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Neutral Citation No. [2024] EWCA Crim 404

IN THE COURT OF APPEAL
CRIMINAL DIVISION



CASE NO 202304424/A5

Royal Courts of Justice
Strand
London
WC2A 2LL

Tuesday, 20 February 2024

Before:

LORD JUSTICE DINGEMANS
MR JUSTICE WALL
THE RECORDER OF NORWICH
HER HONOUR JUDGE ALICE ROBINSON
(Sitting as a Judge of the CACD)

REFERENCE BY THE ATTORNEY GENERAL UNDER
S.36 OF THE CRIMINAL JUSTICE ACT 1988

REX
V
RYAN HASLAM

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MR B HOLT appeared on behalf of the Attorney General
MISS R SMITH appeared on behalf of the Offender

J U D G M E N T
(Approved)

LORD JUSTICE DINGEMANS:

Introduction

1. This is the hearing of an application on the part of His Majesty's Solicitor General for leave to refer sentences imposed on 22 November 2023. The sentences were deferred sentences imposed for three counts of possession of class A drugs (cocaine, heroin and crack cocaine) with intent to supply and one count of possession of criminal property. The offences were committed on 17 August 2023. His Majesty's Solicitor General considers those sentences to be unduly lenient.
2. A deferred sentence is a sentence which may be the subject of a Reference: see *R v Ferreira* [2021] EWCA Crim 537 at paragraph 23. We grant leave. This is because the Reference raises issues about the imposition of the statutory minimum period of 7 years imprisonment for three class A drug trafficking offences on a person found by the judge to be developmentally a child.
3. The respondent is Ryan Haslam, who is aged 19 years and three months, having been born on 12 November 2004. He was aged 18 years and 9 months as at 17 August 2023. Mr Haslam had, before the sentences the subject of this Reference, five previous convictions for 14 offences. This included offences committed on 7 April 2022 (possession of a class B drug, possessing a knife and assaulting an emergency worker). Mr Haslam was convicted on his plea of guilty on 9 June 2022 of a conspiracy to supply class A drugs on dates between 1 October 2020 and 2 February 2022 when he was aged between 15 years 11 months and 17 years and three months. He was sentenced on 4 August 2022 to a youth rehabilitation order with two years supervision for the April 2022 offences and the offences for which he had pleaded guilty in June 2022.

4. On 10 January 2023 Mr Haslam committed two offences of possessing class A drugs (crack cocaine and heroin) with intent to supply. On 22 May 2023 he was sentenced to a community order with an electronic curfew and rehabilitation activity requirements. It was common ground that given the timing of the respective earlier offences, as a result of his further three convictions for possessing class A drugs with intent to supply on 17 August 2023, that unless there were exceptional circumstances Mr Haslam should have received a minimum custodial sentence of seven years before discount of a maximum of 20 per cent for a guilty plea.

The issues

5. It is submitted on behalf of the Solicitor General that there were in fact no exceptional circumstances and the judge was therefore wrong to defer the sentence. An immediate sentence of seven years less discount of 20 per cent should be imposed. Mr Holt on behalf of the Solicitor General submitted that even if there were exceptional circumstances because of the judge's findings relating to Mr Haslam's developmental age, a deferred sentence was still unduly lenient because a period of immediate imprisonment was required because of Mr Haslam's offending and past offending.
6. It is submitted on behalf of Mr Haslam that there were exceptional circumstances so that he should not receive the statutory minimum sentence of 7 years less 20 per cent discount for plea. This was because, as the judge found, while technically an adult, Mr Haslam was operating as a juvenile. Miss Smith submitted that this was the particular factor relating to Mr Haslam which justified the finding of exceptional circumstances in this particular case, given that there was that offence that triggered the mandatory minimum terms. Mr Haslam, it was submitted, satisfied almost every factor which might heighten a person's vulnerability to exploitation according to the Home Office Guidance on

Criminal Exploitation of Children and Vulnerable Adults. Mr Haslam was at a crossroads and the judge was right to see whether a deferred sentence would provide clarity as to which path Mr Haslam might take.

7. We are very grateful to Mr Holt and Miss Smith for their helpful submissions.

These offences

8. At 13.22 hours on 15 August 2023 police officers gained entry to 1 Higher Barley Mount in Exeter. Mr Haslam, who was present, attempted to flee the property by running out into the back garden. He was detained and arrested. He was also arrested with another male, Finley Walsh.
9. Mr Haslam was searched and items were seized. One item was split into four packages. That was 90 white plastic knotted wraps containing crack cocaine, 20 white plastic knotted wraps and 15 translucent plastic knotted wraps of brown powder. One of the white wraps was tested and found to be 0.14 grams of crack cocaine. One of the translucent wraps was weighed and found to be 0.11 grams of heroin and one larger white plastic knotted wrap was 0.6 grams of what appeared to be crack cocaine. There was another translucent plastic knotted wrap of brown paper which was 0.6 grams of crack cocaine. Another item was split into three packages: one of cocaine and two of heroin. There was also the finding of cutting agents and two sets of digital scales. There was cash and coins totalling £148.70.
10. At Mr Haslam's home address there was a machete in a sheath and what the prosecution submitted was designer or brand clothing totalling £1,000. It was submitted on behalf of Mr Haslam that some of that had been provided by the local authority or his personal adviser for his use.
11. A drug expert witness provided a statement dealing with the street value of the drugs.

The street value was £17,730 and the wholesale value was some £7,830.

12. Mr Haslam was interviewed on 16 August but he did not answer any questions.
13. At a first appearance on 17 August 2023 Mr Haslam pleaded guilty to the four charges and was therefore entitled to full credit for pleas and he was committed to the Crown Court for sentence.

Mr Haslam's background

14. It is apparent from the terms of a pre-sentence report that Mr Haslam has had many difficulties in life. Mr Haslam and his twin brother were born to drug-addicted parents. They experienced methadone withdrawal as young children. Mr Haslam had foetal alcohol syndrome. He was subjected to chronic neglect in between periods of care. At the age of three he was recorded to have climbed a wall with a needle which had been used by his parents to take drugs.
15. He was removed from his parents at the age of nine and given to the care of relatives. The relatives found it difficult to care for Mr Haslam because of his aggression. He was placed in care and he was then excluded from school and he has had no formal education since the age of 10.
16. He was placed in foster care in Exeter but there were concerns that he had a drug debt to a drug dealer and was at risk of being drawn into county lines drug dealing.
17. He was moved at the age of 13 to Bradford but he visited Devon in Easter 2018 when he was still 13 and he saw his mother after a long period of separation. He wrote a letter to her asking questions in June 2018 but it was not sent because a social worker was on leave and in July 2018 his mother died because of a suspected drug overdose.
18. Reports completed in secure welfare units, to which Mr Haslam was sent, showed that he had been violent and verbally threatening. He had shown signs of improvement in 2021

but there remained anger management issues. Other reports showed that Mr Haslam had no resilient personality traits and he was at risk of exploitation.

19. There is a Reasonable Grounds Decision by the Single Competent Authority that Mr Haslam is a victim of modern slavery but a Conclusive Grounds Decision was awaited at the time of deferral of sentence and is still awaited. Modern slavery was not raised as a defence to these offences because, we were told and accept, Mr Haslam was not prepared to cooperate with providing details of a defence, but it was relied on to show that he had been exposed to exploitation and grooming.
20. An updated report for sentencing prepared by Emily Coleman, a probation officer, showed that something changed in August 2023 when after 10 months of consistent work to engage with Mr Haslam, he began attending appointments without so much resistance and he would stay in appointments for up to an hour. He was reported to have softened in his manner and started to open up more about his feelings. Miss Coleman reported: "We started to explore his childhood relationships and experiences" and she reported: "Mr Haslam is an intelligent and likeable young man when he allows his barriers to come down. It seems due to his early experiences he is hyper-vigilant and views all new people as a potential threat unless they prove otherwise." Miss Coleman recorded that any resistance to engage initially was a consequence of these perceptions rather than a lack of respect for the order in place. Miss Coleman reported that over the past three weeks before the report he had begun to withdraw and she had not seen him face to face but he had stayed in touch every week by phone and had seen his personal adviser.

The sentencing

21. It was submitted before the sentencing judge by the prosecution that the appropriate culpability category was significant because an expectation of substantial financial

advantage was present and there was some awareness of the scale of the operation. The prosecution submitted that the harm category was 3, selling directly to street users, and that would have given a starting point of four years six months and a range of three years six months to seven years' custody.

22. It was submitted on behalf of Mr Haslam that with grooming and immaturity he fell within a Category 3 lesser role. That would have given a starting point of three years and a range of two years to four years six months. In many respects that was completely academic unless there was a finding of exceptional circumstances because, as already indicated, Mr Haslam faced a mandatory minimum sentence of seven years, less the discount for plea of 20 per cent.
23. During the sentencing hearing the judge asked whether the Crown accepted, on the basis of the materials, that although technically an adult Mr Haslam was operating as a juvenile. Counsel for the Crown accepted that proposition.
24. It was argued on behalf of Mr Haslam that he was really the victim of modern slavery and had not had a choice but to deal drugs and the judge discussed those considerations. The judge remarked that counsel was pushing at an open door in saying that young people do not have a choice in certain circumstances. It was submitted that Mr Haslam was at a turning point and information was provided orally to the court from Mr Haslam's leading care worker. Miss Susan O'Leary, who had been working with Mr Haslam for about two years gave evidence and she noted that Mr Haslam was finally showing some trust in people.
25. The judge recorded: "... it strikes me, each of these Defendants, on everything I've read, are modern slaves ... " The judge found that there were exceptional circumstances for Mr Haslam given his age, the judge's findings on grooming and Mr Haslam's personal

background.

26. The judge deferred sentence saying that he hoped the Attorney General would not refer the deferral of sentence to this court, but the Reference has been made.
27. On 22nd November 2023 Mr Haslam was sentenced to a deferred sentence with the following requirements: no offences to be committed, comply with the requirements of social services or probation, retain accommodation, try to obtain employment and a full assessment with a psychologist - the latter being a hope not an expectation. The deferred sentence is currently scheduled to be heard on 17 May 2024.

Developments since the deferral of sentence

28. A progress report for the Court of Appeal Criminal Division has been produced by Emily Coleman. This repeated the information about Mr Haslam's trauma in early life and the challenges of engaging with Mr Haslam. Miss Coleman said that Mr Haslam had come a long way in engaging with his order after months of relationship building. He had had a push/pull approach to engagement and a lack of trust. The change reported to the court in sentencing below in August 2023 was referred to but it was said:

"Since Mr Haslam's deferred sentence on the 22/11, I have only seen him in person on two occasions. Mr Haslam continues to have a 'push-pull' approach in his relationship with me and I do feel the relationship between us, although is far better, is extremely fragile. I continue to use a trauma informed approach in my management of Mr Haslam and make professional judgements each week. If Mr Haslam does not attend his weekly appointment, he will generally keep in touch via the phone or he will see his personal advisor ... which means I am able to gather an update from her. I had hoped Mr Haslam would be more committed to ensuring he attends every week, knowing he needs to fully comply before being sentenced in May.

I would currently say Mr Haslam's compliance has remained the same as before the deferred sentence was given. I have issued Mr Haslam a first warning this week with the hope to remind him of his responsibility to make more effort to engage. I do feel Mr Haslam 'self-sabotages' a great deal and almost sets himself up to fail. At times he will overcome this, attend his

appointment on time and engage well. However, the following week he won't attend and suggest I just 'breach him' because his comfort zone is things not going well. I feel custody would be a 'terrifying' prospect for Mr Haslam and could possibly contribute to further traumatising him which concerns me."

29. The report writer concluded that Mr Haslam had been targeted and groomed by those further up the chain and his need for belonging and acceptance made him a target. Miss Coleman considered that Mr Haslam had huge potential and that support was there if he wanted to change but if he did not a custodial sentence whatever the impact on him was inevitable.
30. It is therefore apparent that Mr Haslam has not complied with the conditions of the deferral of his scheme, namely that he complies with all the requirements of the probation service.

Section 313 of the Sentencing Act 2020

31. Section 313 of the Sentencing Act 2020, is headed "Minimum sentence of 7 years for third class A drug trafficking offence". Section 313 applies where a person is convicted of a class A drug trafficking offence, and when the offence was committed, the offender "... (i) was aged 18 or over, and (ii) had 2 other relevant drug convictions, and (c) one of the offences to which those other relevant drug convictions related was committed after the offender had been convicted of the other". The section, as amended by the Police, Crime, Sentencing and Courts Act 2022, now provides that where the relevant drug trafficking offence was committed after 28 June 2022 (and the relevant offence in this case was committed on 17 August 2023) the court must impose an appropriate custodial term of 7 years "unless the court is of the opinion that there are exceptional circumstances which (a) relate to any of the offences or to the offender; and (b) justify not doing so".

32. It might be noted that the statutory provisions require the last index offence to have been committed when the offender was over the age of 18 but the first two qualifying convictions may be committed by the offender when he is under the age of 18. It is not apparent that Parliament contemplated a person becoming, what Mr Holt referred to as, "a third striker" at the age of 18 years.

Relevant guidance on exceptional circumstances

33. The definitive guideline for drug offences provides that the following principles apply to exceptional circumstances. First, that the circumstances must be truly exceptional such as would result in an arbitrary and disproportionate sentence if the maximum mandatory minimum sentence was applied. Secondly, that the court should adhere to the statutory requirement and not too readily accept that the circumstances are exceptional. A factor is unlikely to be regarded as exceptional if it would apply to a significant number of cases. Thirdly, the court should consider all of the circumstances of the case. The seriousness of the previous offences and the period of time that has elapsed will be relevant. Fourthly, the presence of one or more of the following factors should not in itself be regarded as exceptional: one or more lower culpability factors, one or more mitigating factors or a plea of guilty.

34. The same statutory wording relating to exceptional circumstances, albeit in relation to the mandatory minimum sentence for firearms, was considered in *R v Nancarrow* [2019] EWCA Crim 470, [2019] 2 Cr.App.R (S) 4. The court reminded sentencers that the purpose of mandatory minimum terms was to deter. It would be exceptional if the resulting sentence would be arbitrary or disproportionate. Sentencers should not undermine the intention of Parliament by accepting too readily that circumstances are exceptional. There should be a holistic approach. The health of an offender may be

relevant and each case is fact-specific.

Children and young people

35. The Sentencing Council Guideline for Sentencing Children and Young People records that when sentencing young people a court should have regard to the fact that the principal aim of the youth justice system was to prevent offending by children and young people and the welfare of the young person and that maturity was as important as chronological age. A court should be alert to traumatic life experiences and the effect on young people of loss, neglect and abuse. Attaining the age of 18 years is not a cliff edge for the purposes of sentencing.

This sentence

36. First it is apparent, as the judge below remarked, that illicit controlled drugs destroy society. Useful members of society cease to function, they begin to look no further than their next drug taking, they commit acquisitive crime, some develop mental disorders and some become violent. Those who deal in drugs spread this misery.

37. Secondly, it is clear that Mr Haslam was not only chronologically young but he was also immature and had no formal education. He had had the most difficult of childhoods, starting from his birth to two drug addicts, proving yet again the damage caused by drugs to society, and the judge made a finding of fact that he had been groomed by others who identified his need for approval.

38. Thirdly, it is apparent that the judge found exceptional circumstances on the basis of Mr Haslam's age, his grooming and his personal background.

39. Mr Haslam was an adult when he committed the offence which triggered the mandatory minimum seven year sentence, less discount for plea, unless exceptional circumstances justified not doing so. The requirement for the last offence to be committed when aged

over 18 is not a requirement for the first two qualifying offences. On the other hand, it is apparent that the requirement for the last offence to be committed as an adult means that a finding made by the judge that Mr Haslam was operating as a child is significant. The finding made in this case was a finding made on evidence heard by the judge, rather than one made simply on the papers or on the basis of a report without hearing the report writer. A finding of fact by a judge will not be set aside by this court unless it is internally inconsistent, inconsistent with some uncontroverted fact or is irrational. Here there is nothing pointed to by Mr Holt to show that the finding could be set aside by this court. Indeed counsel for the Crown at the sentencing hearing at first instance accepted that Mr Haslam was operating as a child or juvenile.

40. The judge's finding of fact that Mr Haslam was operating as a juvenile and developmentally a child cannot therefore be set aside by this court. The question therefore for us is whether giving this finding, it would be disproportionate to impose a sentence of seven years less 20 per cent on Mr Haslam. In our judgment it would be disproportionate to impose such a sentence. This is because the judge found that Mr Haslam, although aged 18 years 9 months was in fact operating as a child at the time that he committed the final and relevant offence, and the statutory regime is addressed at adults. We consider that the circumstances giving rise to this type of situation are likely to be very rare indeed. It is very unusual to find a person of Mr Haslam's age who is 'a third striker', and even more unusual to find that they have the background developmental difficulties in this case. This means that the Reference fails on its main ground.
41. We have noted Mr Holt's fallback position, namely that Mr Haslam should be sentenced to a sentence of immediate imprisonment even without the statutory minimum period applying. We consider that this must be for the sentencing judge to address in the first

instance. The judge has deferred the sentence and was, in our judgment, entitled to find that there were exceptional circumstances to enable him to do so. The judge when hearing the deferred sentence can then decide whether Mr Haslam should receive a sentence of immediate imprisonment, albeit one likely to be less than the mandatory minimum period. We do record that Miss Smith's submissions that Mr Haslam had done all that the judge had asked him to do when deferring sentence is, at the current time, not a submission that we can accept. That is because one of the requirements was to comply with the requirements of the probation service and it is apparent from the information before us that Mr Haslam has not engaged for long periods with the probation services. We were told that things might have changed in February 2024. Those are matters for the judge to deal with at first instance.

42. For all those reasons, although we have granted leave for this Reference, we dismiss it.

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

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