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IN THE COURT OF APPEAL
CRIMINAL DIVISION

CASE NO 202400218/A5



Neutral Citation Number:
[2024] EWCA Crim 474

Royal Courts of Justice
Strand
London
WC2A 2LL

Wednesday 24 April 2024

Before:

LORD JUSTICE MALES

MR JUSTICE HILLIARD

RECORDER OF NORTHAMPTON
(HIS HONOUR JUDGE MAYO)
(Sitting as a Judge of the CACD)

REX

V
RAJAK MIAH

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MS H AHMAD appeared on behalf of the Appellant.

J U D G M E N T

1. MR JUSTICE HILLIARD: On 18 October 2022, in the Crown Court at Leeds, the appellant (then aged 27) pleaded guilty to possessing MDMA (count 2). On 4 December 2023, at the same court, the appellant pleaded guilty on re-arraignment to possessing cannabis with intent to supply (count 1); offering to supply cannabis (count 4); possessing cannabis with intent to supply (count 5) and possessing ketamine with intent to supply (count 6). On 21 December 2023, he was sentenced to concurrent terms of 18 months' imprisonment on each count, with no separate penalty on count 2. He now appeals against sentence with leave of the single judge.
2. On 15 May 2020, police officers stopped a vehicle in Leeds. The appellant was the front seat passenger. The driver was in possession of cash and five mobile telephones. The appellant was in possession of cannabis, MDMA and cash. Two further mobile telephones were found in the vehicle. The drugs were analysed. Fifteen bags of cannabis weighed 44.9 grams, with a street value of £430. The MDMA weighed 0.88 grams and had a value of £40. Examination of the mobile telephone showed that the appellant was involved in the supply of cannabis. At his home address, the police found dealer cards and three more mobile telephones. When interviewed, the appellant said that the drugs were for his own use. He was released under investigation.
3. On 8 March 2021, police officers stopped a vehicle in Chapeltown Road, Leeds. The appellant was the sole occupant. He was in possession of £1766 in cash, two mobile telephones, three bags of cannabis and four bags of ketamine. The drugs had a street value of £140. Telephone contact showed that the appellant was dealing in drugs. When interviewed, he again said that the drugs were for his own use.
4. The appellant had three convictions for three offences. None of them involved drugs. He was in breach of a community order for possessing a bladed article when he committed

the first offence.

5. A pre-sentence report said that the appellant was understanding and remorseful of his behaviour. He said that he had lost his job during the pandemic. His own drug use at the time had left him with a drug debt. He was told to sell drugs to pay off the debt. He had married in 2023. His wife was expecting a baby in March 2024. He stayed with his wife occasionally at her flat. He had been approved for a mortgage and was expecting to move into a new house in March 2024. He no longer took drugs. He was self-employed in his own property refurbishment business which he had had for 2½ years. If a community penalty was considered, an order with an unpaid work requirement was recommended.
6. The appellant's wife had written a letter to the judge. She had been in a relationship with the appellant for 3 years. He had sought to make something of his life with his refurbishment business. She was anxious about how she would manage without his financial and practical support during pregnancy and with a baby.
7. When he passed sentence, the judge referred to the fact that the appellant had offended when subject to a community order and after he had been released under investigation. He said that the offences involving the supply of Class B drugs fell into category 3 significant role of the applicable sentencing guidelines. Each offence had a starting point of 12 months' imprisonment, with a range extending up to 3 years' imprisonment.
8. The judge raised the starting point for the first offence to 15 months' imprisonment because the appellant had been subject to a community order and for the second offence to 18 months, because the appellant had been released under investigation at the time. Taking account of totality, the judge decided to impose concurrent sentences of 20 months' imprisonment for each offence, which he then reduced by 10 per cent because of

the pleas of guilty which had been entered on the morning of the appellant's trial.

9. The judge said that the custody threshold had clearly been passed. He considered whether the sentences could be suspended. He concluded that they could not. The appellant had continued to offend in breach of a community order and when released under investigation. The judge said that there was no rehabilitative element that he could consider which would stop the appellant from offending. He referred to the absence of "over and above strong personal mitigation". Immediate custody would have an impact upon his wife but in the judge's view that was not "overly significant".
10. It is now argued on the appellant's behalf by Ms Ahmad that the sentence should have been suspended and that the judge did not give sufficient weight to the appellant's personal mitigation, to the fact that no rehabilitation activity requirement was proposed in the pre-sentence report and to the current level of the prison population. Reliance is also placed on a positive prison report which we say at once is to the appellant's credit and which says that he will be released on home detention curfew on 7 May, so in 13 days' time. We are grateful to Ms Ahmed for her submissions and we have given them careful consideration.
11. The judge was right to conclude that the case crossed the custody threshold. That is agreed. Nor is any complaint made about the length of the sentence. The judge evidently had well in mind the sentencing guidelines for the imposition of community and custodial sentences. He expressly referred to the appellant's personal mitigation and to the impact that immediate custody would have upon others. There were grounds for some optimism when the appellant had not offended since March 2021, had developed new responsibilities in his personal life and had achieved some success in his business. Nonetheless, the obstacle faced by the appellant then and now is that, as the judge

identified, he had not only offended while subject to a community order, but he had then continued to offend after being released under investigation. The prospect of rehabilitation was only one matter that fell to be considered in accordance with the Imposition Guideline. The constraints the appellant was under, or should have been, and his failure to have regard to them made the offences more serious. In our judgment, it was reasonably open to the judge to conclude that they made the offences so serious that only immediate custody would constitute appropriate punishment, after considering all the circumstances of the case and all the factors in the Imposition Guideline, which it was his role then to balance.

12. In these circumstances, and notwithstanding Ms Ahmad's submissions, this appeal must be dismissed.

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