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IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
The Strand
London
WC2A 2LL

Tuesday 12th November 2019

B e f o r e:

LORD JUSTICE HOLROYDE

MR JUSTICE WARBY

and

HER HONOUR JUDGE MUNRO QC
(Sitting as a Judge of the Court of Appeal Criminal Division)

R E G I N A

- v -

TOYAN ROMMICK

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Tel No: 020 7404 1400; Email: rcj@epiqglobal.co.uk (Official Shorthand Writers to the Court)

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Mr J Kearney appeared on behalf of the Appellant

J U D G M E N T
(Approved)

Tuesday 12th November 2019

LORD JUSTICE HOLROYDE:

1. The appellant pleaded guilty to two offences of possession of cannabis with intent to supply and one offence of failing to surrender to bail. He was sentenced to a total of two years and two months' custody. He now appeals against his total sentence by leave of the single judge.

2. A brief summary of the facts is sufficient for present purposes. On 9th March 2018, police executed a search warrant at the appellant's home address. They recovered 105.52 grams of cannabis with a street value in excess of £1,000, scales and bags, a combat knife, £170 cash, two balaclavas and two mobile telephones, one of which revealed evidence of the appellant's involvement with drugs.

3. In interview the appellant said, untruthfully, that the cannabis was for his own use. He was then released under investigation.

4. Seven weeks later, on 28th April 2018, the police returned to the appellant's address. The appellant tried to leave the property via a rear window but was caught. The premises were searched. The police found ten packages of skunk cannabis, with a street value of about £130. They also found snap bags, a mobile phone on which was again found clear evidence of drug dealing, and a rucksack which contained a machete wrapped in a towel.

5. The appellant pleaded not guilty when he first appeared before the Crown Court in relation to the March offence. A date was set for the trial of that offence, but was vacated when the appellant was charged with the April offence. However, he then failed to attend court when required to do so on 25th April 2019. He was arrested in mid-July. On 22nd July 2019, he appeared before the Crown Court at Wood Green and pleaded guilty to all the offences.

6. The appellant is now aged 20. He has previous convictions, beginning when he was a juvenile. In June 2016, when aged 17, he was sentenced to detention and training orders totalling fourteen months for offences of possessing cannabis with intent to supply, possessing a bladed article (a machete) in a public place, and failing to surrender to bail. Soon after he had been arrested for the March 2018 offence and released under investigation on 9th March 2018, he was found in possession of cannabis. He was quickly dealt with for an offence of simple possession and was fined by a magistrates' court. He then went on to commit the April offence. He subsequently committed yet a further offence of possession of cannabis, for which a magistrates' court imposed a community order in December 2018.

7. At the sentencing hearing on 7th August 2019, the court had the assistance of a pre-sentence report. It described the appellant's very difficult upbringing. It recorded the appellant's account that after his arrest for the April offence he had moved to live with his sister in a different part of the country in order to escape the gang culture of which he had been a part. The author of the report felt that the appellant was genuinely motivated to change his life for the better. It must, however, be noted that, despite his guilty pleas, the appellant claimed to the author of the report that the cannabis found on both occasions was for his personal use and that he would never sell drugs.

8. In her sentencing remarks, the judge said that both the March and the April offences undoubtedly fell into category 3 "significant role", for which the sentencing guideline indicated a starting point of twelve months' custody and a range from six months to three years. She identified as aggravating features the previous convictions and the offending after being released under investigation in March. She referred to "a pattern of criminal behaviour which has

continued over many years". She took into account the pre-sentence report and the matters put forward in mitigation, but concluded that an immediate custodial sentence was necessary. For the March offence, she took a sentence after trial of twelve months, gave credit of about 25 per cent for the guilty plea, and so imposed a sentence of nine months' custody. For the April offence, she took a sentence after trial of eighteen months, allowed about ten per cent credit for the guilty plea, and imposed a consecutive sentence of sixteen months. A further consecutive sentence of one month was imposed for the bail offence. These custodial sentences were wrongly referred to as sentences of imprisonment, when, by reason of the appellant's age, they should have been sentences of detention in a young offender institution.

9. Mr Kearney, who appears for the appellant in this court as he did below, puts forward three written grounds of appeal, two of which he has amplified in his oral submissions. His first written ground of appeal was that consecutive sentences should not have been imposed for offences of a like nature committed over a short period of time. Mr Kearney has not sought to develop this ground. He has concentrated instead on his second and principal ground, which is that the judge failed to give due consideration to the principle of totality. Thirdly, Mr Kearney submits that the total sentence of 26 months' custody for the three separate offences was manifestly excessive, taking into account the appellant's age and the steps he has taken to distance himself from the influences which had contributed to his offending.

10. In our judgment, there was no error principle in imposing consecutive sentences for the cannabis offences, and Mr Kearney was wise not to pursue that ground of appeal. Although similar, they were distinct offences committed some weeks apart. The second offence was aggravated by the fact that the appellant had been arrested and was under investigation for the first. In any event, even if concurrent sentences had been imposed, at least one of them would have had to reflect the overall seriousness of the offending as a whole.

11. Thus, our focus at this stage must be on the totality of the sentencing, not its precise structure. It is unfortunate that the judge did not specifically refer to totality in her brief sentencing remarks. It is, however, clearly implicit in her indication that she could not pass a suspended sentence that she had considered totality. The real issue in the appeal, in our view, is whether the total term was manifestly excessive in length in all the circumstances of the case.

12. We have concluded that it was not. We commend the appellant for the efforts he has recently made to put his offending behind him and to better his life. We have to look, however, at the situation with which the sentencing judge had to deal. Young though he was, the appellant had shown a complete disregard of the law in relation to the supply and possession of cannabis. He had already acquired significant previous convictions before he committed the March offence, and, wholly undeterred by his arrest for that offence, he went on to commit the April offence. It was an aggravating feature of both offences that he was in possession not only of the stock of drugs which he intended to supply and of the evidence of his involvement in supplying drugs, but also of a deadly weapon.

13. The personal mitigation which was contained in the pre-sentence report and advanced in the submissions on his behalf was undermined by his continuing untruthful claims that, despite his guilty pleas, he did not intend to supply cannabis to anyone else.

14. In those circumstances, whilst it can be said that the total sentence was high in the range properly open to the judge, we are unable to say that it was manifestly excessive.

15. Accordingly, grateful though we are to Mr Kearney for his helpful submissions, this appeal fails and is dismissed.

16. The custodial sentences pronounced by the judge, and recorded by the Crown Court, were unlawful. But we can, and do, deal with that plain error by directing that the court record be corrected to show that each of the custodial sentences was one of detention in a young offender institution.
