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IN THE COURT OF APPEAL  
CRIMINAL DIVISION



CASE NO 202203127/A1-202203238/A1

Neutral Citation No.: [2023] EWCA Crim 1397

Royal Courts of Justice  
Strand  
London  
WC2A 2LL

Friday 5 May 2023

Before:

LORD JUSTICE EDIS

MRS JUSTICE CHEEMA-GRUBB DBE

HIS HONOUR JUDGE ANDREW LEES

(Sitting as a Judge of the CACD)

REX

V

JODIE MARIE SMITH

JONATHAN KITSON

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MR C KNOX appeared on behalf of the Applicants.

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## J U D G M E N T

1. MRS JUSTICE CHEEMA-GRUBB: This is a renewed application for leave to appeal against sentence on behalf of Jodie Marie Smith and Jonathan Kitson, leave having been refused by the single judge. The application for Ms Smith has been presented succinctly by Mr Knox who appears by CVP. The trial judge at Teesside Crown Court sentenced eleven defendants on 14 October 2022 for a variety of offences arising out of serious high-level drug offending, concerning high purity cocaine and amphetamine in 2017. Over the period of the charged conspiracies the supply of both drugs was measured in multiples of kilos in excess of 20 kilograms each. The drugs passed from Liverpool to the northeast of England and bundles of cash, each of in the region of around £100,000, returned in the other direction. Overall, the case involved the movement of more than £1 million in cash, proceeds of drug dealing.
2. The principal offender, Darren Towler, who had absconded before trial, was convicted of two counts of conspiracy to supply cocaine and conspiracy to supply amphetamine. For this he was sentenced to 22 years and 15 years respectively, concurrent. He had pleaded guilty to possessing 2.2 kilograms of cannabis with intent to supply and for this he received a 10 per cent discount and 2 years consecutive. The total sentence in his case being 24 years' imprisonment.
3. Two subsidiary offenders pleaded guilty at the PTPH stage to the two counts of conspiracy to supply cocaine and amphetamine. They received 33 per cent discount. The applicant, Jonathan Kitson, pleaded guilty to one count of conspiracy to supply cocaine and to a charge of possession with intent to supply cannabis, unrelated to the larger conspiracies with his co-defendants. Both of these pleas were entered after PTPH and he received 20 per cent discount resulting in sentences of 9 years and 2 months'

imprisonment, and 9 months' imprisonment respectively to be served consecutively. He pleaded guilty to the second count of conspiracy to supply amphetamine on Day 4 of the trial, and this was marked by 5 per cent discount, resulting in 6 years and 2 months' imprisonment concurrent.

4. The applicant, Jodie Smith, pleaded guilty to the two counts of conspiracy to supply cocaine and amphetamine on the day of trial and received 10 per cent discount from the sentence the judge considered would otherwise have been merited. She was sentenced to 6 years and 6 months' imprisonment for conspiracy to supply cocaine and 35 months' imprisonment concurrent for conspiracy to supply amphetamine.
5. Others involved in the amphetamine conspiracy, possession with intent to supply cannabis or other lesser offences also pleaded guilty after PTPH and received sentences generally of around 2 years' imprisonment after a discount of 25 per cent.
6. The proposed grounds of appeal in these two applications are in essence that the judge failed to pass appropriate sentences because the sentences he imposed were disproportionate to the role played by the offender, showed inadequate consideration of the Sentencing Guideline, failed to reflect fully personal mitigation available to each applicant and did not properly assess what discount should be allowed for the delay in the final resolution at the sentencing hearing.
7. It is not necessary, for the purposes of this decision, to set out the underlying facts in detail. Suffice it to say that Darren Towler was at the head of a family-run drug business primarily in the Consett area and he used connections in Liverpool to source drugs from the second defendant, a man called Hemmings. Jodie Smith was Darren Towler's partner at the relevant time and Jonathan Kitson is Towler's half-brother. A third defendant, Campbell, delivered the drugs. Kitson's role was to transport drug receipts back to

Merseyside in a vehicle insured to Smith. On 7 September 2017, he was stopped by the police and in the boot of the vehicle the police found £108,000 in cash concealed in two shoe boxes disguised as a present for a child. This money had been kept at Jodie Smith's address and it was she who disguised it as a gift. Smith became actively involved in the conspiracy at a time when Darren Towler (a cage fighter) had been away from home training. The prosecution relied on the distribution and volume of calls between Towler and the two applicants as proof that they had essentially taken over this part of the enterprise in his absence.

8. Having set out the facts in appropriate but not exhaustive detail and explained his conclusions as to the role played by each of the applicants, HHJ Carroll summarised the timing of the guilty pleas and the mitigation available to each defendant. The individual sentences must be considered against the full framework that the judge applied and this we have done. Judges sentencing a collection of persons, at varying levels of seniority in a joint criminal enterprise, must exercise care in allocating offenders an evidentially justified status for sentencing.
9. Without extending this short judgment more than necessary by rehearsing the entire sentencing remarks, it is amply clear that he did. In the case of these two applicants, he concluded that Kitson had been involved in the drugs conspiracies from the outset of the relevant period, making ten journeys between May and September 2017. His role was a significant one within the meaning of the Sentencing Guideline. He had some previous convictions although none for drugs supply. The judge observed that the court had before it a pre-sentence report which suggested that Kitson was under the influence of Towler. Nevertheless, the judge concluded that the applicant was aware of the scale and scope of the operation and trusted to a significant degree with very large quantities of

money. The judge said:

- i. "Though he may have lacked the strength of character to stand up to his brother, I am equally satisfied that he was a willing participant in high-level offending in anticipation of significant gain."

10. The judge added that if Kitson had wished to challenge this conclusion, he had been given the opportunity to give evidence before the Court, which he declined.
11. There was little mitigation apparent in his case. There was no evidence of severe or enduring mental health issues, for example, and the judge rejected a plea that the delay in the final case determination should count as mitigation in his case. The rationale for this was that Kitson pleaded guilty to the last contested charge only during the course of his trial. The fact that a trial was necessary caused significant delay to both himself and others. He was not in the same position evidently as other defendants who had pleaded guilty to all matters they faced earlier in the proceedings. They were entitled to a discount for the delay, and he was not.
12. We have considered the proposed grounds of appeal of Mr Kitson individually and for ourselves, including a letter that he has provided to the Court in support of this renewed application. We are not persuaded that there is any merit in them. The sentencing remarks reveal, as we have set out, that there was a good and proper reason to refuse a discount on the ground of delay. As to categorisation within the Sentencing Guideline, there can be no realistic argument that his was anything but a *significant* role in each count. Thereafter the judge's application of the Guideline is entirely conventional.
13. We agree with the single judge that matters of personal mitigation were not ignored, but the judge was entitled to place less weight on them than was contended for by the

applicant. The judge offered the applicant the opportunity to give evidence and set out his reasons for getting involved in this half-brother's enterprise, but he declined to do so. It is far too late to do it now. It is clear in any event that the judge bore in mind a degree of imbalance in the personalities and strengths of character in this case, as we have outlined.

14. In respect of Ms Smith, the judge accepted that she was not the controlling mind of the enterprise, and, like others, she was to some degree under the influence and control of her partner Darren Towler. But she had presented an unrealistic account of events to the court in mitigation and the judge rejected her role as being one of "counting cash on a couple of occasions". Having heard the evidence, he concluded that she was a "trusted lieutenant in the business", who had significant involvement in the money side if not the drugs side and this was in anticipation of significant financial gain. He also made a decisive finding that she would take operational command when her partner was away and follow his instructions. The judge set out succinctly evidence from which he had made that finding, and concluded:

- i. "That account, as summarised, is inconsistent with simply being a woman whose will has been overborne by a controlling partner. I am satisfied that this is properly categorised as sitting on the crossover boundary point between significant and lesser role within the meaning of the sentencing guidelines."

15. Ms Smith was treated as of good character and the judge recognised her otherwise decent background attested to by character references and the letter that she had written to him.

16. Mr Knox submits, in writing and today on behalf of Ms Smith, that the role credited to her by the judge was unfair. Given that the prosecution accepted in their note for

sentence there may have been naivety and pressure on her at the outset, and she did not have any influence on those above her in the chain, she did not justify the label "trusted lieutenant" which overstates her true culpability. Mr Knox describes her true role as casual intermittent support which she was unwise to provide. Her mitigation was not fully reflected by the limited discounts applied and given she was to be treated as falling between *significant* and *lesser* role, the judge took too high a starting point and thereafter sentenced, he submits, mechanistically in her case.

17. Having considered these matters for ourselves, we are not persuaded that the judge fell into error in any of these respects. The crossover point between *significant* and *lesser* role in the relevant Guideline is indeed 9 years' imprisonment where the judge started. This was a proper point at which to reflect the quantity and value of the drugs involved and the applicant's substantial degree of culpability in the operation of the enterprise in the principal offender's absence this judge determined, irrespective of her having no practical involvement in the movement of drugs. We remind ourselves that he had heard all the evidence in trial of Darren Towler. The judge recognised the applicant had better than minimal personal mitigation and she was of effective good character. She was entitled to a discount for delay which had been denied to her co-applicant and the credit for plea that we have mentioned. Allowing 9 months' discount for the mitigation and a year for the delay the provisional sentence on count 1, before discount for plea, was 7 years 3 months and a further reduction of 9 months was applied for the guilty plea hence the final sentence. A similar process applied on count 2, for which a concurrent sentence was imposed. It is difficult to see how any greater discount for any element of the mitigation available to this applicant could have been expected.

18. Accordingly, we cannot detect any properly arguable challenge to these sentences, and

we refuse the renewed applications.

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

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