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IN THE COURT OF APPEAL
CRIMINAL DIVISION

Case No: 2021/02517/A4
NCN [2021] EWCA Crim 1476



Royal Courts of Justice
The Strand
London
WC2A 2LL

Friday 8th October 2021

MR JUSTICE HOLGATE

and

THE RECORDER OF SOUTHWARK
(Her Honour Judge Karu)
(Sitting as a Judge of the Court of Appeal Criminal Division)

REGINA

- v -

GEORGE MATA

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Miss Manisha Knights (MK Law) appeared on behalf of the Appellant

JUDGMENT

Friday 8th October 2021

MR JUSTICE HOLGATE:

1. On 24th May 2021, in the Crown Court at Croydon, the appellant pleaded guilty to one offence of possession of cocaine with intent to supply, contrary to section 5(3) of the Misuse of Drugs Act 1971 (count 1), and one offence of Acquiring criminal property, contrary to section 329 of the proceeds of Crime Act 2002 (count 2). There was no basis of plea. On 12th July 2021 he was sentenced by His Honour Judge Flahive to a total of 2 years 9 months' imprisonment, comprising 2 years 9 months on count 1 and 6 months concurrent on count 2. The appellant appeals against sentence with the leave of the single judge limited to a single ground. The matter listed before the court today includes a renewed application for leave in relation to the other grounds of appeal for which the single judge had refused the appellant leave.

2. In the early hours of 27th January 2021 police officers stopped a car they had seen make a U-turn. The appellant was the driver. Officers saw that he was looking down at a phone between his legs. He was searched and found to be in possession of £410 in cash. He also had two phones. When the vehicle was searched officers found a Pringles can with a false bottom, inside which were six wraps of a white substance. The appellant gave the officers the PIN for the phones and he directed them to his home address. The appellant's address was searched and 153 wraps of cocaine, amounting to 76.8 grams, were found in a shoebox. Four Pringle cans were also found, along with £1,690 in cash.

3. In interview the appellant said that he had become involved in drug dealing because he had lost his job and had no money. A friend had given him the name of someone who sold drugs and he approached that person. He was paid £800 a week, but when he tried to get out of the enterprise he said that he had felt threatened and was scared for himself and his friend.

4. We note that in opening the case counsel for the prosecution said:

"[The appellant] could expect and did receive a significant financial advantage, given the amounts that he said that he was earning, £800 per week, and bear in mind the amount of drugs that were at his address and, indeed, the amount of cash that he had at his address, so not a case of somebody simply being given the day's rations to go and deal as a runner, in effect, a man going to have any remaining and takings at the end of each day. This is somebody who is playing a significant role in a relatively well-oiled supply of Class A drugs."

5. The appellant was aged 28 at sentence. He was of previous good character. In the pre-sentence report the appellant said that he regretted his actions and that he was ashamed. At the time of the offending the appellant had been studying at Bedfordshire University. Before that he had worked in the UK for 4 years. His partner had returned to Romania. He also intended to return to his home there. There did not appear to be any issues regarding drug misuse or alcohol consumption. The risk of reconviction was assessed as low and there were no factors to indicate a risk of serious harm.

6. In his sentencing remarks the judge said that he would give the appellant full credit for his guilty plea and for his full admissions in police interview. Due to being short of money the appellant had resorted to supplying Class A drugs. The court could not overlook the fact that the appellant had approached someone in order to make some money by selling drugs. He was an intelligent man and knew the terrible effects that such drugs have on addicts and those close to them. There had to be an immediate prison sentence. For a period of time the appellant was

actively engaged in selling drugs. However, he had tried to get out of it. The judge concluded that he was fairly and squarely in the category of being a street dealer but was at the bottom of the "significant role" category.

7. The judge said that after trial the sentence for a person of good character would have been 4½ years' custody. The judge then stated:

"I am discounting that and I come to a sentence of two years' imprisonment. I am going to reduce that slightly further still, because of the conditions of serving a sentence of imprisonment that is not in your own country and, indeed, when you are subject to lockdown in the prison itself, with the conditions which you are having to endure at the moment. It strikes me the appropriate sentence for me to pass upon you in relation to possession with intent to supply, will be a sentence of two years and nine months imprisonment."

The judge went on to impose a concurrent term on count 2 of 6 months' imprisonment, concurrent. Plainly the judge did not explicitly deal in his chain of reasoning with credit for the guilty plea, to which he had previously referred.

8. In the application to renew the grounds of appeal which were refused by the single judge, Miss Knights had intended to submit on behalf of the appellant, first, that the judge erred in placing the matter squarely within the "significant role" of the sentencing guidelines. It was said that there were features present of a "lesser role", in particular the background of pressure, in addition to which the appellant had co-operated fully with the police. Secondly, it would have been said that the judge should have given a larger discount for personal mitigation of the appellant's previous good character, and the effects of imprisonment caused by the current Covid-19 pandemic: see *R v Manning* [2020] EWCA Crim 592; [2020] 4 WLR 77.

9. The single judge rejected those submissions in the following terms:

"The judge was entitled to see the applicant as falling 'fairly and squarely' in the category of being a street dealer, playing a significant role in the supply of category A drugs to others. It is also apparent that express regard was had to the applicant's personal mitigation and to the on-going impact of the coronavirus pandemic on those in custody. No arguable grounds of appeal arise in these respects."

10. If the renewed application had been pursued, we would have undoubtedly agreed with the conclusions of the single judge. However, somewhat to the court's surprise, we were told by Miss Knights this morning, for the first time, that the renewed application for leave to appeal in respect of those matters was being abandoned. No good reason was given for that late decision. The court might have considered making a loss of time order, but because of the further issue for which leave to appeal has been granted and which requires a correction to be made to the sentence passed by the judge, we will not do so.

11. This case has taken a most unfortunate course.

12. The transcript states that the judge arrived at a sentence of 2 years' imprisonment, before making a further *reduction* to 2 years 9 months' imprisonment. If this is an accurate transcription of what was said by the judge, plainly it could not have made any sense to the parties present in court when sentenced was pronounced.

13. Yesterday Miss Knights sent an email to the court to say that her note at the time states that the judge referred to a sentence of 3½ years' imprisonment, rather than 2 years. If that is right, then it would follow that the judge then went on to reduce that term by 9 months for the effect of the conditions in prison to 2 years 9 months. Even so, the sentence passed could still not have made any sense to those present, because the judge did not then go on to reduce that figure by the full credit for the guilty plea, to which the appellant was entitled.

14. This morning, however, Miss Knights made a different submission, namely that the error in the transcript had been to state that the judge had referred to a starting point of 4½ years' imprisonment, rather than 3½ years. She now says that her note related to that figure of 4½ years, and not the 2 years in the transcript which her email to this court yesterday had sought to correct.

15. We are bound to observe that, on any view, it is most surprising that neither the prosecution nor the defence raised these matters with the judge immediately after sentence was passed and before the court moved on to another case. The matter was so obvious that it is difficult to understand how it could have escaped anyone's attention, even allowing for the difficulties of working with CVP, which we fully appreciate. Perhaps because it was a remote hearing it was not easy for the matter to be raised under the slip rule later that day, but it was identified before the grounds of appeal were drafted in April and should have been raised with the judge then.

16. For our part, we do not accept the submission that merely because other matters were to be raised in the grounds of appeal, no steps needed to be taken to draw the judge's attention to the apparent error regarding credit for the guilty plea. If it had been raised with the judge, any appeal could have focused on the other issues which the appellant wished to raise before this court, and without there being any uncertainty as to what the judge's reasoning had been. Furthermore, as matters have turned out today, if the judge had corrected his sentence so as to deal with credit for the guilty plea, there would have been no need for the resources of this court, both officials and judicial, to be taken up in dealing with this appeal.

17. On the supposition that the transcript of the sentencing remarks is accurate in referring to a starting point of 4½ years' imprisonment for a person of good character, we should mention that for a "significant role" in a category 3 supply of Class A drugs, the starting point is 4½ years, within a category range of 3½ years to 7 years, but that starting point applies to "all offenders in all cases". Thereafter, good character is a mitigating factor, and relevant previous convictions are an aggravating factor which will cause the starting point selected to be reduced or increased respectively.

18. Miss Knights did accept, rightly in our judgment, that given the abandonment of the renewed application to raise the grounds of appeal rejected by the single judge, the sentence of 3½ years referred to in her note should be treated by the court as including an allowance for good character, prison conditions and any other mitigation appropriate for the appellant, including the role he played in the drug offences. She accepted that it follows that the only adjustment which this court now needs to make is to allow full credit for the guilty plea. The effect of doing so is that the sentence should be reduced from 2 years 9 months' to 2 years 4 months' imprisonment.

19. Before leaving this case, we should say that the appellant can consider himself fortunate. There were aspects of this case, including the drugs that were found in his flat and the way in which the prosecution opened the matter, as we have previously mentioned in this judgment, which could arguably have led to the imposition of a slightly higher sentence.

20. Nonetheless, the outcome is that the sentence of 2 years 9 months' imprisonment on count 1 is quashed and we substitute a sentence of 2 years 4 months' imprisonment.

22. Accordingly, and to that extent only, this appeal is allowed.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

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