IN THE COURT OF APPEAL

CRIMINAL DIVISION

ON APPEAL FROM THE CROWN COURT AT AYLESBURY

HIS HONOUR JUDGE COOPER 43SS0339923

CASE NO 202401131/A1

[2024] EWCA Crim 1202

Royal Courts of Justice
Strand
London
WC2A 2LL

Friday, 6 September 2024

Before:

LORD JUSTICE MALES
MRS JUSTICE MAY DBE
MR JUSTICE BRYAN

REX
V
MOHAMMED JUNAID

MR M NASH appeared on behalf of the Appellant

A P P R O V E D J U D G M E N T

MR JUSTICE BRYAN:

1. On 28 July 2023, in the Crown Court at Aylesbury, the appellant pleaded guilty to Count 1 (fraudulent evasion of a prohibition); Count 4, (possession of a controlled drug of Class B with intent to supply – cannabis); Count 7 (possession of criminal property); and Counts 8 and 9 (two counts of driving whilst disqualified). On 29 August 2023 in the Crown Court at Aylesbury the appellant further pleaded guilty to Count 2 (possession of a controlled drug of class A with intent to supply – cocaine), with further counts of possession of Class A drugs with intent to supply and a possession of Class B drugs being subsequently ordered to lie on the file on the usual terms.

2. On 24 October 2023, in the Crown Court at Aylesbury, His Honour Judge Jonathan Cooper sentenced the appellant (then aged 32) to 4 years 6 months' imprisonment on Count 2 (the possession of Class A drugs with intent to supply), 18 months' imprisonment consecutive on Count 1 (the fraudulent evasion of a prohibition), 3 months' imprisonment consecutive on Count 8 (the first of the driving whilst disqualified offences), with 18 months' imprisonment concurrent on Count 4 (possession of cannabis with intent to supply), 4 months' imprisonment concurrent on Count 7 (possessing criminal property) and 3 months' imprisonment concurrent on Count 9 (the second count of driving whilst disqualified) making a total sentence of 6 years and 3 months' imprisonment.

3. The appellant appeals against sentence with leave of the single judge. The single judge considered the appeal was lodged in time, although it appears the appeal was originally sent to the wrong email address and so it was in fact 126 days out of time. Be that as it may, like the single judge before us we consider the grounds of appeal are arguable, and if necessary we grant an extension of time.

4. Turning then to the facts of the appellant's offending. On 26 June 2023 the appellant was seen by police driving a BMW motor vehicle which subsequently stopped at a petrol station for fuel. The BMW was thereafter followed by the police to the appellant's home address in Aylesbury. The following day the police also saw the appellant driving the BMW along the same road and going to the same petrol station. The appellant was stopped by the police for a Section 23 Misuse of Drugs Act search.

5. The appellant had been wearing a small shoulder bag which was removed and searched. Within that bag the police found nine snap seal plastic bags containing skunk cannabis weighing 20.16 grams, along with £568.42 in cash and three mobile phones. The appellant was arrested by the police and taken to his home address for that to be searched. Once at the appellant's address the appellant claimed he was feeling ill and on being

taken out of the police car the appellant appeared to faint as he said he was suffering from asthma. An ambulance was called for the appellant. Police officers entered the appellant's flat and found a large bag in the oven which was found to contain 956 grams of skunk cannabis. Also found was £2,030 in cash, a large set of digital scales, other mobile phones and a small amount of cannabis and cocaine, along with the appellant's passport.

6. Following an address check it became apparent that Border Force officials had intercepted a package to be delivered to the appellant's address that contained a kilogram of herbal cannabis. A vehicle document found at the appellant's address gave a different address linked to the appellant and it was also confirmed that Border Force officials had intercepted a package to be delivered to that address containing 1.1 kilograms of cannabis.

7. Once that address had been searched the police found what has been described as a "stash house" with drugs and drugs paraphernalia on display. The drugs found at that address included 10 grip seal bags containing cocaine weighing 6.97 grams and another bag of cocaine weighing 27.4 grams. A white sports bag was found containing 13 bags of cannabis remnants with markings which were similar to the markings on the package intercepted by Border Force officials. Subsequent analysis of the mobile phones seized reveal messages indicative of the appellant being involved in the supply of both Class A and Class B controlled drugs.

8. The driving offences relate to the appellant driving the BMW when he had been disqualified, as he had been a disqualified driver until he passed an extended re-test which he had not done. When interviewed by the police the appellant answered no comment to the questions asked.

9. The appellant was aged 32 at the time of sentence. He had 2 convictions for 6 offences spanning from 30 October 2018 to 17 June 2020. His relevant convictions included 1 drugs offence and 5 driving offences. Most recently, on 17 June 2020 the appellant had been sentenced to 4 months' imprisonment suspended for 2 years for an offence of dangerous driving.

10. The grounds of appeal are as follows:
    1. The sentence on Count 2 (possession of cocaine with intent to supply) was too high as it should have been reduced to reflect the appellant's guilty plea which was tendered after the Plea and Trial Preparation Hearing and before a trial date had been set.
    2. The sentence on Count 1 should have been placed within a significant role and not leading role and should have been made to run concurrently to the sentence on

Count 2.

3. A further reduction should have been made to reflect the appellant's relatively light previous convictions.
4. The overall sentence of three months' imprisonment consecutive for the driving offences was unnecessarily excessive.
5. The overall sentence of 6 years and 3 months' imprisonment was manifestly excessive given the current prison population and the fact that the appellant's offences were neither violent nor sexual in nature.

11. We are grateful to Mr Nash for the quality of his written and oral submissions before us.

Discussion

12. The Learned Judge considered that there were "elements of leading role" in relation to Count 2 (possession of cocaine with intent to supply) reference being made to a "large quantity of drugs" and the appellant having a "cutting factory" available to him though he ultimately sentenced on the basis that the offending was significant role Category 3, a categorisation with which we agree. Category 3 significant role has a starting point of 4 years 6 months' custody with a range of 3 years 6 months to 7 years' custody.

13. We consider that the Learned Judge was entitled, as he did, to move significantly upwards from the starting point in circumstances where it is clear that the appellant was running a significant commercial operation over three properties, the third of which was wholly given over to preparing and cutting deals of Class B and Class A drugs. So far as the cocaine was concerned, and in addition to the cocaine in single deal bags, there was cocaine ready to be cut into smaller street level deals. The sophistication of the operation means that this was in our view well above street level dealing, notwithstanding that the weight of Class A drugs actually recovered happened to be less than 150 grams. We do not consider that the uplift to 6 years' custody was inappropriate on the facts of the appellant's offending, and having regard to the fact that the Learned Judge was effectively taking the Class A offending (as the more serious offence) as the lead offence, and then adjusting the sentence on Count 1, which related to the evasion of the prohibition under Count 1 with a concurrent sentence in relation to the Class B drugs on Count 4, then adjusting the sentence on that Class B offending across Counts 1 and 4 downwards to reflect totality as he did.

14. The Learned Judge also then made a substantial reduction of 25% to four-and-a-half years which was generous given that the guilty plea was after the PTPH and only 20% had been canvassed by defence counsel with, only limited mitigation.

15. We do not consider that the Learned Judge erred either in placing the cannabis operation as leading role given the appellant's role in importing the same, nor in passing a

consecutive sentence for that operation and the reduction from a sentence of 3 years' imprisonment to 18 months to reflect totality was, if anything, a generous one. No further reduction was, in our view, appropriate "to reflect the appellant's relatively light previous convictions". The appellant was not of previous good character and indeed had a prior drugs conviction. The reduction on Counts 1 and 4 were also sufficient to take account of prison conditions and the overall nature of the offending.

16. The driving whilst disqualified offences were serious offences in their own right, and justified a consecutive sentence of 3 months' imprisonment to reflect two further separate offences. We would only add that the Learned Judge ought to have ordered endorsement of the appellant's licence with 6 penalty points on each of Counts 8 and 9 which would potentially have had further consequences in terms of further disqualification. However, we do not consider that the position can be corrected by virtue of section 11(3) of the Criminal Appeal Act 1968 and make no order in relation to the same.

17. The total sentence passed of 6 years 3 months' imprisonment, to reflect the totality of the appellant's offending, was not manifestly excessive and was just and proportionate to the totality of the offending.
18. Accordingly the appeal against sentence is dismissed.