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Neutral Citation Number: [2023] EWCA Crim 1325

IN THE COURT OF APPEAL
CRIMINAL DIVISION



CASE NO 202301519/A3

Royal Courts of Justice
Strand
London
WC2A 2LL

Tuesday 31 October 2023

Before:

LORD JUSTICE SINGH

MRS JUSTICE McGOWAN DBE

MRS JUSTICE HILL DBE

REX

V

RAQAB MOHAMMED

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MR G PARSONS appeared on behalf of the Appellant.

J U D G M E N T
(Approved)

LORD JUSTICE SINGH:

Introduction

1. This is an appeal against sentence brought with the leave of the single judge. On 13 March 2023, in the Crown Court at Sheffield, the appellant pleaded guilty to two offences. On 17 April 2023 he was sentenced by Ms Recorder Rhys as follows. On count 1, possessing a controlled drug of Class A with intent, there was a sentence of 3 years' imprisonment. On count 2, possessing a controlled drug of Class B with intent, there was a concurrent sentence of 6 months' imprisonment. Having been convicted of an offence committed during the period of a 6-month conditional discharge, imposed by the Crown Court at Sheffield on 1 July 2021 for an offence of criminal damage, the appellant received no separate penalty. That therefore made a total sentence of 3 years' imprisonment. A statutory victim surcharge was imposed, and orders were made for forfeiture, destruction or disposal of all drugs paraphernalia, cash and mobile telephones.

The Facts

2. At 8.00 am on 15 July 2021, police executed a search warrant at the appellant's address in Sheffield. In the attic bedroom officers found a knotted bag inside a suitcase. The bag contained 23.4 grams of cocaine divided into 67 wraps, valued at £2,345. Under the attic eaves they found an Asda carrier bag with 103 grams of cannabis divided into 32 wraps, valued at £800 and 34.7 grams of cannabis divided into 11 grams, valued at £275. Mobile telephones, gloves, dealer bags and £7,580 cash was also found at the property.
3. The appellant was arrested and made no comment in interview. His fingerprints were found on the outer wrappings of the cocaine and cannabis. Examination of two of the mobile telephones showed that they had been used to sell drugs in small quantities

directly to users.

The Sentencing Guidelines

4. The Sentencing Council has issued a Definitive Guideline on supplying or offering to supply a controlled drug, or possession with intent to supply, which took effect from 1 April 2021. It is common ground that this offending fell into category 3 harm because the offenders were selling directly to users. The Guideline makes the following recommendations in relation to appropriate sentences. For an offence which falls into category 3, where the offender has played a *significant role*, the starting point is 4 years 6 months' custody, with a category range of 3 years 6 months up to 7 years' custody. If the offence falls into category 3, but the offender's role is a *lesser role*, the starting point is 3 years' custody, with a category range of 2 years up to 4 years 6 months' custody.

The Sentencing Process

5. The appellant was born on 23 August 2001. He was aged 19 at the time of his offending and 21 at the date of sentence. The sentencing court had a pre-sentence report before it, which we also have read. The author of the report said that the appellant is "somewhat vulnerable" and assessed that his vulnerability was a factor in his decision to offend/be exploited by others into holding and cutting drugs. Moreover, he was 19 years of age at the time of the offences, suggesting an element of immaturity in the view of the author of the report. The appellant was frightened and reported to have been physically and seriously assaulted. The report assessed him as posing a medium risk of reoffending and a low risk of serious reoffending. He posed a low risk of serious harm.
6. There was a written basis of plea as follows:

“D will say that at the material time he was 19 years of age, and a Class A drugs user.

2.. D was in debt and was threatened and then stabbed by his drugs dealer.

3. D agreed to sell drugs for his dealer in order to pay off his debts and fund his habit.”

7. In her sentencing remarks the Recorder accepted what was said in the basis of plea and said that she would sentence on that basis. She gave the appellant 25 per cent credit for his plea at the plea and trial preparation hearing. No complaint is, or could be, made about that. The Recorder noted that the appellant had two previous convictions for dissimilar matters, but she completely disregarded the first, which was committed when he was only 13 years of age. The second matter was when he was 19 years of age and had resulted in a 6-month conditional discharge. That order had been imposed just 2 weeks before his arrest for the present offences, and he admitted that he was in breach of that order. This was clearly an aggravating feature which the Recorder was entitled to take into account, as she did.
8. The Recorder considered the Definitive Guidelines issued by the Sentencing Council in relation to drugs offences, the imposition of community and custodial sentences and also the principle of totality. She concluded that the appellant had played a *significant role* because he had an expectation of significant financial or other advantage, although she accepted that he latterly became encouraged to continue by means of some pressure and threats and intimidation. The category of harm was category 3, since there was supply directly to street users. No issue was taken about that, but issue is taken about the categorisation of the role played by this appellant.
9. The Recorder noted that the starting point recommended in the Guideline for such an

offence is 4½ years' custody, with a range of 3½ to 7 years. In relation to count 2, the recommended starting point is 12 months' custody with a range of 26 weeks to 3 years. The Recorder considered that aggravating features were the breach of the conditional discharge and the fact that the appellant had used the family home as the base for the dealing.

10. The Recorder accepted that there was mitigation, in particular that the appellant is addicted himself and his age and lack of maturity. She also took account of the delay in the case, which was not of his doing. The case had not come before the Magistrates' Court until February 2023, although the offending occurred in 2021. She also took account of the fact that he had taken some steps to try to address some of the issues and that he had never served a custodial sentence previously. The Recorder said that the sentence, after trial, would have been 4 years' imprisonment on count 1, and 8 months on count 2. She reduced those sentences to reflect the guilty pleas to 3 years' imprisonment on count 1 and 6 months on count 2, made concurrent, as we have said, so making a total sentence of 3 years' imprisonment. She imposed no separate penalty for breach of the conditional discharge.

The appellant's grounds of appeal

11. On behalf of the appellant Mr Parsons advances five grounds of appeal.
- (1) The Recorder failed properly to reflect the basis of plea when considering categorisation of the offence.
 - (2) The Recorder failed properly to reflect the finding in the probation report that the appellant was vulnerable when considering the sentencing category.
 - (3) As a result of the above, the Recorder took a starting point that was too high.

(4) The Recorder failed properly to reflect the delay in bringing these proceedings.

(5) The Recorder should have suspended the sentence or, in the alternative, passed a much shorter custodial term.

12. In his oral submissions before this Court, Mr Parsons has realistically focused his submissions on the first part of those grounds. Although he does not abandon ground 5, he realistically places less emphasis on the suggestion that the sentence should have been suspended.

13. In developing his main grounds of appeal, which are in substance grounds 1 and 2, Mr Parsons submits that, having accepted the basis of plea, the Recorder should have placed this into *lesser role* and not *significant role*. The appellant was vulnerable, he had been attacked and exploited; he therefore clearly engaged in the offending through pressure, coercion and intimidation. These were the appellant's first drugs convictions, and he was immature. He had no influence on those above him and was frightened of them. Furthermore, although it is accepted that there was financial gain, the money received was to pay off a debt and indeed it was to be passed on to his drug dealer.

14. Mr Parsons submits that the judge should have sentenced the appellant taking a starting point of 3 years not 4½ years' custody. He submits that there should then have been a further reduction to take account of the mitigating and other factors in this case, so leading to at least the potential for a sentence of 2 years' custody or thereabouts, which therefore might have been suspended. Mr Parsons submits that this would have allowed more emphasis to be put on the appellant's rehabilitation. This is particularly so as he has not offended in the 2 years since.

Assessment

15. In our judgment, the circumstances of this case should have placed this offender as being on the cusp of a *significant* or a *lesser* role. We note that the category ranges recommended by the Definitive Guideline overlap between the two types of case. This no doubt reflects the wide range of circumstances which can arise in practice. Nevertheless, we do accept that the appellant was young, immature and vulnerable. This should have led to a starting point after trial that was lower than the one taken by the Recorder of 4 years' custody.
16. In Attorney-General's Reference (Clarke) [2018] EWCA Crim 185; [2018] 1 Cr App R(S) 52, at paragraph 5, Lord Burnett CJ said that reaching the age of 18 has many legal consequences but it does not represent a "cliff edge" for the purposes of sentencing. Full maturity and all the attributes of adulthood are not "magically conferred" on young people on their 18th birthday. Experience of life reflected in scientific research is that young people continue to mature, albeit at different rates, for some time beyond their 18th birthday. The youth and maturity of an offender will be factors that inform any sentencing decision, even if an offender has passed their 18th birthday.
17. In the circumstances of this case, we have reached the conclusion that the Recorder should have taken a starting point, after trial, of 3 years' custody. In order to reflect the guilty pleas that would have resulted in a sentence of 2 years and 3 months' imprisonment. That is the appropriate sentence on count 1. We do not consider that it is necessary to alter the sentence on count 2, which was made concurrent and will remain so.

Conclusion

18. For the reasons we have given, we allow this appeal to the following extent. We quash the sentence on count 1 and substitute a sentence of 2 years and 3 months' imprisonment. We do not interfere with the sentence on count 2, which remains concurrent. That leads to a total sentence of 2 years and 3 months' imprisonment.

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

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