

IN THE COURT OF APPEAL
CRIMINAL DIVISION



CASE NO 202401183/A4
[2024] EWCA Crim 1208

Royal Courts of Justice
Strand
London
WC2A 2LL

Wednesday, 19 June 2024

Before:

LADY JUSTICE WHIPPLE DBE
MR JUSTICE BRYAN
HIS HONOUR JUDGE LICKLEY KC
(Sitting as a Judge of the CACD)

REX
V
MARK GURI

MR P BARNETT (Solicitor Advocate) appeared on behalf of the Appellant

APPROVED JUDGMENT

MR JUSTICE BRYAN:

1. On 4 March 2024 in the Crown Court at Chester (before His Honour Judge Patrick Thompson), the appellant pleaded guilty to possession of a Class B drug (cannabis), with intent contrary to section 5(3) of the Misuse of Drugs Act 1971 and was sentenced to 15 months' imprisonment. He also pleaded guilty to using a motor vehicle without insurance in respect of which no separate penalty was imposed.
2. The appellant appeals against sentence by leave of the single judge on the ground that the sentence passed was manifestly excessive.
3. Turning to the facts of the appellant's offending. On 19 January 2024 at around 6.15 am the appellant was driving a Mercedes Vito van. The van was seen by police officers who followed it. The officers decided to flag the vehicle down by illuminating the emergency lights and after some distance the appellant pulled the van over onto the pavement. The appellant was alone in the vehicle. He said he was from Albania. He admitted he had no insurance and held his arms out with his wrists together, offering to be arrested.
4. The officers checked the back of the van. The only thing in it was a sports bag which contained seven vacuum-packed clear plastic bags, each containing around one kilogram of cannabis (a total of seven kilograms of cannabis). A police drugs expert estimated that the wholesale value of the drugs was between £28,000 and £49,000. The appellant was also in possession of just under £330 in cash. The appellant had a rental agreement for the vehicle. It was not in his name and he was not insured to drive the vehicle. Officers also found the appellant to be in possession of a bank card and an electricity card, neither of which were in the appellant's name. The appellant was arrested and the drugs were seized. The van was returned to the rental company.
5. In interview, the appellant initially said he had not been aware that there was cannabis in the van. However, he then admitted that he had stopped and had a look into the bag and seen the cannabis. He said that at that point he had been too scared to go back and refused to transport it or tell the police. He said he had been engaged by other members of the Albanian community in the Birmingham area where he had been living and his task had been to take the van and deliver the contents of it somewhere else.
6. The Learned Judge identified the case as Category 3 significant role under the Drug Offences Guideline with a starting point of 12 months' imprisonment based on six kilograms (and a range of 26 weeks to three years' imprisonment), which he stated, "moves up the range", and he considered that given the value of the drugs the appellant was "playing a very trusted and important role in transporting them" and that "this is clearly a significant role albeit you are acting as the driver". He stated that he took into

account the fact that the appellant had no previous convictions in this country but considered that to be of limited value since he had entered the country illegally, he had been here a short time and he was already committing an offence involving the trafficking of drugs. The Learned Judge stated that the appellant's case moved up to 20 months which after 25% credit resulted in the sentence passed of 15 months' imprisonment.

7. Mr Barnett, who appears on behalf of the appellant, submits that the sentence was manifestly excessive in that (1) the upward adjustment from 12 months to 20 months' imprisonment for one additional kilogram of cannabis was excessive and/or (2) the Learned Judge failed to apply the downward adjustment for the lack of previous convictions and/or (3) the Learned Judge failed to take into account the fact that the appellant was engaged by pressure and coercion and reflect this in a downward adjustment.
8. We consider that there is some force in these submissions. We consider that the Learned Judge was entitled to categorise the appellant's offending as a significant role. He had some awareness and understanding of the scale of the operation. In this regard he had looked into the bag and seen the drugs and he was also plainly trusted in his role as a courier of a large amount of drugs as well as money. We consider that an appropriate starting point was 12 months before a modest increase to 13 to 14 months to take account of the slightly larger quantity of cannabis (seven kilograms) before mitigation and credit. We consider the Learned Judge was right to form the view that any mitigation in the form of lack of previous convictions could only be limited given the short time the appellant had been in the country (illegally) but we also regard the evidence that the appellant was acting under a degree of coercion to be a mitigating factor. We consider that an appropriate sentence at trial would have been 12 months' imprisonment, which after 25 per cent credit for guilty plea would result in a sentence of nine months' imprisonment.
9. We consider that the sentence that was passed of 15 months' imprisonment was manifestly excessive and accordingly quash the sentence passed and substitute a sentence of nine months' imprisonment. To that extent the appeal is allowed.