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IN THE COURT OF APPEAL
CRIMINAL DIVISION



CASE NO 202300550/A3
[2023] EWCA Crim 1108

Royal Courts of Justice
Strand
London
WC2A 2LL

Wednesday 12 July 2023

Before:

LORD JUSTICE DINGEMANS

MR JUSTICE TURNER

SIR ROBIN SPENCER

REX

V

ABDULLAH MOHAMMED

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MS C EVANS appeared on behalf of the Appellant.

J U D G M E N T

1. MR JUSTICE TURNER: On 1 February 2023, in the Crown Court at Reading, the appellant (then aged 33) was convicted, after trial, of two offences of being concerned in supplying a controlled drug of Class A to another and was sentenced to 4 years' imprisonment on each count to be served concurrently. He appeals against those sentences with the leave of the single judge.
2. The facts are these. On 10 March 2022, a drug user was arrested by the police in the course of an unrelated investigation. In his mobile phone was found a telephone number ending "4832" and saved under the name "Striker". The "Striker line" advertised Class A drugs and the user was one of its customer.
3. Investigations revealed that the Striker line had sent bulk advertising messages relating to Class A drugs to dozens of other potential customers between 22 and 27 June 2022. There were also messages indicating where dealing was taking place. The data recovered included IMEI numbers for the handsets which were being used to send the messages. Between 6 January and 10 August the Striker line had used two different handsets, a Nokia 105 and an iPhone 7.
4. At around 4.20 in the afternoon of 10 August 2022 a police officer stopped the appellant on Church Street in Slough town centre. He was found to be carrying a black manbag. The officer searched the bag and inside found three mobile phones and a loose SIM card. Two of the phones were found to be a black Nokia burner-style phone and a white iPhone. Their IMEI numbers corresponded to the phone handsets that the Striker line had been using. The Nokia contained the SIM card with a telephone number ending 4832 which was that of the Striker line itself.
5. Further investigation showed that the white iPhone had used the Striker line SIM and the

black iPhone had shared SIMs with the white iPhone. It was clear that the appellant must have been involved in the operation of the drugs line.

6. The appellant had one conviction for two offences. In 2011 he was sentenced to a total of 14 months' imprisonment for two offences of robbery. The Recorder proceeded to sentence without a pre-sentence report, and we agree that it was not necessary for him to call for one and it is not necessary for us to have one now.
7. Prosecution and defence counsel agreed that the appellant's offending fell into category 3 street dealing and *lesser role*, which under the Drug Offences Guideline give a starting point of 3 years with a range of 2 years and 4 years and 6 months' imprisonment. There was no dispute that the appellant was a homeless asylum seeker at the time of his arrest, and no drugs were found on him. The Recorder has said that he thought that the categorisation of the appellant's offending in a *lesser role* was generous but acceded to this approach. He held that the offending fell towards the upper end of the range having concluded that the appellant was engaged in a large enterprise by reference to the number of relevant calls found on the Striker line. He also concluded that the previous convictions for robbery were to be categorised as aggravating features. He said:
 - i. "The offence is aggravated by your previous convictions. Now, I recognise that they were, now, over a decade ago and I recognise that they were not for drug offences but robbery is a serious offence - it was serious enough to justify immediate custody and it's quite clear that that prison sentence has not deterred you from engaging in further criminality. In that regard, it is an aggravating feature."
8. It is this passage in the sentencing remarks which is marked out for criticism in the grounds of appeal, in which it is asserted the appellant's antecedent history ought to have

been treated as a mitigating rather than aggravating feature as a result of which the sentence of 4 years was manifestly excessive.

9. The Sentencing Guideline relating to drug offences lists as one of the statutory aggravating features:
 - i. "Previous convictions, having regard to (a) nature of the offence to which conviction relates and relevance to current offence; and (b) time elapsed since conviction."

10. Among the factors reducing seriousness or reflecting personal mitigation is "no previous convictions or no relevant or recent convictions".

11. Reference may also be made to the Guideline relating to Overarching Principles which provides in so far as is material:
 - i. "Guidance on the use of previous convictions
 - ii. The following guidance should be considered when seeking to determine the degree to which previous convictions should aggravate sentence:
 - iii. Section 65 of the Sentencing Code states that:
 - (2) This section applies where a court is considering the seriousness of an offence ('the current offence') committed by an offender who has one or more relevant previous convictions. (2) The court must treat as an aggravating factor each relevant previous conviction that it considers can reasonably be so treated, having regard in particular to— (a) the nature of the offence to which the conviction relates and its relevance to the current offence, and (b) the time that has elapsed since the conviction.
 - i. Three with the court treat, relevant conviction and aggravating factor of subsection (2) it must state in open court the offence is so so aggravated.
 - ii. Previous convictions are considered at step two in the Council's offence-specific guidelines.

- iii. The primary significance of previous convictions is the extent to which they indicate trends in offending behaviour and possibly the offender's response to earlier sentences.
- iv. Previous convictions are normally relevant to the current offence when they are of a similar type.
- v. Previous convictions of a type different from the current offence may be relevant where they are an indication of persistent offending or escalation and/or a failure to comply with previous court orders.
- vi. The aggravating effect of relevant previous convictions reduces with the passage of time; older convictions are less relevant to the offender's culpability for the current offence and less likely to be predictive of future offending.
- vii. Where the previous offence is particularly old it will normally have little relevance for the current sentencing exercise.
- viii. The court should consider the time gap since the previous conviction and the reason for it. Where there has been a significant gap between previous and current convictions or a reduction in the frequency of offending this may indicate that the offender has made attempts to desist from offending in which case the aggravating effect of the previous offending will diminish.
- ix. Where information is available on the context of previous offending this may assist the court in assessing the relevance of that prior offending to the current offence."

12. We take the view that although the Recorder was right to observe that the robberies committed over 10 years ago must have been serious offences to attract custodial sentences of 14 months, it is necessary to take into account the lengthy period since then over which the appellant had kept out of trouble together with the fact that there is no suggestion that there was any similarity between those offences and the drug-related matters for which he was to be sentenced. In this regard we consider that the Recorder was wrong to treat the previous convictions as an aggravating feature. We take the view

that the proper approach would be to treat the previous convictions as a neutral feature and one that did not aggravate the sentence.

13. We, however, take the view that notwithstanding the Recorder's approach to the appellant's antecedent history, the most seriously aggravating feature which he correctly identified was the very significant scale of the appellant's involvement in marketing the drugs as part of an obviously large operation. This entitled the Recorder to move from the starting point towards the upper ends of the category range. The relevant offending was very different to an isolated occasion of street dealing and fully justified this approach. He took into account all other aspects of the case before him, including matters which were correctly identified as mitigating factors before he came to the conclusion that the appropriate sentence was one of 4 years. The Recorder identified expressly the fact that these previous convictions were a long time ago and of a different nature to the matters for which he fell to be sentenced, and we take the view that such increase as may be attributed to those features was likely to be very low. Ultimately, the question at the centre of this appeal is whether the sentence of 4 years was manifestly excessive. We conclude that although the sentence was condign, bearing in mind the significant scale of the appellant's involvement in a large and sophisticated operation, it was not manifestly excessive, and this appeal is therefore dismissed.

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

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