

Neutral Citation Number: [2019] EWCA Crim 1581
2019/01638/A1
IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
The Strand
London
WC2A 2LL

Thursday 19th September 2019

B e f o r e:

LADY JUSTICE NICOLA DAVIES DBE

MR JUSTICE LAVENDER

and

MR JUSTICE NICKLIN

REGINA

- v -

FRED OBIDI

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Mr S Fidler (Solicitor Advocate) appeared on behalf of the Appellant

JUDGMENT

Thursday 19th September 2019

LADY JUSTICE NICOLA DAVIES: I shall ask Mr Justice Lavender to give the judgment of the court.

MR JUSTICE LAVENDER:

1. This is an appeal against sentence brought with the leave of the single judge.
2. On 28th March 2019, the appellant pleaded guilty before Sussex Central Magistrates' Court to two charges of possessing a controlled drug of Class A with intent to supply. He was committed to the Crown Court for sentence, pursuant to section 3 of the Powers of Criminal Courts (Sentencing) Act 2000.
3. On 25th April 2019, in the Crown Court at Lewes, he was sentenced to two years and six months' imprisonment on each charge. The two sentences were ordered to run concurrently with each other.
4. The offences were committed on 7th March 2019 on Lewes Road in Brighton. The appellant was driving a car and was stopped by the police. The car was found to contain four wraps of drugs, a set of scales and two mobile phones. More drugs were found on the appellant's person in two tubs: one in his jumper and one in his underwear. There were 90 wraps in total, some containing heroin and some containing crack cocaine. The appellant was selling these drugs on his own account in an attempt to raise money to pay off his drug debt. He denied being part of a drugs ring. He did not claim to have been subject to any pressure, coercion or intimidation.
5. For the purposes of the sentencing guidelines, his was a "significant role" and he was

engaged in street dealing, which put his offences in category 3. The starting point was four and a half years' custody, with a range from three and a half years to seven years.

6. In passing sentence, the judge said that he was giving the appellant a discount of 25 per cent. Accordingly, the sentence imposed was equivalent to a sentence of three years and four months, before discount for the guilty pleas. That was below the bottom of the applicable range. The judge did not explain why he felt able to go below the bottom of the range, and we consider that he should not have done so. None of the aggravating factors listed in the guidelines was present. There was one mitigating factor, in that the appellant was 24 years old and had no previous convictions. He said that he had lost his job as a delivery driver, that he became depressed (although there was no evidence that he was diagnosed with depression), that he had tried to lift his mood by smoking crack cocaine, and had thereby acquired the drug debt which he had wanted to pay off by selling drugs himself.

7. These circumstances did not, in our judgment, justify a sentence outside the range prescribed in the guidelines.

8. Looking at the matter ourselves, we consider that the appropriate sentence before discount would have been four years' imprisonment.

9. The appellant has leave to appeal on one ground, which is that he should have been given a one-third, rather than a one-quarter, discount for his guilty pleas, which were entered at the first available opportunity.

10. The judge said that there were "technical reasons" why he could only give the appellant a one-quarter discount, but he did not explain what those technical reasons were. We consider

that the appellant was entitled to a one-third discount.

11. However, given our conclusion that the appropriate sentence before discount would have been four years' imprisonment, a one-third discount would lead to a sentence, after discount, of two years and eight months' imprisonment. It is not open to us to increase the appellant's sentence, but we do not consider it appropriate to reduce it either.

12. For those reasons, this appeal is dismissed.

(An application for a representation order was refused)

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