IN THE COURT OF APPEAL
CRIMINAL DIVISION
ON APPEAL FROM THE CROWN COURT
SNARESBROOK
HHJ KAMILL T20221664
CASE NO 202303994/A4
Neutral Citation: [2024] EWCA Crim 1128

Royal Courts of Justice
Strand
London
WC2A 2LL

Friday 12 July 2024

Before:

LADY JUSTICE MACUR

MR JUSTICE BRYAN

MR JUSTICE FREEDMAN

REX

V

HARRY CULLETON

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Tel No: 020 7404 1400; Email: rcj@epiqglobal.co.uk (Official Shorthand Writers to the Court)

MR P SUTTON appeared on behalf of the Appellant.

J U D G M E N T

LADY JUSTICE MACUR:

1. On 5 December 2022, Harry Culleton ("the appellant") pleaded guilty at the plea and trial preparation hearing to possessing a controlled drug of Class A, namely cocaine with intent, contrary to section 5(3) of the Misuse of Drugs Act 1971, and possessing a controlled drug of Class B, namely cannabis with intent, contrary to the same section. A summary-only offence of possessing an offensive weapon, namely a baton in a private place, contrary to section 141(1A) of the Criminal Justice Act 1988, was sent for sentence.

2. He initially entered a basis of plea stating he was custodian of the drugs and as a cannabis user was paid in cannabis as remuneration for this role. He subsequently abandoned that basis of plea on the day listed for trial in relation to an offence of possession of criminal property. He was thereafter sentenced on the basis of the prosecution case.

3. On 23 October 2023, he was sentenced to 40 months' imprisonment in respect of the Class A drugs offence and 9 months consecutive in relation to the Class B drug offence. A 1-month concurrent sentence was imposed in respect of the offensive weapon, making a total of 4 years 1 month's imprisonment. He appeals against sentence with the leave of the single judge.

The Facts

4. On 7 November 2022, police officers executed a search warrant at the appellant's home. A search of his bedroom revealed 92.14 grams of cocaine (with a street value of £7,000) and 1.69 kilograms of cannabis (with a street value of £15,000). The drugs were in

various separate packages. The search also uncovered cash to the value of £8,810 and two fake Rolex watches. Also found were notes, which took the form of ledgers, relating to drug dealing and a journal setting out the appellant's hopes for the future, which included a note that stated "minimal annual turnover 250K". Other drugs paraphernalia was found together with a friction lock baton. Several Nokia burner-type mobile phones were found, another mobile phone, known to have been used by the appellant, was never recovered by the police. The appellant was arrested upon his return home. He made no response in interview.

5. He was aged 22 at the time of the offending and 23 at the time of sentence. He had one previous conviction in April 2017 for an offence of possessing a controlled drug of Class B, for which he had been sentenced to a 4-month referral order. The appellant was sentenced without a pre-sentence report. We have considered section 33 of the Sentencing Act 2020 and agree that it was unnecessary to obtain one, and nor is it now necessary for this Court to obtain one in order to dispose of the appeal.

6. Although not explicit in her sentencing remarks, it appears that the judge accepted the agreed categorisation of both Class A and B offences as category 3 *significant role*. The prosecution argued that the value of the money and volume of cocaine were factors both *leading* and *significant role* indicated an increase of the starting point of 4½ years with a range of 3½ to 7 years and 1 year with the range of 26 weeks to 3 years respectively. Mitigation included the appellant's relevant youth and gainful and legitimate employment. Both his employer and a long-term associate gave positive character references in his support and the appellant had written a letter of remorse to the

sentencing judge. The judge concluded:

> "This was dealing, however, on a serious scale. It is clear that you had a huge amount of cocaine and a large amount of cannabis, skunk cannabis, available for your customers.
> You had more than one burner phone and your current personal phone appeared to have been lost by the time the police arrested you.... Your own journal talks about you wishing to turn over something like £250,000 by way of annual turnover. [The judge doubted this referred to the legitimate business aspirations of the appellant.] However, you have been a successful drug dealer and...been able to amass... well over £8,500..."

The judge regarded the possession of the baton as "unsurprising" in view of the drug business that the appellant was conducting. She concluded:

> "The sentence, though, on count 1, taking into account – and I take into account 25 per cent by way of credit – my
> starting point with all of those matters in my mind, is one of four-and-a-half years and therefore, your sentence is one of three years four months. Three years four months on
> count 1 and nine months on count 3, and that will be consecutive, so that it is four years one month. The baton will be one month, but that is concurrent."

7. Mr Sutton appears on behalf of the appellant. We are grateful to him for his clear and concise written submissions as he has clarified and amplified them orally before us today. He submits that, even if it could be argued that the sentencing for the Class A drugs offence should be increased beyond the starting point of 4½ years indicated by the sentencing guidelines, any upward variation should be counterbalanced by the appellant's personal mitigation.

8. To be clear, he takes no issue with the individual sentences handed down, his primary argument is that the judge should have ordered the sentences to run concurrently. This, he

submits, would be normal practice, since the offences arise out of the same circumstances, and the resultant sentence would properly reflect mitigation and totality.

Discussion

9. As Mr Sutton acknowledged in writing, to sentence the offences consecutively is not wrong in principle, only subject to the overarching principle of totality. That principle is simply that the overall sentence should reflect all of the offending behaviour, with reference to overall harm and culpability , aggravating and mitigating factors and be just and proportionate. There is no inflexible rule as to how the sentence is to be structured and, if concurrent, the sentence on a lead offence may well be adjusted upwards to reflect all of the offending. Regrettably, the sentencing remarks do not adequately articulate the how the judicial sentencing exercise was conducted in terms of initial categorisation, the relevant starting point, identification of aggravating factors leading to upward variation , reduction for mitigation, consideration of the principle of totality and reduction for plea.

10. There is no issue as to categorisation. The offending is level 3, *significant role.* Thereafter, the large quantities of the drugs in light of the *significant role* occupied by the appellant signals an upward adjustment in regard to both the Class A and Class B drug offences. A further aggravating feature included the possession of a weapon and the disposal of evidence, namely a mobile telephone. If a concurrent sentence was considered appropriate then, inevitably a further uplift would be merited to encompass the totality of the offending.

11. The mitigation available to the appellant was his youth and, to all extents and purposes,

good character, but this had to be seen in the context of such serious offending. We do not agree that the mitigation balanced out the upward variation that was warranted by reason of the aggravating factors identified above.

12. It appears to us that the appropriate upward variation takes this offending towards the top of the range, namely 7½ years. We are persuaded by Mr Sutton that some significant weight should attach to the available mitigation. However, as generous as we are in that regard, and bearing in mind the principle of totality, we come to the conclusion that the appropriate overall sentence would be at least 4 years 1 month and that the sentence cannot therefore be categorised as manifestly excessive. The appeal in this regard is dismissed.

13. However, there are two matters that need to be rectified. First of all, the Crown Court record sheet and the order for imprisonment indicate that the appellant is to be credited with 174 days in respect of the time that he was remanded on bail with a qualifying curfew. No such declaration was made by the judge when sentencing. The Crown Court is required to specify in open court the number of days to be credited towards sentence in respect of the period spent on qualifying curfew calculated in accordance with the provisions of section 325 of the Sentencing Code. We therefore make the following declaration: the appellant will receive credit for half the number of days on curfew, if the curfew qualified under the provisions of section 325 of the Sentencing Code. On the information before the court, the appellant was on bail with a qualifying curfew for 349 days less 1 day deducted for breaching the terms of the curfew. Accordingly, the period to be credited is 174 days but, if this is mistaken, this Court will order an amendment

of the record for the correct period to be recorded. Secondly, the judge imposed a surcharge in the sum of £156. The correct amount, based on the date of the offence and the sentence passed, was £228 and that this is the amount recorded on the Crown Court record sheet. The increase in the amount of surcharge would appear to have resulted from an administrative variation which itself was not announced in open court and thus of no effect. We direct that the surcharge be recorded as stated by the judge.