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IN THE COURT OF APPEAL
CRIMINAL DIVISION



CASE NO 202200241/A3
[2022] EWCA Crim 769

Royal Courts of Justice
Strand
London
WC2A 2LL

Thursday 5 May 2022

Before:

VICE-PRESIDENT OF THE COURT OF APPEAL (CRIMINAL DIVISION)
(LORD JUSTICE FULFORD)

MR JUSTICE JAY

RECORDER OF WESTMINSTER
(HER HONOUR JUDGE DEBORAH TAYLOR)
(Sitting as a Judge of the CACD)

REGINA
V
JORDAN DAVID NICHOLSON

Computer Aided Transcript of Epiq Europe Ltd,
Lower Ground, 18-22 Furnival Street, London EC4A 1JS
Tel No: 020 7404 1400; Email: rcj@epiqglobal.co.uk (Official Shorthand Writers to the Court)

MR G STABLES appeared on behalf of the Appellant.

J U D G M E N T

MR JUSTICE JAY: On 23 December 2021 before Mr Recorder Makepeace sitting at Great Grimsby Crown Court, following his guilty pleas and a Newton hearing, Mr Jordan Nicholson (the appellant) was sentenced to a total term of imprisonment of 6 years 6 months. The sentence was composed as follows. Count 1, offering to supply a Class A drug (cocaine), contrary to section 4(3)(a) of the Misuse of Drugs Act 1971, 6 years' imprisonment; count 2, possessing a Class A drug (cocaine) with intent to supply, contrary to section 5(3) of the Misuse of Drugs Act 1971, 6 years' imprisonment concurrent; count 5, possession of an offensive weapon (a knuckleduster), contrary to section 1 of the Prevention of Crime Act 1953, 1 year's imprisonment concurrent; count 6, possession of offensive weapons (four knives), contrary to section 1 of the Prevention of Crime Act 1953, 6 months' imprisonment consecutive; count 8, possession of a prohibited weapon, a MACE spray contrary to section 5(1)(b) of the Firearms Act 1968, 1 year's imprisonment concurrent. Standard ancillary orders were made which are not the subject of appeal. The appellant appeals against sentence with the leave of the single judge.

The facts were that on 17 April 2021 at around 12.50 am police officers in a marked police vehicle stopped a grey Fiat as a result of information passed over the radio. The appellant was the driver and the sole occupant of the vehicle. Having searched the vehicle officers found a jewellery bag containing snap bags containing white powder, a snap bag with white powder by the gear stick and a large amount of grip sealed bags with white substance in the passenger footwell. The powder was later identified as cocaine. There were 103 bags containing average weights of 506 milligrams of cocaine. Officers discovered a total of £2,534.43 in cash, stashed in various places around the vehicle. Officers also found four flick knives in the console, a can of MACE spray from the boot and a knuckleduster from the central console. A total of 47 grams of cocaine was found,

with an estimated street value of £4,120. Officers also found several mobile phones. One of the phones contained messages that were indicative of drug supply during the period between November 2020 and 17 April 2021.

The appellant was arrested and made no comment in interview.

The appellant's basis of plea rejected wholesale by the Recorder was that he was acting under the direction of a man who threatened him and that he did not benefit financially.

The appellant (now aged 52) was not a man of good character but his previous convictions were for unrelated matters. The Recorder had written evidence from three character witnesses and there was medical evidence that the appellant suffered from ischemic heart disease. The appellant lived with his partner and had five children, the youngest of whom was 10 years old. He was assessed as being at very low risk of reoffending.

For the sentencing hearing the Crown provided a helpful note that was not disputed. For the two drugs matters these were category 3 offences *significant role*. The starting point under the Guideline was 4½ years with a range of 3½ to 7 years. For count 5 (the knuckleduster) this was a category C2 case, with a range of low level to high level community order. For count 6 (the four knives) this was a category A2 case with a starting point of 6 months' imprisonment and a range of up to 1 year. Finally, for the possession of the MACE spray this was a category B2 case with a starting point of 1 year and a range of up to 2 years.

In his sentencing remarks the Recorder observed that in relation to the drugs offences there was a pattern of offending over a protracted period of time. This fell to be balanced against the mitigation, including the absence of similar offending, the appellant's settled family life and the fact that at least half of the sentence would be served under the Covid regime. In the Recorder's view, with a view to totality, as he put it, these factors balanced out at 6 years' imprisonment.

The sentences for the offensive weapons would have been in the region of 3 years' imprisonment on a standalone basis but the Recorder said that he took into account totality, by effect adding a further 6 months to the overall sentence by imposing a consecutive sentence for the knives.

The Recorder's credit for the guilty pleas notwithstanding the appellant's lies at the Newton hearing was 6 months, that is to say approximately 7%.

There are eight grounds of appeal as follows.

1. There was insufficient reason for the Recorder to increase the starting point from 4½ to 6 years on counts 1 and 2.
2. There was insufficient reason for the Recorder to go outside the sentencing range of 1 year's imprisonment on count 5.
3. There was no evidence or basis for elevating harm from category 3 to 2 on count 8.
4. A sentence of 7 years before credit for plea was manifestly excessive.
5. Insufficient credit was given for the guilty pleas.
6. No reduction was made to reflect the effects of the pandemic on the appellant. (Mr Stables withdrew this ground at the start of the hearing although submitted that the knock-on consequence must be that the Recorder's adjusted starting point was even higher and wrongly so).
7. The Recorder wrongly imposed a sentence of six-and-a-half years' imprisonment instead of a sentence of around 4½ years' imprisonment and
8. The sentence was manifestly excessive in all the circumstances.

Plainly there is a degree of overlap between some of these grounds.

In his brief but effective oral argument, Mr Stables' headline submission was that there were no aggravating features in this case to take it effectively to the top of the sentencing range for

category 3 *significant role* drugs matters. The Recorder, it is submitted, should have started at approximately 4½ years and then reduced the sentence further for the available mitigation.

In our judgment, it was a reasonable approach to treat the offences involving offensive or prohibited weapons as part and parcel of the appellant's overall drug offending. Drug dealing is an inherently dangerous activity and weapons are often involved.

The Recorder's overarching approach in treating the offensive weapons as in effect aggravating factors in relation to counts 1 and 2 was not wrong in principle. In the main, he imposed concurrent sentences for these matters. It is true that some of the concurrent sentences were too high, but in practical terms, as is accepted, that makes no difference to the outcome. Where we think the Recorder erred was in imposing a consecutive sentence on count 6 for the four knives. There was no reason for taking this hybrid approach and in doing so regard was not properly had to totality.

The two drugs offences differed in as much as count 1 related to supply over the period 12 November 2020 to 17 April 2021, whereas count 2 related to what police found on this last date. Viewed in isolation from the offensive weapons these two offences warranted concurrent sentences slightly above the starting point of four-and-a-half years subject to the personal mitigation.

A series of concurrent sentences ought to have been imposed for the other matters. These sentences would, as we have said, have served to aggravate the sentences imposed on the first two counts. Viewing this case in the round and having regard to totality the overall sentence on the drugs matters before credit for plea should have been 6 years' imprisonment. We reduce that by 9 months to reflect the appellant's pleas and the impact of Covid, notwithstanding the unrealistic stance that the appellant took at the Newton

hearing.

It follows that we allow this appeal to the following extent. On count 1, we quash the sentence of 6 years' imprisonment and substitute for it a sentence of 5 years 3 months' imprisonment. On count 2, we do likewise. We do not alter the sentences on the remaining counts save that for count 6 the sentence is 6 months' imprisonment concurrent not consecutive. The total term of imprisonment is now 5 years 3 months.

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Lower Ground, 18-22 Furnival Street, London EC4A 1JS

Tel No: 020 7404 1400

Email: rcj@epiqglobal.co.uk