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IN THE COURT OF APPEAL

CRIMINAL DIVISION

CASE NO 202203428/A1

NCN: [2023] EWCA Crim 1267



Royal Courts of Justice
Strand
London
WC2A 2LL

Wednesday 10 May 2023

Before:

LORD JUSTICE WILLIAM DAVIS
MR JUSTICE HOLGATE
MR JUSTICE SWIFT

REX
V
MOHAMMED RASOUL

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MR P LAZARUS appeared on behalf of the Applicant

J U D G M E N T

1. MR JUSTICE HOLGATE: On 31 May 2022 in the Crown Court at Wood Green before Her Honour Judge Greenberg QC the applicant pleaded guilty to two counts of being concerned in supplying class A drugs, in one case heroin and the other crack cocaine and to one count of possessing criminal property, contrary to section 329(1)(c) of the Proceeds of Crime Act 2002. These offences took place on 8 April 2022.
2. On 21 July 2022 having pleaded guilty before Highbury Corner Magistrates' Court, the applicant was committed for sentence to the Crown Court in respect of two offences of possessing a class A drug with intent to supply, in one case heroin and the other crack cocaine. These offences took place on 14 December 2021.
3. On 27 October 2022 having pleaded guilty before the Magistrates' Court, the applicant was committed for sentence to the Crown Court in respect of two offences of possessing a class A drug with intent to supply, in one case heroin and the other crack cocaine, two offences of assaulting an emergency worker, one offence of possessing a bladed article and one offence of possessing a flick knife. These offences took place on 11 February 2022.
4. On 1 November 2022 the judge passed an overall sentence of 5 years 3 months' imprisonment. In summary, this comprised concurrent terms of 60 months for the drugs offences and 1 month for possessing criminal property committed on 8 April 2022, concurrent terms of 52 months for the drugs offences on 14 December 2021, concurrent terms of 54 months for the drugs offences and 1 month for possession of the flick knife committed on 11 February 2022, 2 months consecutive for possessing a bladed article and concurrent terms of 1 month for the two assaults of emergency workers to run consecutively to the other terms.
5. The applicant applies for an extension of time of two days in which to renew his

application for leave to appeal against sentence following refusal by the single judge. In view of the explanation provided by the applicant's solicitors we grant the applicant the short extension of time which he needs.

6. On 14 December 2021 police officers on patrol in Camden saw what appeared to be a drugs transaction. They searched the applicant. They found on him 25 wraps of heroin and 5 wraps of cocaine. The police also found £600 in cash and a burner mobile phone. He was arrested and interviewed.
7. On 11 February 2022 at around 11 pm police officers in Camden saw the applicant with another person on a bicycle. As they approached the applicant appeared to discard an item. The police detained both individuals for a drug search. A police officer had been holding the applicant's left wrist when the applicant pushed her and tried to run away. When another officer grabbed his jacket, the applicant ran towards a third officer whom he punched to the cheek. The applicant ran off. The police found a lock knife in his jacket and 100 wraps of heroin and crack cocaine where the applicant had discarded them. He again was arrested and interviewed.
8. On 8 April 2022 the police searched the applicant's address. They found a cupboard containing a large number of class A drugs in a sock, including both heroin and crack cocaine. The police also found approximately £1,000 in cash and a notebook referring to large amounts of money, including an entry for over £6,000. The notes indicated drugs being bought and sold. The police also found a knife and scales containing powder.
9. The applicant was born on 17 July 2002. He had 10 convictions for 19 offences spanning from 2015 to November 2019. The applicant had significant previous convictions including assault with intent to rob, threatening behaviour, battery, possession of cannabis, failure to comply with a detention and training order, common assault,

assaulting a constable and two thefts.

10. We have considered the pre-sentence report which was before the judge. Although the applicant said that he had been under financial pressure to repay a debt owed to a drugs dealer, the author considered that his actions had been well thought through with an underlying motivation for financial gain. We note that the applicant accepted before the judge that by February 2022 he was no longer acting under any such pressure. He was assessed as posing a high likelihood of re-offending and a medium risk of serious harm to the public.
11. In her sentencing remarks the judge rejected the submission that the applicant should receive full rather than 25 per cent credit for his guilty pleas to the offences committed on 8 April 2022 on the grounds that insufficient information had been provided to enable the solicitor to provide advice. By then the applicant had already been arrested twice for drug dealing. When subsequently he was charged with those offences he entered guilty pleas in the Magistrates' Court and for those offences the judge allowed full credit.
12. The judge took into account the applicant's relatively young age, that he had shown some remorse and was beginning to appreciate the need for him to change his criminal lifestyle. She said that the drug offences fell into category 3 street dealing in which the applicant played a significant role. He had an operational role within a chain, he had an expectation of significant financial advantage and had some awareness of the scale of the operation. Taking into account the applicant's mitigation, along with the aggravating features, the judge decided that the applicant's overall criminality merited a sentence of 18 months' custody before credit for plea. The bladed article offence fell within Category 2A and required a consecutive sentence. Concurrent sentences for the assaults on the emergency workers would also run consecutively.

13. We are grateful to Mr Lazarus for his submissions this morning and for appearing *pro bono*. He advances four grounds of appeal:

- (1) that the sentences imposed for the drug supply offences were manifestly excessive as the judge's starting point was too high;
- (2) insufficient regard was paid to the applicant's youth;
- (3) insufficient regard was paid to the applicant's mitigation;
- (4) credit of 33 per cent rather than 25 per cent should have been afforded in relation to the drugs offences in April 2022.

14. In refusing leave the single judge said this:

"There is no complaint in the helpful Grounds of Appeal as regards the Judge having adopted the Guideline starting point of 4 years 6 months for a single drug offence and there is no challenge to the sentences for the non-drug matters. It is suggested, instead, that as regards the drug offences the judge paid insufficient regard to totality, the applicant's youth and his personal mitigation. It is furthermore argued that greater credit should have been afforded for the guilty pleas, given for two of the sets of offending the applicant was entitled to full credit.

The overall starting point for all the drug offences was within the bracket for a single offence (six years eight months within the 7-year outer range). Notwithstanding the applicant's youth and mitigation, given his notable criminal record, his persistent offending (he was undeterred by being arrested and placed under investigation on two occasions) and the period of time over which these offences were committed, I consider it unarguable that a sentence that remained within the range for a single offence was manifestly excessive. The Judge took account of the mixed regime as regards credit for plea in her sentencing remarks. This was a long sentence but it is not, in my view, sustainably susceptible to challenge."

15. We entirely agree with the single judge. It is not arguable that the sentence of 18 months before any credit for plea was manifestly excessive. We would add that no arguable

complaint can be made about the judge's decision to allow only 25 per cent credit for the guilty pleas in relation to the April 2022 offences. The offences sent by the Justices to the Crown Court on 9 April 2022 specified crimes which had been committed the previous day and they gave the correct date. The applicant knew what he had been arrested for and what was being alleged in court.

16. However, in view of the applicant's age when sentence was passed, the custodial sentences should not have been expressed as 'imprisonment' but as 'detention in a young offender institution'. Accordingly, on that basis alone we allow the appeal and for each of the offences passed as terms of imprisonment we substitute custodial sentences for the same length in each case but expressed instead as sentences of detention in a young offender institution.

17. Accordingly, for these reasons the overall custodial term remains one of five years and three months in a young offender institution.

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