IN THE COURT OF APPEAL
CRIMINAL DIVISION
ON APPEAL FROM THE CROWN COURT
LEEDS
HHJ MANSELL KC
CASE NO 202400870/A2
[2024] EWCA Crim 894

Royal Courts of Justice
Strand
London
WC2A 2LL

Wednesday 17 July 2024

Before:

LADY JUSTICE MACUR

MRS JUSTICE STACEY

THE RECORDER OF WOLVERHAMPTON
(HIS HONOUR JUDGE MICHAEL CHAMBERS KC)
(Sitting as a Judge of the CACD)

REX

V

PATRYK FORNALSKI

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MR I KHAN appeared on behalf of the Appellant.

J U D G M E N T

LADY JUSTICE MACUR:

1. On 24 January 2024, Patryk Fornalski ("the appellant") pleaded guilty to knowingly permitting premises to be used for the supply of a controlled drug of Class A, namely MDMA, and also two offences of knowingly permitting premises to be used for the production of a controlled drug of Class B, namely cannabis and amphetamines, all contrary to section 8 of the Misuse of Drugs Act 1971. The total value of the drugs concerned had a street value exceeding £26,000. These counts were added to the indictment on the date of trial as an alternative to the original offences which charged possession with intent to supply, contrary to section 4(1) of the 1971 Act. Ultimately, no evidence was offered on these originally indicted offences or those of abstracting electricity, contrary to section 13 of the Theft Act 1968, and possessing a prohibited weapon, namely a gas canister, contrary to section 5(1)(b) of the Firearms Act. Not guilty verdicts were entered in relation to all of those counts.

2. On 22 February 2024, the appellant was sentenced to a total of 3 years' imprisonment. Count 7 on the indictment, which was in respect of the Class A drugs, was designated as the *lead* count for sentencing purposes. The other two counts attracted concurrent sentences of 12 months' imprisonment. Other ancillary orders were made.

3. He appeals against sentence with the leave of the single judge, on grounds that the sentence was manifestly excessive because the starting point taken was too high and insufficient credit was awarded for plea.

The Facts in Brief

4. On 24 August 2023, an officer from the National Extradition Unit together with local police officers went to an address in Leeds to make inquiries regarding a wanted male. They saw a male figure behind the frosted window of the front door, who appeared to match the description of the person they were looking for. They announced who they were and the man ran upstairs. Shortly thereafter officers heard the sound of a toilet being flushed in the property. They demanded entry and began to force the door. However, it was then opened and the police officers entered where they saw the appellant, who was the man they had initially seen behind the door. The police searched the house. Two of the bedrooms were clearly being used for a cannabis grow. The bathroom had signs of foils and wraps. In the kitchen they found a suitcase with two large vacuum bags of cannabis already in it. The electricity supply of the property had been bypassed and a gas canister was found in the living room. In total there were 554 grams of amphetamine; 1186 MDMA pills and 1.573 kilos of cannabis recovered that day.

5. The appellant was arrested. He made "no comment" in interview. A council tax demand connected the appellant to the property. On the day of trial, he produced documentation which indicated that he had sublet the house. The assured shorthold tenancy agreement he produced is dated 1 May 2023. The appellant said that, as the "landlord", he visited the premises on a monthly basis in order to collect the rent from the subletting tenant, which he indicated was £900 per month and paid in cash.

6. The appellant had one previous conviction in 2012 for an offence of robbery in Poland. He had a caution for battery in 2014 in the United Kingdom. He produced favourable

character references and wrote a letter to the judge expressing his remorse. In short, he was in a stable relationship and had employment prospects. A standdown oral report was given. The probation officer recommended a community penalty, namely unpaid work and 10 rehabilitation activity requirement days.

7. Sentencing the appellant, the judge categorised the offences as high culpability, because the premises were being used primarily for drug activity "and no doubt in expectation of substantial financial gain on your part", and category 1 harm because of the quantity of the drugs involved. This categorisation indicated a starting point in relation to the Class A drugs of 2½ years with a sentencing range of 18 months to 4 years and a starting point of 1 year, with a range of 6 months to 18 months in respect of the Class B drugs. Making an allowance for mitigation, the judge said he would nevertheless have arrived at a sentence of 40 months after trial. He allowed 10 per cent credit for plea.

8. Mr Khan appears on behalf of the appellant. We are grateful for his submissions, both in writing and as amplified orally before us today. He concedes, in writing, that there was no objection to the sentencing categorisation but submits that there were features which meant that this appellant had lower culpability, in that he had no active role in the drug activity taking place and, he submits, the only reward was the rent payment for the premises as opposed to any "additional personal gain". This, he submits, should have driven the starting point towards the bottom of the range before uplift to reflect the other offences and then mitigation. The mitigation was the appellant's relative good character, that he had shown genuine remorse, had family support and prospects of employment and then there was credit for plea. As to the latter, the appellant had pleaded guilty

immediately that the alternative counts were framed.

Discussion

9. There was no basis of plea entered. The rent for the property was quantified by the appellant as paid "in cash" and therefore unverified. We note that the Defence Statement served when this matter was to be a trial, refers to the appellant "checking on his dog", which he presumably left in the property and would indicate far more frequent attendance than once a month by a landlord to collect his rent. There was ample reason therefore, we consider, for the judge to come to the sure conclusion that the appellant had the expectation of significant financial reward.

10. There is no issue but that the judge was entitled to pass concurrent sentences having determined and indicated that he took the lead offence to be that represented in count 7 in respect of the Class A drugs. The harm was undoubtedly increased by the production of the large quantities of Class B drugs and an uplift from the starting point was required. It would appear to us that, if the judge reached the figure of 40 months after trial and after reduction for mitigation, that he must have started towards the top of the sentencing range for the categorisation of higher culpability and Class A harm.

11. We consider that 40 months would be a stern sentence but not one that could arguably be deemed manifestly excessive. The judge, in our view, was entitled to conclude that the applicant was well aware that the premises were being used primarily in significant drug dealing - he had observed the bypassing of the electricity. Equally, as we have indicated above, the judge was entitled to infer that the sublet was made with a view to

considerable financial gain.

12. The credit allowed for plea is unobjectionable. The Overarching Guideline in Reduction in Sentence for a Guilty Plea indicates at paragraph F3:

> "If an offender is convicted of a lesser or different offence from that originally charged, and has earlier made an unequivocal indication of a guilty plea to this lesser or different offence to the prosecution and the court, the court should give the level of reduction that is appropriate to the stage in the proceedings at which this indication of plea (to the lesser or different offence) was made taking into account any other of these exceptions that apply. In the Crown Court where the offered plea is a permissible alternative on the indictment as charged, the offender will not be treated as having made an unequivocal indication unless the offender has entered that plea."

13. In this case, the appellant, both at the Better Case Management stage and in his Defence Statement, made no indication that he was prepared to offer pleas to those offences subsequently charged. His Defence Statement denies involvement with the drugs of the property and makes no indication of an unequivocal plea to any alternative offence as subsequently framed or otherwise.

14. In those circumstances, we conclude that the starting point, less reduction for the plea entered at this late stage, properly arrived at the figure of 3 years overall. This figure properly reflects the criminality involved and takes all due account of totality. In those circumstances, this appeal is dismissed.

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

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