IN THE COURT OF APPEAL
CRIMINAL DIVISION
CASE NO 202303508/A1
[2024] EWCA Crim 257

Royal Courts of Justice
Strand
London
WC2A 2LL

Wednesday 14 February 2024

Before:

LADY JUSTICE MACUR

MRS JUSTICE FARBEY

MR JUSTICE LINDEN

REX

V

MASON RODGERS

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MR M HAGGAR appeared on behalf of the Appellant.

J U D G M E N T

MRS JUSTICE FARBEY:

1. The appellant appeals against sentence by limited leave of the single judge. He renews before us the grounds on which the single judge refused leave.

2. On 25 July 2023, having pleaded guilty before Warrington Magistrates' Court, the appellant was committed for sentence, pursuant to section 14 of the Sentencing Act 2020, for five offences relating to the supply of controlled drugs.

3. On 12 September 2023, in the Crown Court at Chester before HHJ Berkson, he was sentenced as follows. For one offence of supplying a Class B drug, namely ketamine, 8 months' detention in a Young Offender Institution ("YOI"); for one offence of possessing a controlled drug of Class A with intent to supply, namely MDMA, 3 years in a YOI; for one offence of possessing a controlled drug of Class A with intent to supply, namely cocaine, 2 years in a YOI; for one offence of possessing a controlled drug of Class B with intent to supply, namely ketamine, 8 months in a YOI; and for one offence of supplying a controlled drug of Class A, namely MDMA, 3 years in a YOI. These were concurrent sentences so that the total sentence pronounced by the judge was 3 years' detention.

4. The appellant was 20 years old at the time of his offending. He was 21 years old at the date of conviction and sentence. It will readily be seen that, as the appellant was aged 21 at the date of conviction, the judge made a slip in sentencing him to detention in a YOI rather than to a term of imprisonment. The Crown Court record should be amended to correct that slip which is otherwise immaterial.

5. We turn to the facts. On 27 August 2022, at around 5.00 pm, the appellant was searched by a police officer while trying to enter the Creamfields Music Festival in Cheshire. During that search, the police seized a three-day non-camping ticket to the festival, an iPhone and some drugs. The drugs were subsequently analysed and found to be: 18 MDMA tablets, with a value of £180; a further 29 MDMA tablets, with a value of £290; 0.87 grams of cocaine, with a value (at the festival) of between £80 and £100; and 2.3 grams of ketamine in five resealable plastic bags, with a value of £100.

6. The appellant was arrested. In interview, he provided a prepared statement in which he stated that the drugs were for his own personal use. He denied that he would have sold the drugs to anyone and stated: "I do not supply drugs". His mobile phone was analysed and messages indicative of an intention to supply drugs at the festival were found. He had no previous convictions.

7. The judge had the benefit of a pre-sentence report and a detailed community impact statement from a police officer with knowledge of Creamfields, which is an annual dance music festival. In 2022, when the appellant's offending took place, the festival ran from Thursday 25 August to Sunday 28 August. The community impact statement makes clear that the festival is considered a high risk for drug consumption. Police data suggests that the price of controlled drugs is higher at the festival than on the streets, to compensate for

the risk of smuggling controlled drugs past the security arrangements and because of the closed market conditions. Tragically, at the 2022 festival, a young woman died from the consumption of drugs. When she fell ill, she was in possession of MDMA and cocaine.

8. The prosecution case (which the judge sensibly clarified with prosecuting counsel and which the appellant accepted on a "full-facts" basis) was that the two offences of supplying drugs related to 25 August. The evidence of supply on that date came from messages on the appellant's phone. The three offences of possession with intent to supply related to the drugs seized by the police when the appellant was searched on 27 August. The offences were therefore committed on two different days. As the judge noted, the appellant went into the festival to supply drugs and came out to replenish his stock with a view to re-entering to supply some more.

9. In his sentencing remarks, the judge generously accepted that the appellant had sold the drugs to a group of 30 people who were his friends and who had gone together to the festival. The judge applied the relevant sentencing guideline. He concluded that the offences involved category 3 harm as they had involved selling directly to users. In relation to culpability, he accepted the prosecution submission that the appellant had a significant role. For present purposes, we focus on the more serious, Class A offences. The starting point in relation to those offences was 4 years 6 months' custody. The category range was 3 years 6 months' to 7 years' custody.

10. By way of aggravating factors, the judge took into consideration the appellant's determined efforts to smuggle the drugs into the festival despite the warning signs that any drugs should be put in bespoke on-site bins. It was an aggravating factor that the supply of drugs took place at a festival. The appellant had been involved with more than one type of drug.

11. By way of mitigating factors, the judge took into consideration the appellant's age, his lack of previous convictions and his positive good character, including the high regard in which he was held by his employer. Balancing these various factors, the judge concluded that the overall sentence after a trial would have been 4½ years' imprisonment, which was reduced to 3 years after full credit for the appellant's early guilty pleas. He then pronounced the individual sentences for each offence, as we have already mentioned.

12. The single judge granted leave on the ground that the judge had erred in concluding that the appellant had a significant role. In support of this ground, Mr Haggar emphasises that the judge accepted that the drug dealing was exclusively to friends. The quantities of drugs seized were not indicative of the sort of significant financial advantage that characterises a significant role. The valuation of the drugs was low. They were worth hundreds and not thousands of pounds. Mr Haggar submits that, in these circumstances, the appellant should have been categorised as having a lesser role. In sentencing him on the basis of a significant role, the judge had adopted an excessive starting point.

13. Renewing the grounds of appeal on which leave was refused, Mr Haggar submits that the judge did not sufficiently reduce the sentence to reflect the appellant's significant

mitigation which outweighed the aggravating factors of the offending. He emphasises that the appellant had no previous convictions and was of good character. He was aged only 20 at the time of the offences. He had demonstrated remorse, as detailed in the pre-sentence report. He was at the time of the offences a drug user, owing to difficulties in his personal life but he has stopped taking drugs in light of lessons learned from his offending.

14. Mr Haggar submits that the delay of around a year between the offending and the commencement of a prosecution amounted to undue delay. He reminds us that this Court has held that sentencing judges should bear in mind the effect of custodial sentences in the context of a high prison population (R v Ali [2023] EWCA Crim 232). He submits that it is further mitigation that the appellant is still being held under the very restrictive conditions of the Covid-19 pandemic in prisons (see R v Manning [2020] EWCA Crim 592; [2020] 2 Cr App R(S) 46). Mr Haggar is instructed that the appellant is permitted to leave his cell for only 2 hours each day.

15. We are asked to consider reducing the sentence to the level that it may be suspended.

16. We are prepared to accept that the judge was wrong to treat the appellant as having a significant role under the guideline. Despite some evidence of advance planning in the phone messages, there is no clear evidence of the sort of awareness of, or role in, the supply of drugs that would fall into the guideline criteria for a significant role. On the evidence before the judge, the appellant had no expectation of more than limited financial or other advantage. His offending was consistent with only a limited role and the judge should have sentenced him on that basis. It follows that the starting point was 3 years for the Class A offences.

17. We accept that the appellant had strong mitigation. Prior to custody, he was working full time and undertaking college work, which was to his credit. Custody interrupted his good progress towards qualifying as an electrician. The pre-sentence report concluded that he had genuine remorse and that he had made efforts to put drugs behind him. However, as the sentencing remarks make plain, the judge had this mitigation in mind.

18. The three-year starting point applies to a single offence. In this case, the judge was sentencing the appellant for three Class A offences, as well as for two Class B offences. The appellant could expect an upward adjustment from the starting point to reflect the number of offences and the seriousness of his offending overall.

19. As the judge observed, the appellant supplied or intended to supply two different Class A drugs. He made determined efforts to sell drugs to a group of (on his own admission) 30 individuals. Nor can his offending be regarded as a single course of conduct: the appellant sought to evade the festival's very considerable security regime on two different days. As the community impact statement vividly demonstrates, there is a need to deter people from exploiting a closed and susceptible group whose guard may be down as they enjoy themselves. The context of drug supply at a festival was a further, serious aggravating factor. All these factors warranted a further significant upward adjustment

from the starting point.

20. In our judgment, notwithstanding the appellant's mitigation, the seriousness of the appellant's offences warranted an overall sentence, before discount for pleas, at the top of the category range which is, as we have said, 4½ years. That is what the judge concluded. The question for this Court on an appeal is whether the sentence was manifestly excessive. Irrespective of the route by which the judge reached his conclusion, the sentence of 4½ years, reduced to 3 years for pleas, is not manifestly excessive. It follows that no question of a suspended sentence can arise. We refuse leave to appeal on the renewed grounds, which are not arguable, and we dismiss the appeal. It remains for us to express our gratitude to Mr Haggar for his helpful submissions.