Prepared for Unknown for ICLR
No: 200406617/A9

Neutral Citation Number: [2005] EWCA Crim 939
IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
Strand
London, WC2
Friday, 15th April 2005

B E F O R E:
MR JUSTICE OUSELEY
MR JUSTICE TREACY

- - - - - - -

R E G I N A
-v-
ANTHONY JOHN KESLER

- - - - - - -

Computer Aided Transcript of the Stenograph Notes of
Smith Bernal Wordwave Limited
190 Fleet Street London EC4A 2AG
Tel No: 020 7404 1400 Fax No: 020 7831 8838
(Official Shorthand Writers to the Court)

- - - - - - -

MR K RAYNOR appeared on behalf of the APPELLANT

- - - - - - -

J U D G M E N T
(As approved by the Court)

- - - - - - -

Crown copyright©

1. MR JUSTICE OUSELEY: On 12th August 2004 at Derby Crown Court, the appellant pleaded guilty to two counts of possession of class A drugs with intent to supply: one related to methadone, the other count related to heroin. There were a significant number of other counts, but they were left on the file in the usual way. The appellant was sentenced to seven and a half years' imprisonment concurrent on each of the two counts to which he had pleaded guilty. A confiscation order in the sum of £51,641 was made and orders for forfeiture and destruction.

2. There were two co-accused who had been involved with the appellant in his drug dealing. Both were ladies and both of them received significantly lighter sentences. Those lighter sentences were understandable in the circumstances.

3. The reason why the appellant received the seven year sentence plus was that he already had two previous convictions for supplying class A drugs. The first was in February 2001, when he was fined £250. The second was in October 2002 when, for possession with intent to supply of a class A drug, he was given a community rehabilitation order for 12 months, which was, during the course of it, revoked because of the appellant's good behaviour. Those two previous offences meant, however, that the appellant had to be sentenced to a minimum sentence of seven years under section 110 of the Powers of Criminal Courts (Sentencing) Act 2000.

4. The facts of the case are somewhat unusual. The appellant, who is 65, was a resident at warden controlled sheltered housing. He was living on benefits, including disability benefits, at the time of these offences and indeed at the time of the earlier two. In the run up to March 2004 the appellant installed a CCTV camera covering his front door. It became apparent that the purpose of that was so that he could check on who was coming to his door. He installed a security light covering the same area and acquired a brand new car for over £20,000.

5. The manager of the housing complex became suspicious about what was going on and there were complaints made about the number of people coming to the appellant's house. As a result the police executed a search warrant on 4th March 2004. They found £3,000 in cash and 12 bottles of methadone in the fridge. They also found 19 wraps of heroin, and one of the co-defendants, a woman of 24, was in possession of a single wrap of heroin.

6. The appellant was arrested at his address later that day. When he was interviewed, he said that he had bought the methadone to try and wean one of the other women co-defendants off her addiction to drugs. He lived exclusively on benefits of £1,000 a month and had purchased the car with the benefit of a loan. He was then released on bail.

7. Some 26 days later he was arrested in his car, the car being driven by the woman for whom he said he had bought the methadone in order to try and cure her heroin addiction. She was found to be in possession of a small wrap of heroin. When the appellant was stripped searched at the police station, some 19 clingfilm wraps, each containing 0.1 grammes of heroin with a street value of £200, were found between his buttocks. He also had £765 cash on him.

8. When he was interviewed, he said that he had gone out that day to deal in heroin and suggested that it was the first time in recent years that he had done that. It became apparent to the sentencing judge that the appellant had carried out drug dealing, making a large amount of money over a four month period, involving and manipulating the two female co-defendants in his operation. Much of his dealing was done over the phone and over a mobile phone. He used to give the impression of innocent behaviour by going out with his dog to collect the drugs, and because of his disability had a stick, but it was hollowed out so that he could keep his drugs in it.

9. Although the sentencing judge made some comments of a strong nature about the sentences which had been passed for the two previous offences, it is perfectly clear, and Mr Raynor has realistically accepted before us, that the mitigation put forward on those earlier occasions, which had led to the surprisingly lenient sentences being imposed, had been to the effect that he was assisting one of the co-defendant females on each occasion to be weaned off her drug addiction and was thus a kindly old gentleman with a disability, misguidedly helping someone, as opposed to the reality, which is that he was a dealer in heroin in some considerable way of business.

10. The sentencing judge made some comments about the basis upon which he was going to sentence. He said that the plea of guilty to two out of the rather larger number of counts was "a very mean plea". He then said that he had been asked to make allowance for the plea of guilty by reducing the sentence by 20 per cent as is permissible under section 152(3) of the 2000 Act. However, he then said that the least sentence which he thought appropriate, bearing in mind the plea of guilty, was seven and a half years.

11. Before us Mr Raynor has particularly focused on the way in which the pleas of guilty were dealt with. In particular he points out that the comments about the pleas being "very mean" failed to appreciate that it had been agreed between the prosecution and the defence that those pleas of guilty were acceptable and adequately reflected the criminal behaviour in drug dealing in which the appellant had been engaged and effectively would give proper scope to the sentencing judge to deal with the offences. Therefore there was no reason for that particular approach to be adopted, discounting the pleas.

12. Mr Raynor also points out the age of the appellant. It is indeed an unusual case in which someone of 65 should be facing a significant custodial sentence for dealing in drugs. Realistically he puts less weight on the generally poor health, but not especially poor health, which the appellant has.

13. It is clear that the question of whether there is a discount to be made for plea of guilty has to be judged against the provisions of the Act and the nature of the offending. It is important, in our judgment, to recognise that the new sentencing provisions contained in the 2000 Act create a clear legislative policy whereby a third offence would attract

seven years minimum unless there were particular circumstances. In this case the previous convictions were plainly under-sentenced because of the deceitful mitigation that was put forward. It is no mitigation in relation to this sentence that the previous sentences did not involve custody and were dealt with in the lenient way in which they were. But so far as the total is concerned, we point out that not merely was the offence of 30th March 2004 committed on bail, which is a significant aggravating feature, but that for the third offence alone, even if the fourth and later offence had not been committed, the minimum sentence, save for the possible 20 per cent discount for a plea of guilty, would have had to be imposed. There was no mandatory requirement for the 20 per cent discount to be given. Whether or not one allowed a discount for a plea of guilty and then sentenced to more than six months for the fourth offence, or whether one views seven and a half years as a totality recognising the pleas, aside from the other aspects of mitigation to which we will come, the overall sentence of seven and a half years on the plea of guilty is in the right bracket.

14. So far as the age of the appellant is concerned, we do not regard that as of any real significance given the gravity of the offences and the fact that it was at that age that he was committing those offences. This is not, as sometimes happens, somebody of 65 being sentenced for offences which were committed a very great deal of time ago. The same point applies in relation to his poor health. Indeed, it is plain that he has been using his health as a means of obtaining sympathy and of deception and he has already gained from his previous sentences such benefit as could possibly be accorded to him for those matters.

15. We also point out that not merely were these offences aggravated by one being committed on bail, but also by the involvement of two vulnerable people. The reality is that this was a persistent course of dealing in heroin and, taking the minimum sentence for three offences into account, seven and a half years with pleas of guilty is not manifestly excessive for the two offences to which the appellant has pleaded guilty. These were serious offences and, whilst not necessarily adopting all the language of the sentencing judge, this sentence was well deserved. Accordingly, this appeal is dismissed.

SMITH BERNAL WORDWAVE