IN THE COURT OF APPEAL
CRIMINAL DIVISION
[2023] EWCA Crim 719

No. 202300723 A2

Royal Courts of Justice

Friday, 19 May 2023

Before:

LORD JUSTICE WARBY
MRS JUSTICE GARNHAM
HIS HONOUR JUDGE FLEWITT KC
(Sitting as a Judge of the High Court)

R E X
V
JOANNE YEATES

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MR M SAFFMAN (instructed by Taylor Rose MW) appeared on behalf of the Appellant.

THE CROWN did not appear and were not represented.

J U D G M E N T

LORD JUSTICE WARBY:

1 This is an appeal against the imposition of the statutory minimum sentence for a third Class A drug-trafficking conviction. The appellant is Joanne Yeates, aged 49.

The facts

2 On the afternoon of 6 January 2022 the appellant was observed by plain-clothes police officers sitting in the driving seat of her Ford car in a car park in an area of Crewe that is notorious for Class A drugs. A woman in a nearby alleyway used her mobile phone and then approached the rear passenger window of the car from which she appeared to the officers to be dealt drugs. The police allowed the appellant to drive the vehicle out of the car park, whereupon they stopped it, detained its occupants, and searched the car and the arrested individuals.

3 The appellant was one of four people in the car. In the front passenger seat was her boyfriend. In the back were two others, Adnan Sattar, who was then aged nearly 19, and Andres Pohlotka, still a few days short of his 17th birthday. Pohlotka was in possession of a package containing 33 separate deals of crack cocaine, with a street value of up to £480, and 46 deals of heroin, with a value of up to £460. It was the Crown's case that he was holding these for Sattar, whose DNA was found on some of the wraps. Sattar himself had £195 in cash. A Nokia telephone found on the rear seat was attributed to him. There was another telephone found on the front dashboard which belonged to the appellant.

4 Data downloaded from those telephones found evidence to link those in the car to drugs supply. On Sattar's phone, there were Flare messages from March and May 2019 advertising drugs for sale. There were also messages passing between that phone and the appellant's telephone on the day before the arrests, in which the appellant indicated that she would be available to drive Sattar and he provided her with the postcode of an address where he was living in Stoke, from which she was to collect him.

5 In interview, the appellant said that she had agreed to drive Sattar from Stoke to Crewe on 6 January in return for £100, but she denied knowing that he was dealing drugs, saying that she was shocked when she learned of this from the police. But that account was not sustained and, on 7 March 2022, at the adjourned plea and trial preparation hearing, she pleaded guilty to two counts of being concerned in supplying Class A drugs to another, one count relating to the heroin and the other to the cocaine. Her plea was on the basis that she had bought cocaine from one of the co-accused, she could not say which, and was then recruited by text to drive the car for which she would be paid £100 and that was her only role. She had had no prior dealings with the others.

The sentencing process

6 The appellant had 15 previous convictions for 32 offences between 6 July 1989 and 17 June 2019. Among them were three convictions for possession of Class A drugs in 1997, 1999 and 2000, two for permitting premises to be used for supplying Class A drugs in 1997 and 1999, one of being concerned in the supply of a Class A drug, that was in 2002, three of attempting to supply Class A drugs in 2006 and one of drug driving in 2019. For

the 2002 offending, the appellant had been sentenced to 45 months' imprisonment. For the further offending of 2006, she received a sentence of 54 months.

7 Those two convictions and the one of 2022 satisfied the criteria in section 313 of the Sentencing Act 2020. The court was, therefore, obliged to impose an appropriate custodial sentence of seven years, unless the sentencing judge was of the opinion that there were "particular circumstances" which related to the offence or to the offender that would make it unjust to do so in all the circumstances. If the judge was not of that opinion, the maximum reduction for the guilty plea was 20 per cent (see section 73(3)(a) of the 2020 Act).

8 On 15 February 2023 Mr Saffman, on behalf of the appellant, urged the sentencing judge, HHJ Thompson, to conclude that the circumstances here were such that it would be unjust to impose the minimum sentence provisions. Four points were advanced. One, other than the drug-driving conviction, the appellant has been offence free for 17 years; two, after a decade of abstinence she had relapsed due only to the death of her mother in 2021; three, her ability to turn around her life was evidenced by the fact that she was in full-time employment as a warehouse worker at the date of sentence; and, four, she also cared for her partner, who had a number of mental health difficulties.

9 A pre-sentence report provided some support for some of these points. It did point out that the appellant's claims of abstinence and an isolated relapse in 2021 were as a result of a specific cause were somewhat undermined by her 2019 conviction for drug driving and it did identify a pattern of offending behaviour. But it endorsed the point that the appellant had no convictions or cautions for some ten years from the date of her release from custody in June 2008 until her appearance in court for the drug-driving incident in June 2019.

10 The Judge concluded, however, that it was not unjust to impose the minimum term. He and imposed on each count concurrent the statutory maximum of seven years, less the maximum permissible reduction for the guilty plea. The resulting sentence was one of 2,045 days, the equivalent to approximately five years and eight months.

11 Explaining his decision, the Judge referred to the appellant's previous convictions, noting that each of the two previous qualifying offences had attracted a significant sentence. He took into account that the appellant had been offence free for what he called a significant period of time and said that he took account of all the other mitigation relied on. He went on, however, to say that he had to bear in mind that the minimum sentence "should not be watered down by liberal application of unjust circumstances or by reference to totality". The appellant, he said, had played an important role in the supply of these drugs, knowing what she was doing and knowing the risks that she was taking. She was well aware from her own experience of the misery caused by Class A drugs. Those who involve themselves persistently in dealing Class A drugs must, he said, expect the law to apply.

The appeal

12 The grounds of appeal for which the single Judge gave leave are that, in determining whether the minimum sentence was unjust, the Judge erred by failing to attach sufficient weight to the appellant's personal circumstances, the antiquity of the qualifying offences or the circumstances of this offence. As a result, it is said, the sentence was manifestly excessive.

13 In support of those grounds, Mr Saffman has drawn our attention to four decisions of the court in which the minimum term provisions were considered and the court concluded that their application would be unjust. These are *Stonehouse* [2002] CrAppR. *Turner* [2005] EWCA (Crim.) 2363, *McDonagh* [2005] EWCA (Crim.) 2742 and *Timperley* [2012] EWCA (Crim.) 1782. Mr Saffman submits that there are some helpful analogies to be drawn between those cases and the present, in particular as to the treatment of qualifying convictions that date back several years and the importance of supporting offenders' efforts to remain drug free.

14 He also points to the disparity between the sentence imposed here and that which the guidelines would otherwise indicate. The prosecution identified this as a Category 3 lesser-role case with a starting point of three years and a range of up to four and a half years.

Discussion

15 It is often rightly said that decisions in this area are highly fact sensitive. Previous decisions on different facts are not treated as if they were authorities and this court will be slow to interfere with a properly reasoned judicial assessment of the particular circumstances of a case and their bearing on the justice or otherwise of applying the minimum term provisions.

16 The authorities do, however, identify a certain number of relevant principles. These were drawn together by this court in the case of *Woofe* [2019] EWCA (Crim.) 2249, [2020] 2 Cr. App. R. (S,) 6.

17 One of those principles was mentioned by the Judge: sentencing courts should beware of circumventing the intention of Parliament by an unduly liberal approach to the statutory exception. The deterrent intention that underlies the "three-strikes" provision, as it is called, must be borne in mind. But *Woofe* identifies three other principles of particular relevance to this case.

18 The first is that the correct approach for the sentencing Judge is to begin by applying the relevant sentencing guideline and then to determine whether the sentence thereby arrived at complies with the minimum sentence provisions. Only if it does not would it be necessary to consider those provisions.

19 The second relevant principle is that one way of testing whether or not the application of the minimum sentence provisions would be unjust, in the particular circumstances of a given case, is to ask if that sentence would be markedly more severe than the one that

would otherwise have been imposed applying the relevant Sentencing Council guideline. Put another way, the sentence indicated by the guideline is an element of the context in which the justice or otherwise of imposing the higher statutory minimum has to be assessed.

20 The Judge did not apply either of those principles in this case. He made no assessment of the appropriate sentence according to the guidelines. It follows that he made no comparison between that sentence and the statutory minimum. We have, therefore, undertaken that process ourselves.

21 As the prosecution conceded at the sentencing hearing, this appellant played a lesser role in the offending. The facts of this case do not call for any departure from the category starting point of three years, but there were two offences and the appellant's previous convictions, despite the relative antiquity of some of them, must represent a significantly aggravating factor. Allowing for the available mitigation, we would identify the appropriate sentence after a trial as one of some four years, applying the guideline. That would be reduced by 25 per cent for the guilty plea, resulting in a sentence of some three years.

22 It follows that a substantial period of custody was inevitable. But the disparity between the guideline sentence and the 2,045 days imposed under the minimum terms provisions is a substantial one. In our judgment, the latter is properly described as markedly more severe.

23 That brings us to the third relevant principle, which is the need to consider the length of time since the last qualifying offence. As pointed out in *Woofe*, the passage of time is not something that can of itself make the application of the minimum term unjust, but it may be a matter to be taken into account, as indeed it was in several of the cases mentioned Mr Saffman, and in *Woofe* itself. Although the judge was alive to this point, our review of the cases suggests that the offence-free period of over ten years that we see in the present case is at or beyond the top end of the range. The Judge may not have had this firmly in mind.

24 Two other factors strike us as significant. The first is the isolated nature of the offending in this case. It is tolerably clear that this appellant was using Class A drugs. She had on her own account been doing so for a period of many months since the death of her mother, if not before that. But possession and use are one thing, taking part in drugs supply to others is a different matter. There is nothing to contradict the appellant's account that this was a one-off episode involving people who she had not met before. The second significant factor is the appellant's personal circumstances, specifically her demonstrated ability to hold down a job. That is testament to an ability to rehabilitate and integrate into society, despite a long-term drug habit. Neither of those matters was specifically mentioned in the Judge's remarks.

25 For these reasons, we find that the sentencing Judge's approach was flawed. Undertaking the process for ourselves and bearing in mind all that was said in *Woofe,* we have formed

the opinion that this is one of those relatively rare cases in which the particular circumstances of the offender and the offending are such as to make it unjust to impose the minimum term.

26 We therefore quash the sentence of 2,045 days' imprisonment on each count and substitute, on each count, a sentence of three years' imprisonment concurrent. The other orders made below are unaffected.

CERTIFICATE

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the Judgment or part thereof.

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This transcript has been approved by the Judge