



Neutral Citation Number: [2024] EWCA Crim 1313
IN THE COURT OF APPEAL
CRIMINAL DIVISION

ON APPEAL FROM THE CROWN COURT AT LEWES
HHJ S.MOONEY T20230075

CASE NO: 2023 04079 A4

Royal Courts of Justice
Strand
London
WC2A 2LL

Wednesday 16 October 2024

Before:
LORD JUSTICE COULSON
MRS JUSTICE THORTON
HIS HONOUR JUDGE DREW KC

REX
v
MELIK YALCIN

Computer Aided Transcript of Epiq Europe Ltd,
Lower Ground, 46 Chancery Lane, London WC2A 1JE
Tel No: 020 7404 1400; Email: rcj@epiqglobal.co.uk (Official Shorthand Writers to the Court)

MR ANDREW TROLLOPE KC appeared on behalf of the Applicant

APPROVED JUDGMENT

MRS JUSTICE THORNTON:

1. This is a renewed application for permission to appeal against sentence, permission having been refused by the single judge on the papers.
2. Having pleaded guilty the Applicant was sentenced in relation to the following offences:
 - Count 1 - Possessing a Class A Drug with Intent to Supply (cocaine) contrary to section 5(3) of the Misuse of Drugs Act 1971, for which he was sentenced to 12 years' imprisonment.
 - Count 2 - Possessing a Class B Drug with Intent to Supply (cannabis) contrary to section 5(3) of the Misuse of Drugs Act 1971, for which he was sentenced to 5 years' imprisonment to be served concurrently.
 - Count 4 - Being Concerned in Supplying a Class A Drug to Another (cocaine) contrary to s.4(3)(b) of the Misuse of Drugs Act 1971, for which he was sentenced to 12 years to be served concurrently.
 - Count 5, Being Concerned in Supplying a Class B Drug to Another (cannabis) contrary to s.4(3)(b) of the Misuse of Drugs Act 1971, for which he was sentenced to 5 years to be served concurrently.

In total, the Applicant was sentenced to 12 years' imprisonment.

Factual Background

3. On 10 August 2021, police officers observed the Applicant engaging in what was presumed to be a drug deal. His car was searched and officers discovered 124 grams of cocaine at 82 per cent purity, 7 grams of cannabis, two iPhones and £255 in cash. His home address was searched where Officers found £6,095 in cash, 244 grams of cannabis valued at around £2,440, 32 grams of cocaine valued at around £3,000, and various drug paraphernalia.
4. During a search of his house two phones were found. Incriminating messages clearly indicated the Applicant's participation in the supply of cocaine and cannabis. They included messages to drug users about available drugs and messages up the chain in relation to the wholesale supply of the two drugs.

Sentencing Remarks

5. The sentencing judge took Count 4 - being concerned in the supply of a Class A drug - as the lead sentence. He sentenced the Applicant on the basis of a leading role in the supply of 8-9 kilograms of cocaine. The Applicant was organising the buying and selling on of the drugs on a commercial scale. He must have had close links to the original source, the judge found, and he did it for substantial financial or other advantage. The judge described the drugs operation as sophisticated.
6. The offending fell into category 1. The judge treated the supply of cannabis as an aggravating feature. The Applicant's previous drugs-related conviction for false imprisonment was a significant aggravating feature, as was the fact that the operation had extended over a period of time (a year). Mitigation was slight. The judge rejected the submission that the post traumatic stress disorder exhibited by the Applicant constituted mitigation on the basis it arose from his previous involvement with "vicious drug dealers".
7. The judge concluded that the starting point after trial, balancing the aggravating and mitigating features, would be one of 15 years in relation to both category A offences. The Applicant was entitled to 20 per cent credit for guilty plea, thereby reducing the sentence to 12 years. A concurrent sentence of 5 years was imposed for the cannabis offending.

Grounds of appeal

8. Two grounds of appeal are advanced that the sentence was manifestly excessive.
9. The first ground of appeal is that the judge did not reduce the sentence by the appropriate amount commensurate with the Applicant's plea of guilty, namely 25 per cent.
10. In this regard it is submitted before us that the case in relation to Counts 4 and 5 on the indictment was sent to the Crown Court on 1 December 2022. The Applicant could not be arraigned on 5 January 2020 as he had not yet given instructions "through no fault of his own", as a note on the DCS makes clear. His solicitor had indicated prior to the Plea and Trial Preparation Hearing (PTPH) that the case was unlikely to be contested. He was

arraigned and pleaded guilty on 10 February 2023. The Applicant had therefore entered his pleas as soon as he had had legal advice and at the PTPH. This is not a case where a plea was not entered at the first opportunity. It is submitted that there is no justification for any decrease from the maximum reduction of one-quarter; still less by as much as one-fifth of the quarter. A trial was not at any stage anticipated.

11. The second ground of appeal is that insufficient weight was given for the other mitigating factors advanced on his behalf; in particular the Applicant's diagnosed mental health conditions. In this regard it is submitted that in view of the Applicant's early pleas of guilty the other mitigating circumstances should have been given more weight, in particular the psychiatric report diagnosing PTPH and depression, as to which the relevant Sentencing Guideline on "Sentencing offenders with mental disorders" indicates that this may be relevant to the length of the sentence because it weighs more heavily on the individual as diagnosed. There are, in addition, character references and the favourable prison record.

Discussion

Credit for plea

12. When sentencing an offender who has pleaded guilty, section 73 of the Sentencing Code requires a court to take into account:

“(a) the stage in the proceedings for the offence of which the offender indicated the intention to plead guilty, and
(b) the circumstances in which the indication was given.”

13. The Sentencing Council Definitive Guideline on "Reduction in sentence for a guilty plea" sets out the principles the court should follow in reducing the punitive aspects of a sentence by reason of a guilty plea. After the first stage of the proceedings the maximum level of reduction is one-quarter. The reduction should be decreased from one-quarter to a maximum of one-tenth on the first day of trial having regard to the time when the guilty plea is first indicated to the court relative to the progress of the case and the trial date. The illustrative flowchart in the guideline demonstrates that if a defendant indicates a not guilty

plea or gives no indication at the Magistrates' Court but pleads guilty at his first appearance before the Crown Court, he will receive a one-quarter reduction. If his case is listed for trial in the Crown Court, he will receive a reduction on a sliding scale decreasing from one-quarter to one-tenth.

14. In R v Plaku [2021] EWCA Crim 568 the Court of Appeal explained that where a defendant faces more than one charge and does not at the first stage of proceedings give an unequivocal indication of an intention to plead guilty to all the charges, the circumstances of such cases will vary widely. In some cases it will be appropriate to view the charges separately and give the differing levels of credit which are appropriate in respect of each individually. In others it may be better to take a view across the charges as a whole and make the same reduction in each case.

The application of these principles to the circumstances of the present case

15. The grounds of appeal and submissions made orally before us have focused on the chronology of the proceedings for Counts 4 and 5 on the basis that Count 4 is the most serious count. Nonetheless it is appropriate to also consider the chronology of proceedings for Counts 1 and 2 on the indictment which proceeded according to a different timetable, as set out in the prosecution's sentencing note, and which has not been disputed.
- 10 August 2022 - The first appearance in Hastings Magistrates' Court in relation to the possession with intent to supply cocaine and cannabis, which became Counts 1 and 2. The Applicant was represented. He was on bail. No plea was taken or indicated. The matter was sent to the Crown Court.
 - 7 September 2022 - There was a PTPH for Counts 1 and 2, at which the Applicant was not represented because of the Bar strike. He was on bail and he was not arraigned. The judge preserved credit until stage 2, namely 16 November 2022. The case was warned for 6 February 2023. The judge's note on the side bar of the DCS states that "D is to be arraigned on 16 November and instructing solicitors must give advice re plea as not part of the Criminal Bar Association action".
 - 24 November 2022 – There was a further Case Management Hearing at which the Applicant was not represented. The solicitors reported they had legal aid issues and the

case was adjourned to 16 September.

- 1 December 2022 - The Applicant had his first appearance in Brighton Magistrates' Court for the new matters in relation to the supply of cocaine and cannabis, which became Counts 4 and 5 on the indictment. He was represented and in custody. No plea was indicated. He was sent to the Crown Court.
- 16 December 2022 - There was a PTPH on Counts 1 and 2. He was represented and not arraigned. The court was told about the other case and that the prosecution would be seeking a joinder. The case was adjourned to 5 January 2023. No plea was indicated or taken.
- 5 January 2023 – There was a mention and PTPH on Counts 4 and 5. The joinder was allowed, so Counts 1, 2, 4 and 5 are by now joined. The defendant was not arraigned. The case was warned for 29 May 2023. It was adjourned to 10 February for a Further Case Management Hearing. No plea was taken or indicated and a note on the DCS by the judge states pleas not put to the Applicant who had not as yet given instructions “through no fault of his own.”
- According to the Defence Chronology, on 9 February 2023 the Applicant's solicitor emailed the court saying that a contested matter was not anticipated but that it would be necessary to see their client.
- 10 February 2023 - At a Further Case Management Hearing, the Applicant was not represented by Counsel but his Solicitor attended. He was at that point arraigned and pleaded guilty to Counts 1, 2, 4 and 5. The matter was adjourned to 24 February for a Further Case Management Hearing, and then for sentence.
- 23 March 2023 - A written basis of plea was uploaded.
- 10 May 2023 - At a further hearing the judge noted on the side bar of the DCS that the basis of plea was unacceptable and might be abandoned.
- 12 May 2023 - The basis of plea was withdrawn at a hearing at which it is submitted the judge indicated credit would be afforded as if the basis of plea had not been entered.

16. It is unfortunate in this regard that there is no court log for the hearing on 12 May 2023, but we note however that the log for 25 August 2023 states as follows:

"Judge addresses advocate. Reiterates that Yalcin will be receiving 20 per cent discount for plea, not 25 per cent as counsel submits."

17. Accordingly, drawing matters together, the Applicant did not plead guilty at his first appearance in a Crown Court in relation to Counts 1 and 2 (there being no indication of plea

at the second PTPH on 16 December 2022) and his case had been warned for trial for February 2023. Counsel submits that these were not the most serious offences, but they are nonetheless relevant in an appeal against the overall sentence. Count 1 is still a serious offence - the possession of Class A drugs with intent to supply.

18. The basis of plea put forward after plea on 10 February 2023 was unacceptable and was later withdrawn. On 25 August 2023 the judge reiterated that the discount would be 20 per cent not 25 per cent as Counsel had submitted. The Applicant duly received 20 per cent discount. In a case where a plea is not entered at the first opportunity, the percentage discount to be given is a matter for the discretion of the judge. Given the chronology and circumstances of the four pleas, we can see no error in the judge's approach which would justify this court interfering with the judge's decision.

Other mitigation

19. As to the other mitigation, the judge's sentencing remarks show he took full account of the limited favourable points that could be made on behalf of the Applicant. Like the single judge we agree that he was, in particular, entitled to take the view he did about the PTSD related to involvement in the work of drug dealers and violence. As for the impact of custody, as the grounds of appeal acknowledge, the relevant guideline makes clear that in accordance with the principles applicable in cases of physical ill-health, impairments or disorders can only be taken into account in a limited way so far as the impact of custody is concerned. The character references and the positive prison records to which our attention has been drawn do not change matters.

Conclusion

20. For the reasons given it is not arguable that the Applicant's sentence of 12 years for serious Class A drugs offending was manifestly excessive. The renewed application for permission to appeal is refused.

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

Lower Ground Floor, 46 Chancery Lane, London, WC2A 1JE
Tel No: 020 7404 1400 Email: Rcj@epiqglobal.co.uk

