

WARNING: reporting restrictions may apply to the contents transcribed in this document, particularly if the case concerned a sexual offence or involved a child. Reporting restrictions prohibit the publication of the applicable information to the public or any section of the public, in writing, in a broadcast or by means of the internet, including social media. Anyone who receives a copy of this transcript is responsible in law for making sure that applicable restrictions are not breached. A person who breaches a reporting restriction is liable to a fine and/or imprisonment. For guidance on whether reporting restrictions apply, and to what information, ask at the court office or take legal advice.

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.

Neutral Citation Number: [2023] EWCA Crim 1066

IN THE COURT OF APPEAL
CRIMINAL DIVISION



CASE NO 202301811/A5

Royal Courts of Justice
Strand
London
WC2A 2LL

Tuesday 12 September 2023

Before:

LORD JUSTICE SINGH

MRS JUSTICE LAVENDER

MR JUSTICE JOHNSON

REX

V

OUSSAMA BOUHAMIDI

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)

MR J OLIVER appeared on behalf of the Applicant.

MS R BECKETT appeared on behalf of the Crown.

J U D G M E N T

(Approved)

LORD JUSTICE SINGH:

Introduction

1. This is an application for leave to appeal against sentence, which has been referred to the Full Court by the Registrar of Criminal Appeals, as it concerns relatively new legislation relating to the minimum sentence to be passed for certain drugs offences. It raises the issue of the scope of the “exceptional circumstances” permitted by section 313(2A) of the Sentencing Act 2020, or the Sentencing Code, which was brought into force on 28 June 2022 by the coming in to force of section 124 of the Police, Crime, Sentencing and Courts Act 2022.
2. The applicant’s previous convictions in this case fell within the scope of section 313 of the Sentencing Code, which so far as material provided as follows:

“(1) This section applies where—

- (a) a person is convicted of a class A drug trafficking offence (‘the index offence’) committed on or after 1 October 1997
- (b) when the index offence was committed, the offender—
 - (i) was aged 18 or over, and
 - (ii) had two other relevant drug convictions, and
- (c) one of the offences to which those other relevant drug convictions related was committed after the offender had been convicted of the other.

...

(3) For the purposes of subsection (1), ‘relevant drug conviction’ means—

- (a) a conviction in any part of the United Kingdom of a class A drug trafficking offence...

...

(5) In this section ‘class A drug trafficking offence’ means a drug trafficking offence committed in respect of a class A drug; and for this purpose—

- i. ‘class A drug’ has the same meaning as in the Misuse of Drugs Act 1971;

‘drug trafficking offence’ means an offence which is specified in—
paragraph 1 of Schedule 2 to the Proceeds of Crime Act 2002...”

3. That paragraph includes an offence under any of the following provisions of the Misuse of Drugs Act 1971, section 4(2) or (3) (unlawful production or supply of controlled drugs), section 5(iii) (possession of a controlled drug with intent to supply) (c) section 8 (permitting certain activities relating to controlled drugs) (d) section 20, assisting in or inducing the commission outside the UK of an offence punishable under corresponding law.

4. The new provision enacted in 2022, that is section 313(2A) provides as follows:

“If the index offence was committed on or after the day on which section 124 of the Police, Crime, Sentencing and Courts Act 2022 came into force, the court must impose an appropriate custodial sentence for a term of at least 7 years unless the court is of the opinion that there are exceptional circumstances which—
(a) relate to any of the offences or to the offender, and
(b) justify not doing so.”

5. The relevant legislation therefore differs from what had preceded it, which referred instead to “particular circumstances” rather than “exceptional circumstances”.

6. On 11 April 2023, the applicant pleaded guilty to four offences in the Crown Court at Lewes. On 3 May 2023 he was sentenced by His Honour S Mooney as follows: on count 1, being concerned in supplying a controlled drug of Class A to another, which concerned crack cocaine, there was a sentence of 2045 days. Count 2, possessing a controlled drug of Class A with intent, which related to crack cocaine, there was a sentence of 2045 days made concurrent. On count 3, possessing criminal property, there was a sentence of 2045 days again made concurrent. On count 4, being concerned in the supply of a controlled drug of Class A, this time diamorphine, there was again a sentence of 2045 days, again made concurrent, but that therefore made a total of 2045 days’ imprisonment or 5 years and 7 months. This was clarified in post-sentence

correspondence by the sentencing court.

The Facts

7. This was a “county lines” case. The applicant was involved in two drug selling operations known as the “Frank” and “Antz” lines. The drugs were brought into Brighton and distributed in the city centre. The applicant was linked to both lines through his mobile phone and was concerned in the running of those lines between 19 December 2022 and 22 February 2023. Both the Frank and Antz line SIM cards were seized from the applicant on the arrest. In addition, when he was arrested on 2 March 2023, at his home address in London, the applicant was in possession of 75 grams of crack cocaine, 15 grams of heroin and around £5,000 in cash. Bulk text messages had been sent out advertising the sale of Class A drugs. Cell site analysis showed the applicant’s personal mobile phone and the drugs line phones were together in both London and Brighton.

The Sentencing Process

8. The applicant was born on 14 August 2001 and so was aged 21 at the dates of conviction and sentence. He had seven convictions for 15 offences spanning the period from 2018 to 2022. His relevant convictions included possessing a controlled drug of Class A with intent to supply (x 3) in 2020 and being concerned in the supply of a controlled drug of Class A (x 2) in 2022. We note that the Crown Court sentenced the applicant without a pre-sentence report. We agree that one is not necessary having had regard to the provisions of section 33 of the Sentencing Code.
9. The applicant does now have a prison report, which this Court has seen. The applicant

was transferred to a young offender institution at Aylesbury on 24 May 2023. It had been difficult for the author to make a full assessment. No major concerns had been raised by wing staff. The applicant had one negative IEP entry for misuse of an emergency bell. Staff reported that he was a polite young man who had settled in well. He was employed in a workshop and had spoken of a willingness to progress to open conditions to gain employment and ready himself for the future.

10. The judge referred to the applicant's previous relevant convictions and considered that he was a "dyed in the wool drug dealer". Because of the previous convictions, the judge said the applicant was subject to the mandatory sentence of imprisonment to which we have referred. Because of the mitigation advanced on the applicant's behalf, and because of his age, the judge did not feel it necessary to extend the sentence beyond the mandatory 7 years. The judge discounted the sentence by 20 per cent in accordance with the legislation, to which we have referred, resulting in a sentence of 2045 days.

The Relevant Legal Framework.

11. In Attorney General's Reference (R v Marland) [2018] EWCA Crim 1770, paragraphs 22 to 31, Simon LJ said that the starting point in considering a sentence, where the minimum sentencing provisions apply, is to recognise that Parliament intended a minimum sentence should be passed unless the particular circumstances of the offences and the particular circumstances of the offender made such a sentence unjust. He recognised that having regard to the legislation in force at that time the Court was not looking for exceptional circumstances but particular circumstances. Nevertheless, having referred to earlier decisions of this Court, Simon LJ observed that the same approach must apply.

12. As we have noted, the amended provisions of the Sentencing Code, which are applicable in this context, now do refer to the word “exceptional” and no longer “particular circumstances”. Accordingly, we consider that helpful guidance can be obtained by reference to what this Court has said in the context of the minimum sentencing provisions in the Firearms Act 1968, section 51A. In R v Nancarrow [2019] EWCA Crim 470; [2019] 2 Cr App R(S) 4, Popplewell J summarised the principles which can be derived from the earlier authorities regarding the application of a minimum term in the context of the Firearms Act at paragraph 19, so far as relevant but without setting out the references to earlier authorities:

- “(1) The purpose of the mandatory minimum term is to act as a deterrent...
- (2) Circumstances are exceptional for the purposes of subsection (2) if to impose five years’ imprisonment would amount to an arbitrary and disproportionate sentence...
- (3) It is important that the courts do not undermine the intention of Parliament by accepting too readily that the circumstances of a particular offence or offender are exceptional. In order to justify the disapplication of the five-year minimum, the circumstances of the case must be truly exceptional...
- (4) It is necessary to look at all the circumstances of the case together, taking a holistic approach. It is not appropriate to look at each circumstance separately and conclude that, taken alone, it does not constitute an exceptional circumstance. There can be cases where no single factor by itself will amount to exceptional circumstances, but the collective impact of all the relevant circumstances makes the case exceptional...
- (6) The reference in the section to the circumstances of the offender is important. It is relevant that an offender is unfit to serve a five-year sentence or that such a sentence may have a significantly adverse effect on his health...
- (7) Each case is fact-specific and the application of the principles dependent upon the particular circumstances of each individual case. Limited assistance is to be gained from referring the court to decisions in cases involving facts that are not materially identical...
- (8) Unless the judge is clearly wrong in identifying exceptional circumstances where they do not exist or clearly wrong in not

identifying exceptional circumstances where they do exist, this Court will not readily interfere...”

Grounds of Appeal

13. On behalf of the applicant, it is submitted in the written grounds that first, the judge erred in failing to find exceptional circumstances that would justify not imposing the minimum 7-year sentence. Secondly, it is submitted that the first and second drug trafficking convictions, which were items 5 and 6 on the Police National Computer, in fact represented a single continued period of offending, which justified a finding of exceptional circumstances. Thirdly, it is submitted that a starting point below the category range, which it is accepted was one of significant role and category 3, should have been adopted. Finally and in consequence, it is submitted that had exceptional circumstances been found, the reduction in sentence to reflect the applicant’s guilty plea would not have been restricted by section 373(3) of the Sentencing Code and therefore a reduction greater than 20 per cent (it is suggested it should have been 25 per cent) would have been given.
14. We have been assisted by grounds of opposition, which have been filed in the Respondent’s Notice by the respondent, although we are grateful to Ms Beckett, who has attended Court, having settled those grounds to assist the Court but in the end we found it unnecessary to call upon her.
15. On behalf of the applicant Mr Oliver has focused in particular on the second of the grounds to which we have referred. He submits that the first and second drug trafficking convictions, in truth, represented a single continuing period of offending which justified a finding of exceptional circumstances in this case.
16. We do not accept those submissions or the others which are advanced in writing. The

Respondent's Notice correctly points out, in our judgment, that although there was some dispute about this before the sentencing court, it came to be, and is now accepted on behalf of the applicant, that there were three separate convictions, otherwise the minimum sentence provisions would not apply in the first place. Furthermore, the chronology of events in 2020 shows that the applicant pleaded guilty to one offence on 31 August 2020, two days after the offence took place on 29 August. It does not appear, as the Respondent's Notice observes, that a link was made at that stage with the offences that were later discovered to have taken place when the applicant was arrested and investigated in Sussex rather than London. Importantly, following his guilty plea the applicant was granted bail but continued to supply drugs on the "Frank" line. He continued to be involved in the supply of drugs from London to Brighton until his arrest on 18 November 2020. He was sentenced at Harrow Crown Court on 20 November 2020, to a term of 3 years' imprisonment. Subsequently he was sentenced at Lewes Crown Court on 3 February 2022 to a total of 15 months' custody. Following his release, he committed the offences for which he was now sentenced at Lewes Crown Court on 3 May 2023. In the light of those circumstances, we agree with the respondent that the judge was entitled to find there were no exceptional circumstances which justify not imposing the minimum term of 7 years.

17. Turning to ground 2, the fundamental point is that the judge would have been entitled to impose a sentence of 7 years' custody, applying the relevant Guideline, and leaving aside the minimum sentence provisions in any event. We accept the respondent's submission that the applicant fell towards the top of the sentencing range for a category 3 offence where his role was significant and in particular because he had previous convictions which were relevant and recent. Furthermore, as Mr Oliver fairly acknowledges on

behalf of the applicant, he was on licence when he committed the offence to which he was now being sentenced.

18. Turning to ground 3, the respondent accepts that in principle the applicant would have been entitled to credit of 25 per cent at plea at the PTPH stage but points out that he relied on a basis of plea which then had to be investigated. At what became the sentencing hearing the prosecution stated that there would need to be a Newton hearing and requested an adjournment. At this stage the defence advised that they no longer relied upon the basis of a plea. In those circumstances, we accept the respondent's submission that credit of more than 20 per cent was not required in this case. In any event, as we have held, the minimum sentence provisions do apply and, in those circumstances, Mr Oliver fairly acknowledges that statute prevents there being credit given greater than 20 per cent.

Conclusion

19. For those reasons, we refuse this application for leave to appeal against sentence.

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