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Neutral Citation No. [2023] EWCA Crim 47

IN THE COURT OF APPEAL
CRIMINAL DIVISION



CASE NO 202202302/A1

Royal Courts of Justice
Strand
London
WC2A 2LL

Tuesday 17 January 2023

Before:

LORD JUSTICE DINGEMANS

MRS JUSTICE MAY DBE

HIS HONOUR JUDGE CONRAD KC

(Sitting as a Judge of the CACD)

REX

V

DANIEL LEE SIVYOUR

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MR V MISRA appeared on behalf of the Appellant.

J U D G M E N T

LORD JUSTICE DINGEMANS:

Introduction and grounds of appeal

1. This is an appeal with the leave of the single judge. The appellant is a 44-year-old man and he pleaded guilty at various dates in the Crown Court at Southampton between 28 May 2021 and 11 April 2022 to supplying Class A drugs, conspiracy to evade the prohibition on the importation of Class B drugs, supplying Class B drugs and producing a Class B drug. He was sentenced on 22 June 2022 to a total of 6 years 6 months' imprisonment, being 4 years for supplying Class A drugs, 2 years 6 months consecutive for supplying Class B drugs, 3 years' imprisonment concurrent for conspiracy to evade the importation of Class B drugs and 12 months concurrent for producing a Class B drug.
2. The grounds of appeal are first, that the sentence imposed was wrong in principle and excessive in that it did not properly reflect totality. The offences committed by the appellant arose from the same facts and same set of incidents, and in accordance with the Definitive Guideline on Totality the appellant should have been sentenced to concurrent terms on all but the main count. Secondly, that there was a disparity with the total sentence of 6 years 8 months imposed on the co-accused, Mr Woods, so that right-thinking members of the public would think the appellant would have a legitimate sense of grievance arising from the more lenient sentence imposed upon Mr Woods. Whilst the appellant may have been an independent drug dealer he was not operating on the scale of Mr Woods and was not said to be dealing the range or quantity of drugs that Mr Woods was.

Sentences on co-defendants

3. Given the grounds of appeal it is relevant to record that Stanley Woods (then an 18-year-old man) pleaded guilty to count 1, conspiracy to supply Class B drugs; count 2

conspiracy to evade the prohibition on the importation of Class B drugs and count 3, supplying Class A drugs. He also pleaded guilty to count 4, being concerned in supplying a controlled drug of Class A to another and was sentenced in total to 6 years 8 months' imprisonment. He had, as already indicated, pleaded guilty at the first available opportunity.

4. There were other co-defendants but it is not necessary to set out the details of their sentences.

The factual circumstances

5. The lead defendant Stanley Woods was a dealer supplying other dealers in the South of England with different strains of cannabis as well as other controlled drugs. He stored his drugs in different houses around Southampton and he sourced cannabis both domestically and from direct importations from Canada, France, Spain, Switzerland and the United States. He arranged for the kilogram packages to be delivered by post to some of his network.
6. A schedule of importations, which gave only an incomplete picture of the cannabis imported, showed that a minimum of approximately 262 kilograms of cannabis was imported by Mr Woods, albeit this included 58 kilograms stopped by the Border Force. Mr Woods also purchased cocaine in quarter kilogram amounts at a time. He regularly advertised 'Raw' as being another wholesale product that the drug dealers who he was supplying might wish to purchase. It was estimated that he sold at least 1 kilogram of cocaine.
7. The appellant was a cannabis dealer and purchased multiple amounts from both Mr Woods and previously a co-accused, Stacey Burton. His contact with Mr Burton commenced in May 2019. There were text messages that the appellant then supplied to

other dealers. On 8 April 2020 he was stopped by police in a car in which he was a passenger and 600 grams of cannabis was found in a bag behind the seat. The evidence suggested that he purchased between half and 1 kilogram of cannabis per week which (taking an average of those two figures over a 52-week period) equated to some 39 kilograms.

8. The appellant had two addresses, one in Newport on the Isle of Wight and the other in Southampton. The importation schedule indicated that Mr Woods had arranged for nine parcels containing at least 20.5 kilograms of cannabis to be delivered to those addresses. The appellant was paid by way of having £100 deducted from his bill with Mr Woods for the cannabis supplied to him.
9. The appellant also purchased cocaine from Mr Woods during a 36-week period. On most occasions, which were once a week or so, he would purchase 28 grams (1 ounce) and on one occasion he purchased 250 grams. It was estimated that in total he purchased 750 grams with a street value of between £60,000 and £75,000. The evidence suggested that the appellant was sourcing the cocaine for others who were running drug lines in both Basingstoke and the Isle of Wight given the relatively slim margin between wholesale price and the price on which was estimated that he would have made a profit of £7,500. It was also in evidence that the appellant owed at least £28,000 to another drug dealer who was listed in his phone contacts. When the appellant moved to the Isle of Wight he made an agreement with that individual that his Southampton property could be used to cultivate cannabis. There was a person at the property responsible for tending the crop who fled when the police attended and discovered the growing operation. The plants recovered were at three different stages of growth indicating that this was a reasonably long-term operation. None of the plants were larger than medium size, suggesting this

may have been the first crop produced at the property. The different sizes indicated that it was intended to be a rolling crop, creating a continuous supply of cannabis that could be harvested.

10. The appellant admitted in interview that he had cultivated cannabis and supplied cannabis and cocaine.

Sentencing remarks

11. The appellant was aged 43 at sentence. He had 12 convictions for 18 offences spanning between 1997 and 2014 but the relevant convictions were for simple possession of controlled drugs. He had a caution from 2002 for being concerned in production of cannabis.
12. The pre-sentence report, when it was produced, mirrored the appellant's explanation for offending which was in line with the basis of plea which was subsequently withdrawn. It was noted that the appellant had shown no remorse for his use of cannabis and stated the belief that it should be legalised but he accepted that cocaine ruined lives.
13. The appellant had lost a leg in a car accident when he was aged 14. He had reported using cannabis regularly since the age of 14. His use of cocaine was said to have spiraled out of control following the accident and he reported that he no longer used cocaine. He struggled with depression and post-traumatic stress disorder and was a Type 2 diabetic.
14. The judge recorded that this was a large scale, organised operation centred on the importation and supply of skunk cannabis and also featured the supply of cocaine and the judge identified that Mr Woods was the leading person in the operation and the operation was characterised by Mr Woods enlisting those he knew both younger or older than him and their relatives and associates to act as cogs in his organisation. The judge said he was

well placed to assess the criminality of each defendant having presided over the trial.

The judge stated that each defendant had to be sentenced according to their own criminality. The appellant was the oldest of the defendants.

The sentences

15. The judge said that the appellant's original basis of plea was quite clearly nonsense but had been abandoned on the date of sentencing. His pleas on counts 2 and 3 were entered on the day of trial and merited a 10 per cent discount. Count 10 attracted a 15 per cent discount and count 5 (the least serious of the offences) a 25 per cent discount. The judge said there were no real aggravating features because the low level criminal history would be ignored. The judge noted mitigating features which were a long involvement with drugs but no previous supply offences, the loss of the appellant's leg and his diabetes. Account was taken of the conditions that existed in custody and the heightened effect that would have on the appellant. The judge said he would give effect to totality. The sentences would not simply be added up. From the starting points within the appropriate categories and the roles that had been identified the way to achieve totality was by reducing the sentence for being concerned in the supply of cannabis from that which would otherwise have been imposed, and then make it consecutive to the other counts to pass the shortest sentence possible.

Disposal of the appeal

16. We deal first with the standalone ground of appeal, namely that the judge failed to have proper regard to totality. The Sentencing Council Definitive Guideline on Totality provides that all courts, when sentencing for more than a single offence, should pass a total sentence which reflects all the offending behaviour before it and is just and proportionate. That is so whether the sentences are structured as concurrent or

consecutive. We note that the categorisation of these offences was common ground before the judge. Each separate offence had a starting point of 4 or 4½ years and ranges from 2 years 6 months or 3 years 6 months to 5 or 7 years. An overall sentence of 6 years 6 months in circumstances where there were very late pleas to some of the offences does not appear disproportionate. We record that different judges might have structured the sentences in different manners but there is no basis for us interfering for that reason. It is right to record that the judge did not set out his reasoning in relation to the sentencing in accordance with the relevant steps in the Guidelines for each offence. Having attempted to reconstruct what the judge must have done, we are sure that this sentence is not disproportionate and may, if anything, have been merciful to Mr Sivyour. In that respect it is only fair to note that custody will be difficult for Mr Sivyour because of his disabilities.

17. That leaves the issue of the sentence imposed on Mr Woods and the claimed disparity.

The issue is whether right-thinking members of the public would think that the appellant would have a legitimate sense of grievance arising from the more lenient sentence imposed upon Mr Woods considering his criminality. It is right to note that Mr Woods was guilty of the greatest criminality but it is also fair to note that the appellant's operations were separate and Mr Woods was very young (aged 17 and 18 at material times) and pleaded guilty at a very early stage of the proceedings. The appellant by contrast continued until the last opportunity with some not guilty pleas and a basis of plea which before it was withdrawn was described as "absurd" by the judge. We can see no basis on which right-minded thinking members of the public would consider that the appellant would have a legitimate sense of grievance because of the respective sentences that were imposed.

18. For all these reasons the appeal is dismissed. We are very grateful to Mr Misra for his helpful written and oral submissions.

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

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