APPEAL COURT, HIGH COURT OF JUSTICIARY

[2019] HCJAC 43
HCA/2019/000130/XC

Lord Drummond Young
Lord Turnbull

OPINION OF THE COURT

delivered by LORD DRUMMOND YOUNG

in

APPEAL AGAINST SENTENCE

by

JAMES HOUTEN

Appellant

against

HER MAJESTY'S ADVOCATE

Respondent

Appellant: Gilfedder (Sol Adv); Gilfedder & McInnes
Respondent: Bowie (Sol Adv); Crown Agent

11 June 2019

[1] The appellant pled guilty to a charge that on 24 April 2018 he was concerned in the supplying of a controlled drug, cocaine, contrary to section 4(3)(b) of the Misuse of Drugs Act 1971. A plea of guilty was tendered and accepted at a first diet. The sentence imposed by the sheriff was 23 months imprisonment discounted from 30 months on account of the guilty plea.

[2] The explanation given was that the appellant accepted that he was involved in the supplying of class A drugs, but that this occurred on only one occasion when he performed for a friend the task of providing a safe house and holding the drugs for that friend. It was emphasized that no direct financial gain was made from holding those drugs.

[3] Particular emphasis was placed on the caring responsibilities that the appellant has for his partner's son, who is aged 18 but suffers from a considerable range of disabilities. The appellant has been the primary carer for the boy over a number of years, and it was emphasized that he does not merely care for him but is the boy's only male friend and therefore plays a very important part in his life.

[4] It was further submitted that the offence was out of character. The only previous convictions the appellant has were old convictions for road traffic offences; these are not remotely like the present charge. We endorse the sheriff's view that being concerned in the supplying of class A drugs is a serious matter and must always be taken very seriously. Nevertheless, we think that in this case the sheriff perhaps paid excessive attention to the importance of deterring other offenders and perhaps gave insufficient weight to the very singular circumstances in which the appellant found himself, principally as the carer for his partner's son.

[5] We also note a number of other factors: the lack of any significant previous convictions; the generally good record of the appellant; and the fact that he has already served 3 months in custody, which is the equivalent of 6 months when the provisions for early release are taken into account.

[6] Taking all of these matters into account we have decided that this is a case that might exceptionally, and we would emphasize exceptionally, be dealt with by a community payback order. We would propose that such an order should be for the period of 3 years

and should be subject to an unpaid work requirement of 250 hours of unpaid work to be completed over a period of 12 months. In this connection we have regard to the criminal justice social work report, which discusses a community payback order. It notes that the appellant is a low risk offender convicted of a serious offence. It is suggested that there were no problem areas that would require statutory social work intervention, and the appellant had indicated that he would comply with an offender supervision requirement. If such an order were made he would be supervised in line with national standards. One might hope that this would be at a fairly minimal level. The report also discusses unpaid work and the appellant is assessed as suitable for an unpaid work requirement.

[7] We consider that there is merit in these recommendations. As I have indicated we consider that a period of 250 hours of unpaid work would be appropriate if the appellant is willing to undertake it.