class A drug trafficking as defined by s.313(5) of the Sentencing Act 2020 and this led to the seven-year minimum sentence to which we have already referred.

- 12 The grounds of appeal initially were, firstly, that the judge imposed a sentence which was wrong in principle in respect of Counts 1 and 2 in that he imposed a sentence in line with s.313 of the Sentencing Act 2020 when it was unjust to do so in the particular circumstances. A different way of expressing this is it is effectively said on the applicant's behalf that the sentencing judge or this court ought to have found or to now find that there were or are particular circumstances which related to any of the offences or the offender that would make it unjust to apply the s.313 minimum sentence in all the circumstances.
- 13 There was a second ground of appeal, which was that the sentence in respect of Count 3 was wrong in law as that was not an offence that fell foul of the mandatory minimum sentencing provisions, but that ground was abandoned when it was identified that in fact the sentencing judge had passed a sentence of 18 months concurrent on that count and not five and a half years concurrent as had been initially thought by the applicant's advisers. This misapprehension was corrected by the applicant's legal representatives and helpfully confirmed again today by Ms Quinton-Carter.
- 14 We therefore have considered the first and only ground. We have considered the careful submissions made today and the authorities provided on the applicant's behalf, both those referred to at para.32 to 35 of the advice and grounds and the others that have been sent to the court. We are unable to accept that the applicant's personal circumstances made it unjust to impose the statutory minimum. We agree with the single judge who stated the following in refusing leave to appeal:

"The learned Recorder who sentenced you was entitled to conclude that your circumstances and those of your offending did not render it unjust to impose the statutory minimum sentence. It was not wrong in law, nor can it be said to be manifestly excessive, to sentence you on that basis. In particular, there is no rule of law that sentencing at the minimum is unjust for a street dealer who is involved in dealing as a by-product of their own addiction. The judge was reasonably entitled to the view that your case in fact fitted the intention of Parliament to impose the minimum sentence, to give you ample time in custody to address your addiction as well as to serve as proper punishment (and deterrent to others) in the face of repeat offending of this kind."

- 15 There is nothing we can usefully add to those remarks. We do not consider the challenge to the sentence passed by the learned sentencing Recorder to be reasonably arguable and we dismiss it.
- 16 We therefore return to the calculation of the relevant term. Twenty per cent of seven years is 1.4 years. Taking account of the fact that there are 12 months in a year, 0.4 of a year is when expressed in months 4.8 months. The learned recorder applied a reduction of 1.5 years or one year and six months, which is therefore in excess of the maximum permitted reduction of 20 per cent. The sentence passed therefore contravenes the express requirement of the legislative provision committing the court to reduce the maximum sentence imposed for such an offence. However, this error is in the applicant's favour. This court has no power to increase a sentence on appeals such as this one. This is not an Attorney General's reference under s.36 of the Criminal Justice Act 1988 and we are precluded by the provisions of s.11(3) of the Criminal Appeal Act 1968 from imposing a sentence that would result in the applicant being more severely dealt with, taking the case as a whole, than he would have been in the court below. Given the overall term of the resulting sentence passed upon him in the Crown Court below is five years and six months, we cannot interfere with that error or correct it, and it remains undisturbed. The arithmetic error to which we have referred therefore gives the applicant a sentence very

slightly less than he ought to have been given under the statute but by an amount of only 1.2 months.

- 17 Finally, we return to the question of an extension of time of 106 days. The explanation given to the court by the applicant's solicitors in their letter of 1 August 2022 is that notification having been given to the applicant that the single judge had refused leave, difficulties at the prison with booking, and obtaining a video link for instructions were such that this was not possible until a period of over three months had passed. We have dealt in this judgment with the merits of the renewed application in any event and have considered it as though it were brought within time. However, having concluded there is no merit in it and that the application is not reasonably arguable, there would be no point in extending time and we refuse to do so.
- 18 We therefore dismiss the application for an extension of time and also dismiss the renewed application.
-

**CERTIFICATE**

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the Judgment or part thereof.

*Transcribed by **Opus 2 International Limited**  
Official Court Reporters and Audio Transcribers  
5 New Street Square, London, EC4A 3BF  
Tel: 020 7831 5627 Fax: 020 7831 7737  
CACD.ACO@opus2.digital*

This transcript has been approved by the Judge