



IN THE COURT OF APPEAL

CRIMINAL DIVISION

ON APPEAL FROM THE CROWN COURT AT CHELMSFORD

MR RECORDER CLEGG KC No. 42MZ1151223

CASE NO 202303948/A1

**[2024] EWCA Crim 970**

Royal Courts of Justice  
Strand  
London  
WC2A 2LL

Friday, 19 July 2024

Before:

LORD JUSTICE WARBY  
MRS JUSTICE MAY DBE  
HIS HONOUR JUDGE TIMOTHY SPENCER KC  
(Sitting as a Judge of the CACD)

REX  
V  
JASON HEATH

Computer Aided Transcript of Epiq Europe Ltd,  
Lower Ground Floor, 46 Chancery Lane, London, WC2A 1JE  
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MR C DURRANT appeared on behalf of the Applicant

**J U D G M E N T**  
(Approved)

1. LORD JUSTICE WARBY: This is a renewed application for leave to appeal against sentence for drug trafficking offences, after refusal by the single judge. The applicant is Jason Heath, now aged 50.
2. On 16 June 2023 in the Crown Court at Chelmsford he pleaded guilty to two counts of being concerned in the supply of class A drugs (crack cocaine and heroin) and two counts of possession with intent to supply class A drugs (also crack cocaine and heroin).
3. On 10 October 2023 in the same court Mr Recorder Clegg KC passed sentences on each of the first two counts of 41 months' imprisonment concurrent, with sentences of 51 months on each of the other counts to run consecutively. The total sentence was thus one of seven years and eight months' imprisonment.
4. In summary, the facts of the case are that on 3 October 2022 the applicant was observed by police officers dealing drugs to known users over his garden fence. When officers searched his home they found 16 grams of heroin and half a gram of crack cocaine in his bedroom, along with amounts of cash, some scales and a mobile phone registered to the applicant. Review of the phone showed that it had been used to supply both types of class A drug that we have mentioned. The applicant was charged and after a brief remand in custody released on bail. It was later established that over the following weeks and whilst on bail he had used another mobile phone to supply crack cocaine and heroin to users. These matters were the basis of counts 1 and 2.
5. On 9 February 2023, when the applicant was still on bail, police officers once again encountered him engaged in drug supply. Officers watching known drug users in central Harlow saw one of these approach a van which they then followed. When the officers themselves approached the van they saw the applicant in the front seat. On seeing them he began to throw items around in the vehicle. He was arrested and inside the van the

police found a 17 gram bag of white powder on the passenger seat and, in the passenger side footwell, a small bag of brown powder and some small rocks of white powder.

These proved to be the drugs the subject of the charges. In the applicant's pocket were found a mobile phone and £190 in cash. A search in custody also revealed that the applicant was in possession of two further wraps of class A drugs and £10 in cash. These matters gave rise to counts 4 and 5 on the indictment.

6. The applicant gave a no comment interview and pleaded not guilty at the plea and trial preparation hearing. His guilty pleas came late but before the case was listed for trial. They were entered on the basis, not contested by the prosecution, that his drug supply reflected a longstanding battle with class A drug addiction which he had funded by supplying drugs to friends who he knew to be already drug users and that a little over half of the £1,800 which the police had seized belonged to his parents. The sum that belonged to his parents was later established as being in the region of £700.
7. At the time of sentence the applicant, then aged 49, had an unenviable record comprising 47 convictions for 110 offences. Among these were 24 drug offences, including not only possession but also possession with intent to supply and supply. The seriousness of the offending was aggravated by these previous convictions and by the commission of the offending on all counts while on bail.
8. In mitigation the point was made on his behalf that his drug convictions did not trigger the minimum term provisions for drug trafficking. Although his record included drug supply convictions from 1992 and 1993, the applicant's contention was that these were for amphetamines and cannabis and the Crown was unable, after investigation, to say that any of these were class A matters that qualified for the purposes of the so-called "three strikes" regime. Moreover, the applicant's most recent conviction for the supply of class

A drugs was as long ago as January 2007. His convictions since then, though numerous, were almost all for shoplifting. It was further submitted that the instant offences reflected a small scale operation predominantly conducted for the purposes identified in the basis of plea and that the applicant had made determined efforts when in custody to become drug free, that he had a supportive family and that there were realistic prospects of rehabilitation once he was released.

9. The Recorder sentenced the applicant on the basis that the offending on each count involved a significant role in street dealing, undertaken partly for profit and partly to fund the applicant's own addiction. Having referred to the aggravating features we have mentioned, the Recorder went on to say that he had however to take into account totality and the guilty pleas for which he afforded a reduction of 15 per cent. He then passed the sentences that we have mentioned. In doing so he did not identify his notional sentence after a trial before reduction for the guilty plea, nor did he specify the extents to which he had reduced any of the sentences for totality, although he did say the sentences would otherwise have been "significantly longer".
10. The single ground of appeal is that despite his express references to the principle of totality, the judge's sentencing decision did not give proper effect to that principle with the result that the overall sentence was not just and proportionate but manifestly excessive. Mr Durrant, who appears today, as he did below, suggests that the judge's notional sentence before reduction for guilty plea and totality, although unspecified, must have been out of all proportion to the seriousness of the offending, even allowing for the admittedly potent aggravating features of the case.
11. In support of that argument Mr Durrant has invited comparison with the starting points of eight years for someone performing a significant role in the supply of class A drugs in

quantity category 2, namely one kilogram, and 10 years for a significant role in Category 1, involving five kilograms. Counsel also highlights the mitigating factors on which he relied at the sentencing hearing which we have already identified.

12. We are grateful to Mr Durrant for his submissions.
13. The sentencing judge identified the appropriate guideline category for which the category starting point was four-and-a-half years' imprisonment. The aggravating factors were correctly stated. The imposition of consecutive sentences for separate offences was appropriate. However, we do accept the submission that the total sentence at which the judge arrived was out of proportion and manifestly excessive.
14. The inference we draw from the reduction for plea and what the judge said about the impact of totality is that he must have arrived at an overall notional sentence after a trial in excess of 10 years. That in our judgment was far too high in all the circumstances of this case. In any event, we are satisfied that the judge failed to give proper effect to totality.
15. This applicant's conduct fell within the lower part of the significant role category. He knew what he was doing but he acted alone without involving others and on a relatively modest scale. The seriousness of his offending was also reduced by the fact that it involved supply of a drug to which the applicant was addicted and at least some of the supply was to associates who were already addicted themselves. The degree of aggravation that was properly attributable to the previous convictions was significantly tempered by their age. All but one of the drug supply offences dated back some 30 years and the most recent was 15 years old. The applicant had no convictions at all since 2019. There was substance in the proposition that he had made a genuine and determined effort to shed his addiction and that he had shown a real prospect of succeeding. That was in

our opinion personal mitigation of real weight. All those matters, not all of which were mentioned by the sentencing judge, should have been taken into account, ideally before reduction for plea at step 5 and at step 6 the application of the principle of totality.

16. Bearing in mind all of the matters we have mentioned, we consider that the appropriate sentence after a trial for each of counts 1 and 2 would be one of four years. That, reduced by 15 per cent for the pleas, comes to 41 months. Counts 4 and 5 were more serious but the appropriate sentence after a trial would be one of four-and-a-half years, which we reduce to 46 months for the pleas. The resulting total of 87 months is not far short of the judge's eventual sentence but it must then be reduced to ensure that it is just and proportionate to the offending. The upshot in our judgment is a total sentence of 74 months, or six years and two months.

17. In the result we grant leave to appeal and having done so we allow the appeal. We give effect to our conclusions by quashing all the sentences imposed below and substituting on counts 1 and 2 concurrent sentences of 34 months, and on counts 4 and 5 sentences of 40 months, concurrent with one another but consecutive to the sentences on counts 1 and 2.

MR DURRANT: My Lord, given your determination could I ask for a representation order?

LORD JUSTICE WARBY: A representation order. Yes, you may.

MR DURRANT: Thank you very much.

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