

Neutral Citation Number: [2018] EWCA Crim 376

No: 201702404/A4

IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
Strand
London, WC2A 2LL

Thursday, 22 February 2018

B e f o r e:

LORD JUSTICE HAMBLÉN

MR JUSTICE SWEENEY

RECORDER OF GREENWICH
(HIS HONOUR JUDGE KINCH QC)
(Sitting as a Judge of the CACD)

R E G I N A

v

KHAVER ATIQUE ZARIF

Computer Aided Transcript of the Stenograph Notes of WordWave International Ltd trading as DTI, 165 Street London EC4A 2DY, Tel No: 020 7404 1400 Fax No: 020 7831 8838 (Official Shorthand Writers to the Court)

Mr A Turton appeared on behalf of the **Applicant**

J U D G M E N T (Approved)

If this transcript is to be reported or published, there is a requirement to ensure that no reporting restriction will be breached. This is particularly important in relation to any case involving a sexual offence, where the victim is guaranteed lifetime anonymity (Sexual Offences (Amendment) Act 1992), or where an order has been made in relation to a young person.

1. MR JUSTICE SWEENEY: This is a renewed application for leave to appeal against sentence and for a representation order.
2. On 22 February 2017 the applicant pleaded guilty on re-arraignment to conspiracy to supply heroin for which, on 16 May 2017, he was sentenced to 61 months' imprisonment by Her Honour Judge Shant QC (the Honorary Recorder of Derby).
3. The facts are set out in full in the Criminal Appeal Office summary.
4. It suffices to record that the applicant is now aged 25 and that his prosecution for the conspiracy arose out of the investigation, over a very substantial period, into his family's drug dealing activities.
5. In July 2014, the applicant was arrested for the possession of heroin with intent to supply and bailed.
6. In May 2015, whilst still on bail, the applicant was arrested in relation to the conspiracy.
7. In June 2015, the applicant was charged with the 2014 offending and bailed.
8. In July 2015, whilst still on bail, the applicant was arrested again in relation to the conspiracy, and more evidence was found.
9. Later that month the applicant's 2014 case was sent to the Crown Court, where (under the early guilty plea scheme) he pleaded guilty. In November 2015, he was sentenced to 3 years' imprisonment for that offending.
10. In April 2016, he was charged with the conspiracy to which, as we have already indicated, he pleaded guilty in February 2017, and was sentenced in May 2017.
11. The Grounds of Appeal are that the sentence was wrong in principle and manifestly excessive in that: (i) the starting point was too high; (ii) insufficient credit was given for the guilty plea (as the prosecution only reduced the basis on which they put the case shortly before the trial date); and (iii) insufficient adjustment was made for totality (given that the 2014 and conspiracy cases were dealt with separately, but the judge accepted that they should have been dealt with together).
12. On the applicant's behalf Mr Turton submits that the case was essentially concerned with the targeting by the police of the appellant's family and associates' activities in relation to the supply of drugs, during the course of which the applicant was arrested on

a number of occasions. After his arrest in relation to the 2014 offending, as Mr Turton puts it, he was also involved from time to time thereafter.

13. Mr Turton points out that the imposition of the instant sentence was at a time when the applicant was coming to the end of the service of the 3-year sentence for the 2014 offending. Mr Turton underlines that the practical effect of the combination of the 3-year sentence and the instant sentence is an overall sentence in the order of 8 years' imprisonment. He submits that that is too long – particularly if the applicant's conspiracy offending is more appropriately categorised as the equivalent of being in category 3 in a significant role, as he submits that it should be. He further submits, in the alternative, that even if the appropriate categorisation is on the cusp of categories 2 and 3 and at the high end of a significant role the sentence, viewed overall, was still too long.
14. Mr Turton submits that taking the Recorder's starting point of seven-and-a-half years and adding to it what must have been the notional sentence after trial for the 2014 offending, namely four-and-a-half years, the overall notional sentence after trial must have been in the order of 12 years. Given that both cases were concerned with relatively small quantities being dealt to friends and associates, he submits that such an overall notional sentence, and the consequent reduction for plea to 8 years, were too long.
15. That said, Mr Turton concedes that this is plainly not a case which requires a very substantial reduction to bring it within what he submits is the appropriate range, but nevertheless argues that a deduction of perhaps 1 year might better reflect the applicant's criminality.
16. Although Mr Turton has made his submissions attractively, we disagree. The judge gave the most careful consideration to what was the appropriate categorisation of the applicant's offending, the appropriate discount for plea, and (with totality in mind) the appropriate level of sentence in the round (albeit that she did not have full details as to the 2014 offending). In the result, it seems to us that, essentially for the reasons given by the single judge, it is not arguable that the sentence imposed was wrong in principle or manifestly excessive. Accordingly, this renewed application is refused.

WordWave International Ltd trading as DTI hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

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