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IN THE COURT OF APPEAL

CRIMINAL DIVISION

ON APPEAL FROM THE CROWN COURT AT

NORTHAMPTON

HER HONOUR JUDGE CRANE T20227133/T20220127

CASE NO 202303286/A1 [2024] EWCA Crim 1295

Royal Courts of Justice
Strand
London
WC2A 2LL

Friday, 11 October 2024

Before:

LORD JUSTICE JEREMY BAKER
MRS JUSTICE FARBEY DBE
THE RECORDER OF WINCHESTER
HER HONOUR JUDGE ANGELA MORRIS
(Sitting as a Judge of the CACD)

REX
V
BRUNO LEPURI

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MR J HINGSTON appeared on behalf of the Appellant

J U D G M E N T

MRS JUSTICE FARBEY :

Introduction

1. The appellant appeals against sentence by leave of the single judge.
2. On 29 June 2022 in the Crown Court at Northampton before HHJ Crane, the appellant pleaded guilty to one count of possession with intent to supply a class A drug, (namely 250 grams of cocaine). We shall refer to this offence as “the possession offence.” On 5 September 2022, before the same Judge, the appellant pleaded guilty to count 1 on a second indictment by which he admitted his involvement in a conspiracy to supply cocaine. On 6 January 2023, before the same Judge, he pleaded guilty to count 7 on the second indictment by which he admitted his involvement in a second conspiracy to supply cocaine. We shall refer to the counts on the second indictment simply as counts 1 and 7.
3. On 24 August 2023, the Judge sentenced the appellant to 6 years' imprisonment for the possession offence; 7 years and 10 months on count 1; and 10 years and 10 months on count 7. All three sentences were ordered to run concurrently so that the total sentence was 10 years and 10 months. Counts 3 and 4 (which also related to conspiracies to supply class A drugs) were ordered to lie on the file. We need say no more about count 4 but will return to count 3 in due course.
4. The appellant was aged 23 at the date of sentence. A number of co-accused pleaded guilty to various counts on the second indictment but, in light of the narrow confines of the present appeal, it is not necessary for us to give details.

Facts

5. The appellant was part of an organised criminal group involved in the supply of drugs. The group supplied wholesale drugs in Milton Keynes and in Devon. The Milton Keynes conspiracy was the subject of count 1. In relation to Milton Keynes, the appellant was part of several meetings to arrange the handover of drugs in the autumn of 2021. In particular, he sent and received multiple calls and text messages on a drugs line on the day of a significant drugs transaction (9 November 2021). He was also observed attending the handover of drugs on that day. Soon afterwards, one of the co-accused was arrested and a block of 997 grams of cocaine was seized from him. The cocaine was contained in a camera bag which was found to have the appellant's fingerprints on it. Later that day, the appellant was passed a bag which contained a rectangular block containing a kilo of cocaine worth around £40,000.
6. The Devon conspiracy was the subject of count 7. In relation to that conspiracy, the appellant made 14 trips to Devon to transport cocaine. The possession offence related to the seizure of 250 grams of cocaine from the appellant in Devon on 10 March 2021. He was charged with this offence before the conspiracy charges were brought.

Sentence

7. The appellant was sentenced at the same time as a number of other conspirators. The Judge concluded that the quantity of drugs and the appellant's role in the Milton Keynes conspiracy made his offending under count 1 a category 2A offence under the relevant sentencing guideline with a starting point of 11 years' imprisonment and a category range of 9-13 years. In relation to count 7, the offence fell within category 1A with a starting point of 14 years and a category range of 12-16 years. The Judge did not indicate how she applied the guideline in relation to the possession offence but no point is taken before us about the sentence for that offence.
8. The Judge considered mitigating factors, including the appellant's age and the fact that he had no previous convictions. As she was sentencing the appellant for three offences, she took into consideration the principle of totality. She accepted that the appellant was entitled to 25% credit for his guilty pleas to the possession offence and to count 1. However, she found that he was entitled to only 10% credit for his guilty plea to count 7. The Judge observed that, although count 7 was added to the indictment on the second day of the trial, the appellant had not admitted any involvement in the Devon conspiracy or offered to plead guilty in relation to any part in a conspiracy in Devon before the start of the trial. The Judge did not state the notional sentences for the offences before discount for pleas but went on to pronounce the sentences after discount in the terms we have already described.

Ground of appeal

9. The sole ground of appeal before us today is that the judge failed to give sufficient credit for the appellant's guilty plea on count 7. On the appellant's behalf, Mr Joe Hingston does not submit that full credit should have been awarded. He submits, however, that count 7 was added to the indictment at a very late stage. He emphasises the practical difficulties that arose in taking instructions on a plea in the context of an ongoing multi-handed trial where, for example, facilities for interpretation had to be shared. Given these difficulties, he submits that the discount on count 7 should as a matter of fairness be the same as if the appellant had pleaded guilty at his first appearance in the Crown Court.

Discussion

10. We are grateful to Mr Hingston for clarifying the chronology. The appellant pleaded guilty to the possession offence on 29 June 2022. The possession offence related to Devon drugs. The appellant pleaded guilty to count 1 (the Milton Keynes conspiracy) on 5 September 2022. By that time, the Devon conspiracy had been charged as count 3 on the second indictment in relation to the appellant's co-accused but the appellant was not included.
11. On 14 December 2022, there was a mention hearing at which the Prosecution indicated that the appellant was to be added to count 3. An amended indictment showing the appellant as charged on count 3 was uploaded to the Digital Case System on 23 December 2022.
12. The trial on counts 3 and 4 started on 3 January 2023 – so the Prosecution was on any account very late in adding the appellant to count 3. On the first day of trial, the appellant objected to his inclusion on count 3 as an abuse of process on the basis that the conduct alleged in count 3 overlapped with the possession offence to which he had already pleaded

guilty. The Judge rejected that argument.

13. The appellant's lawyers thereafter negotiated with the Prosecution over the next few days. As a result, on 6 January 2023, the Prosecution added count 7 which represented a version of the Devon conspiracy albeit phrased in a slightly different way. The appellant pleaded guilty to count 7 on the same day, which the Judge described in her sentencing remarks as the second day of the trial.
14. The chronology demonstrates that the Devon conspiracy was not on the indictment against the appellant and was not properly subsumed within any other count against him before he was added to count 3 in December 2022. In these circumstances, it would have been unreasonable to expect the appellant to indicate a guilty plea to any form of Devon conspiracy before December 2022.
15. After he was added to count 3, it was open to the appellant to admit his involvement in a Devon conspiracy but he prevaricated until the Prosecution took the doubtless pragmatic step of adding count 7 which involved only a minor change to the framing of the conspiracy in count 3: the name of one of the co-conspirators was removed.
16. We have however reached the view that, in light of the Prosecution's unexplained delay in adding the appellant to any form of Devon conspiracy, the Judge was wrong in principle to reduce the discount for plea to only 10%. We quash the sentence on count 7. We substitute a sentence of 9 years and 7 months' imprisonment which includes a 20% discount for plea. All other elements of the sentence remain the same. To this extent, this appeal is allowed.