

**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 1410**

IN THE COURT OF APPEAL  
CRIMINAL DIVISION



CASE NO 202301699/A2

Royal Courts of Justice  
Strand  
London  
WC2A 2LL

Tuesday 12 September 2023

Before:

LORD JUSTICE SINGH

MRS JUSTICE LAVENDER

MR JUSTICE JOHNSON

REX

V

ROBERT WOOLDRIDGE

---

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 W PARKHILL appeared on behalf of the Applicant.

---

**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. The applicant pleaded guilty to three offences on 14 April 2023, in the Crown Court at Exeter. On 19 May 2023, the applicant was sentenced by Mr Recorder Tait in the following way. On count 1, which was an offence of possessing a controlled drug of Class A with intent to supply, which related to cocaine, there was a sentence of 66 months' imprisonment. On count 2, which was an offence of possessing a controlled drug of Class A with intent, this time being diamorphine, the sentence was also one of 66 months' imprisonment, made concurrent. On count 3, which was obstructing a constable, under section 23(4)(a) of the Misuse of Drugs Act 1971, no separate penalty was imposed. Accordingly, the total sentence was one of 5 years and 6 months' imprisonment, and an appropriate order was made for the forfeiture and destruction of the drugs. The applicant was convicted therefore of an offence of Class A trafficking, as defined in section 313(5) of the Sentencing Act 2020, or the Sentencing Code.
2. At the date of the offences the applicant was aged 46. He had been convicted of previous drug trafficking offences on 24 January 2003, 22 April 2004, 4 October 2011 and 12 January 2016. In accordance with the provisions of section 313 of the Sentencing Code, the judge was under a duty to impose an appropriate custodial sentence of 7 years' custody, unless the court was of the opinion that there were particular circumstances which related to an offence or the offender that would make it unjust to do so in all the circumstances. Section 73(3)(a) of the Sentencing Code allows for credit for a guilty plea, provided that it does not reduce the appropriate custodial sentence below 80

per cent.

3. The relevant legislation has been amended. The test of unjust in all the circumstances was applicable at the relevant date, since the offending occurred on 30 June 2021. An amended test has been introduced requiring there to be exceptional circumstances in relation to offences committed after 28 June 2022 (see section 313(2) (a) of the Sentencing Code).

### ***The Facts***

4. At 10.15 am on 30 June 2021, officers noticed a group of known Class A drug users huddled near some public toilets. They were on their mobile phones. Whilst making phone calls one of the group walked towards a nearby post office. Shortly afterwards the applicant was seen also to make his way to the post office, where he met up with a known drug user. They walked to a side path out of view. A few seconds later, the drug user came out of the alleyway and the applicant left in the opposite direction. Officers were aware that the applicant lived nearby, located him and arrested him. He shouted that he was not a drug dealer, possibly to inform others of police presence. He told officers that he was buying not selling. Upon being searched, officers located £50 in his trouser pocket, £250 in his wallet, a mobile phone which was ringing and placed on the floor and a yellow Kinder egg containing eight wraps of crack cocaine (that was the subject of count 1) and three wraps of heroin (which was the subject of count 2). Whilst the mobile phone was on the floor the applicant stamped on it, damaging the screen, that was the subject of count 3. The phone was examined and found to contain messages indicative of the applicant being involved in drug supply and phone calls from drug users. In interview, the applicant denied that the cash was from, or that he was otherwise involved

in, drugs supply.

### ***The Sentencing Process***

5. The applicant was born on 4 December 1974, and so was aged 48 at the date of sentence. He had 43 convictions for 151 offences, spanning the period from 1988 to 2021. His relevant convictions included possessing a controlled drug of Class A with intent to supply in 2003, 2004, 2011 and 2016.
6. The sentencing court had the advantage of a pre-sentence report. This stated that the applicant was involved in drug dealing to fund his own long-standing drug use, which at the time was heroin. He had been abstinent from drugs for 2 years with his methadone dosage reduced from 85 milligrammes to 45. He had made impressive and significant efforts to move away from that previous lifestyle. Although aware of the challenges, he appeared determined to maintain the changes. He stated that his lengthy criminal record was almost totally related to his drug use. He had resided with his mother since 2019 and was in a relationship. He was unable to work due to poor physical and mental health. Given his significant progress, efforts and level of motivation, he was assessed as a medium level of reoffending. This was likely to increase if he relapsed into drug use. There was no suggestion that he posed an imminent risk to the public. He was assessed as a low risk of serious harm to all groups and a low risk of serious recidivism. Prison was said to be likely to disrupt the progress he had made. He had the opportunity to receive mental health treatment in the community, which would have been invaluable to maintain his abstinence.
7. The sentencing court also had a liaison and diversion report, which said the following. In respect of the applicant's mental health and vulnerabilities, he was clean of all drugs,

with his opiate dependency managed with a diversionary script of methadone, by residing between his partner and his mother, for whom he was her carer, he maintained a level of social stability, for the first time, making him feel relatively safe. He continued to experience symptoms of PTSD, significant anxiety and moderate depression. He was aware that he needed to address the root causes of these by completing long-term psychological interventions and trauma recovery work. He was able to identify the triggers that deteriorated his mental state. To cope with daily experiences, he avoided most social situations. He attended professional appointments and obligations but found it difficult. He would have been able to comply with a sentence within the community as he presented a realistic prospect of rehabilitation and was motivated to change the pattern of his past offending appellant behaviour. This would also allow him access to trauma recovery work to address his underlying mental health needs.

8. In his sentencing remarks the Recorder noted that the applicant had similar convictions going back to 2004. The applicant had not learned his lesson, as he again faced a minimum term of 7 years' imprisonment. In the Recorder's view there were no exceptional circumstances within the meaning of the legislation. It would have flown in the face of Parliament to do anything other than impose a minimum sentence of 7 years' imprisonment. This was reduced by 20 per cent in accordance with the legislation to which we have referred. It would appear that the Recorder erroneously referred to "exceptional circumstances" because the amendment to the legislation had not taken effect at the date of this offending.
9. Since the time of sentence, there has been a prison report, which this Court has seen, which states that the applicant was a standard prisoner who had adhered to the wing rules and regime. He had shown a positive attitude and asked to complete programmes but had

not completed any offender behaviour work. He had engaged in work to address his drug issues. He had a positive adjudication from 24 June 2023, when he refused a cell mate despite residing in a double cell. This charge was proven, and he received a caution for an undefined number of days.

### ***Relevant Legal Framework***

10. In Attorney General's Reference (R v Marland) [2018] EWCA Crim 1770, at 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 that 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 the Court is not looking for “exceptional circumstances” but “particular circumstances” – see, for example, R v Hickson [2002] 1 Cr App R(S) 71; [2001] EWCA Crim 1595, in particular, at paragraphs 19 to 20, where Waller LJ, noted the distinction in the statutory language between the two phrases. Nevertheless, Simon LJ continued that in R v Lucas [2012] 2 Cr App R(S) 14, at paragraph 13, Jackson LJ said that this Court must loyally apply the minimum sentencing provisions and must not treat “perfectly normal circumstances” as being “particular circumstances” in order to circumvent the operation of those provisions. In Marland, at paragraph 30, Simon LJ observed that, although the minimum sentence provisions in the Firearms Act 1968 (section 51A) referred to “exceptional” and not “particular” circumstances, the same approach must apply as indicated by the Court in Lucas. Certain, albeit limited, principles can be derived, he said, from the terms of the statute and case law. First, the provisions of the minimum sentencing provisions are intended to have deterrent effect. Second, normal

circumstances are not to be regarded as particular circumstances. Third, the Court must come to the view that those particular circumstances are such as to make it unjust to have passed the minimum sentence in all the circumstances. Finally, Simon LJ said that one way of testing whether a sentence will be unjust in the particular circumstances is to ask whether the sentence is “markably more severe than the sentence which would be passed applying the Sentencing Council Guidelines for the offence”. But he said this has to be measured against the deterrent element which underlies the minimum sentencing provisions.

11. Finally, in setting out the relevant legal framework, we should refer to the decision of this Court in R v Silvera [2013] EWCA Crim 1764, at paragraph 6, where Lewis J summarised the proper approach to the sentencing in context such as this in the following way:

“... The correct approach is to have regard to the Sentencing Council Guidelines and then to ensure that the final sentence imposed is not less than the minimum sentence required by section 111 of the Sentencing Act. Further, the three year minimum term is not the starting point. [That was a reference to the 3-year minimum term applicable in that context relating to burglary.] Rather, the judge must go through the proper sentencing exercise in accordance with the guidelines and should then cross-check to ensure that the sentence is no less than the minimum term required. In some circumstances it may be significantly more.”

### ***Grounds of Appeal***

12. In the grounds of appeal, the applicant advances two points. First, it was unjust, in all the circumstances, to impose the minimum sentence, given the strides he had made to rehabilitate himself. His need for treatment to combat his mental health had only been identified in his 40s. He successfully completed a community order. Secondly, in the

written grounds, it was submitted that the sentence should have been suspended. Despite the starting point and the range in the Guidelines, if afforded a full third for his plea and proper credit for his other mitigation, it was submitted that he should have received a period of custody capable of being suspended. At the oral hearing before us Mr Parkhill, who did not settle the written grounds, accepted that that was not a realistic suggestion but submitted nevertheless that a community order could and should be considered as suggested in the report from the Probation Service, particularly so that the applicant's mental health issues can be addressed.

13. On behalf of the applicant, it is accepted that the defendant was subject to the minimum sentence provisions, having regard to his previous convictions for supplying Class A drugs. Nevertheless, it is submitted that the sentence was wrong in principle because the Recorder applied the wrong statutory test, referring to "exceptional circumstances" rather than the legislation as it was in force at the material date. Further, it is submitted that by reference to the particular circumstances relating to the applicant, albeit it is accepted not the particular circumstances relating to the offence, there were circumstances which would make it unjust to impose the minimum sentence otherwise required by the legislation. Our attention has been drawn in particular to the Criminal Justice Liaison and Diversion Report, to which we have referred and to relevant parts of the pre-sentence report.

14. It is submitted that putting aside the minimum sentence provision, the Sentencing Guideline applicable to this case would have resulted in a recommended starting point of 4 years 6 months' custody with a range of 3 years 6 months up to 7 years. This is because it was agreed, and remains the case, that this was a category 3 offence and that the defendant had played a *significant role*. Nevertheless, it is submitted that the



sentence should have been towards the lower end, if not below the recommended range.

15. In our judgment, that submission fails to acknowledge the obvious point that the applicant had, as is accepted, a bad criminal record, including for serious drugs offences. It is unrealistic, in our view, to proceed on the basis that, even leaving aside the minimum sentence provisions applying the Guideline would have resulted in a sentence towards the lower end of the recommended range. To the contrary, in our judgment, it would have to be at the upper end of the range in any event.
16. Although the Recorder did not go through the exercise which was required by Silvera, and may erroneously have referred to the amended legislation, we have reached the conclusion that these were not material to the appropriateness of the sentence in fact passed.
17. The submissions which have been eloquently made on behalf of the applicant by Mr Parkhill, in our judgment, do not point to anything other than the sort of “normal circumstances” which sadly sentencing courts and this Court frequently encounter in cases of this kind. It is laudable that the applicant has now taken steps to address his difficulties, in particular his mental health issues. But nevertheless, the reality is that he continued to offend and, in particular, to commit these serious drugs offences after the relevant time. The fact that the legislation has not had the deterrent effect on this particular applicant that it is intended to have, does not make it unjust to impose the minimum term in his case.
18. At the end of the day, the question for this Court is whether it is arguable that the sentence in fact passed was manifestly excessive. We have reached the conclusion that it is not. The application for leave is therefore refused.

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](mailto:rcj@epiqglobal.co.uk)