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No: 201903710/A3

**IN THE COURT OF APPEAL**  
**CRIMINAL DIVISION**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Wednesday, 13 November 2019

**B e f o r e:**  
**LORD JUSTICE HOLROYDE**  
**MR JUSTICE WARBY**  
**HER HONOUR JUDGE MUNRO QC**  
(Sitting as a Judge of the CACD)

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

**R E G I N A**  
v  
**ADAM TAME**

**Mr B Lloyd** appeared on behalf of the **Attorney General**  
**Mr K Brocklehurst** appeared on behalf of the **Offender**

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(Official Shorthand Writers to the Court)

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**J U D G M E N T**  
(Approved)

1. LORD JUSTICE HOLROYDE: Adam Tame, to whom we shall refer as the offender, pleaded guilty to two offences of possession of a controlled drug with intent to supply, an offence of possessing criminal property and an offence of having a bladed article. He was sentenced to a total of two years' imprisonment, suspended for two years, with a six-month drug rehabilitation requirement, a rehabilitation activity requirement of up to 25 days and a requirement to carry out 50 hours of unpaid work. Her Majesty's Solicitor General believes that total sentence to be unduly lenient. Application is accordingly made pursuant to section 36 of the Criminal Justice Act 1988 for leave to refer the case to this court so that the sentencing may be reviewed.
2. The facts can be summarised very briefly. On 14 May 2019 the offender was seen supplying drugs in a public place to a number of known drug users. When stopped and searched by police officers, who had seen him making a number of trips to and from a nearby flat, he was found to be carrying eight wraps of heroin and seven wraps of crack cocaine (each of those wraps having a street value of between £20 and £30), a lock knife and £630 in cash. More drugs were found in the flat which was owned by another man. When interviewed under caution the offender made no comment.
3. Now aged 36, the offender has a long criminal record. He had been sentenced on 46 previous occasions for a total of 124 offences, starting when he was a juvenile. His adult convictions were predominantly for offences of dishonesty, including a number of convictions for house burglary. He had been convicted many years ago of possession of cannabis resin but had no convictions relating to the supply of drugs. Many of his offences were comparatively minor and his longest previous custodial sentence was 32 months' imprisonment imposed in 2013. He had on a number of occasions failed to surrender to bail and he had breached a number of community orders.
4. It is relevant to note his most recent previous convictions after he had been released from the sentence which was imposed in 2013. In April 2017 he was sentenced to a total of four months' imprisonment, suspended for 12 months, for offences of handling and driving whilst disqualified. He was quickly in breach of that suspended sentence, and on 13 October 2017 he was sentenced to a total of 26 weeks' imprisonment, suspended for 12 months, with a drug rehabilitation requirement for offences of theft and racially aggravated fear or provocation of violence. He breached that order and on 2 October 2018 the operational period of the suspended sentence was increased to 18 months. He again breached the order by failing to comply with the community requirements and further breach proceedings were brought. The offender was due to attend court on 9 January 2019, but he failed to appear and a warrant for his arrest was issued. It was not executed until he was arrested for the present offences. A Magistrates' Court subsequently ordered him to serve 22 weeks of the suspended sentence imposed on 13 October 2017.
5. As to the present offences, the offender entered not guilty pleas to all four charges at a

plea and trial preparation hearing on 17 June 2019. Shortly thereafter he indicated an intention to change his pleas and on 21 June 2019 he was re-arraigned and pleaded guilty to the four offences.

6. At the sentencing hearing on 12 September 2019, the judge had the assistance of a pre-sentence report. The offender told the author of the report that he had a long history of drug abuse, starting when he was very young, which he had often funded by crime. Recently he had been able to fund his drugs habit from legitimate earnings as a plasterer. However, his employer had gone on an extended holiday, leaving the offender without work, and he had incurred a drugs debt which he was repaying by supplying drugs. He claimed that he had forgotten that he had the knife in his rucksack. He also claimed that the cash found on him had been given to him by his partner's mother - an account clearly inconsistent with his guilty plea to the offence of possessing criminal property.
7. The offender said that he wanted to address his drug abuse, to be able to live with his partner and their young daughter and to resume contact with his older child by a previous relationship. He had been making use of drug support whilst in custody. He was however assessed in the report as a high risk of re-offending and a medium risk of harm to the public. The author of the report noted the offender's history of poor response to supervision in the past and expressed concern about his ability to comply with a drug rehabilitation order.
8. The judge was also provided with a reference from the offender's substance misuse case manager which recorded that the offender was currently prescribed methadone but was otherwise abstinent from drugs. The case manager had spoken to a drugs recovery worker who had worked with the offender and was supportive of a drug rehabilitation requirement.
9. The judge in his sentencing remarks noted that previous sentences of imprisonment had been followed by significant gaps in the offender's record of convictions. Applying the relevant sentencing guideline to each of the drug offences, which involved of course street dealing, he found that the offender had played a significant role in a Category 3 offence. That gave a starting point of four-and-a-half years' custody, with a range from three-and-a-half to seven years. The judge took the view that the offending fell "towards the bottom" of that range. He noted the offender's very difficult start in life and the guilty pleas. At page 13, he said this:
  - i. "You present a difficulty in the sense that the Probation Service are in two minds about your commitment or compliance with a DRR. I can understand that, but I think it is worth it, and I am going to include in your sentence that you follow that and that you do not go immediately to prison. I think you have learnt that that does not help you, and, when you have been to prison, you have managed

somehow not to commit so many offences, and I think that, given another chance, one might well see you not doing this type of offending again. And, if I were to balance that up, the alternative, which is an immediate custodial sentence, that seems to me to be too much."

10. The judge then imposed concurrent sentences of two years' imprisonment suspended for two years on each of the drugs offences, with the requirements which we have mentioned. He imposed a concurrent sentence of four months' imprisonment suspended for two years for the bladed article offence and no separate penalty for the possession of criminal property.
11. This court today has been greatly assisted by the submissions of both counsel, which were of an extremely high quality, and we are grateful to them both.
12. For the Solicitor General, Mr Lloyd submits that the total sentence was unduly lenient. Far from being at the bottom end of the range, the drugs offences were aggravated by the offender's previous convictions, in relation to which it was relevant to note the previous failures to respond to suspended sentence and community orders; by his possession of the lock knife; and by his possession of criminal property, which the prosecution submitted to the judge below represented the proceeds of selling drugs earlier in the day. There were mitigating features in that the offender had no previous convictions for drug dealing, was remorseful and had taken some steps to address his addiction. Balancing those features, Mr Lloyd submits that the judge should at the very least have concluded that the appropriate sentence after a trial would be four-and-a-half years' imprisonment. Allowing credit of 25 per cent for the guilty pleas, the sentence should not have been less than three years four months' imprisonment and accordingly there was no scope for a suspended sentence.
13. Mr Brocklehurst, representing the offender here as he did in the court below, submits that in all the circumstances of the case the judge was entitled to take a course which avoided immediate custody and instead made provision for the offender to undergo a drug rehabilitation requirement. He acknowledges that there may be an argument that the appropriate way to achieve that aim would have been a community order rather than a suspended sentence, on the basis that any breach of the former would have rendered the offender liable to be re-sentenced and to receive whatever total sentence might be thought appropriate for these offences, whereas breach of the latter could at most be punished by two years' imprisonment. His principal submissions however are that the judge was correct to place the offender at the bottom end of the relevant sentencing range; that the judge correctly identified and balanced the aggravating and mitigating factors; that credit of 25 per cent for the guilty pleas was appropriate, notwithstanding that they were not entered until shortly after the PTPH; and that this was a case in which a drug rehabilitation requirement had a sufficient prospect of success and was a proper alternative to immediate imprisonment. Mr Brocklehurst pointed out that whilst the

author of the pre-sentence report was sceptical about the offender's response to further community requirements, the author did not go so far as to exclude that possibility. Mr Brocklehurst submits that the threshold for imposing a drug rehabilitation requirement is set comparatively low in terms of the prospect of its success, no doubt, he suggests, in recognition of the difficulties faced by a drug abuser trying to put his drug habit behind him.

14. Mr Brocklehurst relies, as he did in the court below, on the following passage in the Sentencing Council's Definitive Guideline for sentencing offences of possession with intent to supply:
  - i. "Where the defendant is dependent on or has a propensity to misuse drugs and there is sufficient prospect of success, a community order with a drug rehabilitation requirement under section 209 of the Criminal Justice Act 2003 can be a proper alternative to a short or moderate length custodial sentence."
15. We have reflected on the most helpful submissions which have been made to us. We understand why the judge wished, if he properly could, to take a course which would focus on assisting the offender to break away from the abuse of drugs which has clearly brought him into conflict with the law for much of his life. We do not wish to say anything to discourage judges from applying, where it is appropriate to do so, the passage in the guideline which we have quoted. The issue in this hearing is whether this was an appropriate case in which to take that course.
16. In our judgment it clearly was not, for the following two principal reasons. First, in assessing the seriousness of the two drugs offences it is important to give appropriate weight to the offender's possession of a knife and to his possession of a significant amount of cash which by his plea he admitted was the proceeds of crime. We regard that latter offence as significant, both because it gives the lie to an important assertion which the offender made to the author of the pre-sentence report and because it points away from any finding that the offender was at the very bottom end of the supply chain and doing no more than acting on the instructions of others. At the very least, he was trusted to continue his trips to and from the flat without handing over the proceeds of previous drug dealing.
17. Further, the long record of previous convictions, albeit mostly for different types of crime, was a significant aggravating feature. We agree that there were matters of mitigation to be taken into account in the offender's favour, but we accept the submission of the Solicitor General that on a proper balancing of all relevant factors it was not possible to reach a notional sentence after trial of less than the guideline starting point of four years six months' imprisonment. Thus, even allowing credit of 25 per cent for the guilty pleas, which we regard as generous, the appropriate custodial term was too long for any question of suspension to arise and too long to come within the category of "a short

or moderate length custodial sentence."

18. Secondly, even if a different view were taken as to the appropriate length of the prison sentence, this was not a case in which it could properly be concluded that the prospects of success were such as to justify the imposition of a drug rehabilitation requirement. We accept that the appellant wishes to break away from drugs and to lead a law-abiding life and we recognise that it is no easy matter to achieve such a break. The inescapable problem, however, is that he has not been able in the past to put his good intentions into effect and there is no basis for thinking he will be more successful in the near future. We have referred above to the recent sequence of offences, sentences and breaches during a period in 2017 to 2018. That sequence shows that a drug rehabilitation requirement did not prevent rapid re-offending, and there was nothing before the judge which provided any basis for optimism as to the offender's response to a further drug rehabilitation requirement. On the contrary, there was in our view good reason why the author of the pre-sentence report was doubtful as to the offender's ability to respond to community orders.
19. We therefore conclude that the sentences imposed below fell outside the range which the judge, applying his mind to all the relevant factors, could reasonably consider appropriate. In our judgment, the least total sentence which could properly have been imposed for these offences was one of three years four months' imprisonment.
20. We would add that events subsequent to the sentencing have provided nothing which could assist the offender's position. The judge had ordered monthly reviews. A report dated 7 October 2019 prepared for the first review showed that the offender was already in breach of his drug rehabilitation requirement and had tested positive for drugs. A report prepared for a second review was to a broadly similar effect, although it referred to the offender's engaging with those who were supervising him. A report dated 23 October prepared for the assistance of this court again showed continuing drug use and referred to missed appointments and poor compliance. Breach proceedings have been listed for hearing in a magistrates' court in late November.
21. For the reasons we have given, we grant leave to refer. We quash the sentences imposed below as unduly lenient. Making a generous allowance in the offender's favour in respect of his partial performance thus far of the requirements of his suspended sentence order, we substitute the following sentences: for each of the two drug offences, three years' imprisonment; for possessing criminal property, six months' imprisonment and for having the bladed article, four months' imprisonment. Those sentences will be concurrent with one another, making a total of three years' imprisonment. That sentence will commence when the offender surrenders to custody, which we direct he must do by 4.00 pm today at Eastern Police Investigation Centre (Portsmouth).

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

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