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IN THE COURT OF APPEAL

CRIMINAL DIVISION

CASE NO 202001473/A1

[2020] EWCA Crim 1321

Royal Courts of Justice

Strand

London

WC2A 2LL

Wednesday 7 October 2020

LORD JUSTICE HADDON-CAVE

MR JUSTICE JOHNSON

HIS HONOUR JUDGE EDMUNDS QC

(Sitting as a Judge of the CACD)

REGINA

V

DAVID WINTON

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MS R SAIMBHI appeared on behalf of the Appellant

J U D G M E N T

1. MR JUSTICE JOHNSON: This appeal concerns the credit to be afforded for a guilty plea where the minimum sentence provision for a third Class A drug trafficking offence applies.
2. In the afternoon of 4 December 2019 the appellant was seen by police to be driving whilst disqualified. He failed to pull over when it was indicated that he should do so but he was nonetheless quickly apprehended. During a struggle to restrain him he was seen to put two small bags in his mouth. It was subsequently determined that one of those bags was empty but the other contained six cling film wraps containing a total of 1.983 grams of cocaine and 0.138 grams of heroin. The appellant was also in possession of £280 of cash. He was prosecuted for two offences of possessing a Class A drug with intent to supply as well as for two driving offences.
3. After the plea and trial preparation hearing, but before trial, the appellant entered guilty pleas. He was sentenced on 24 April 2020. He was aged 44 and had 51 convictions for 91 earlier offences including 29 drugs offences.
4. As the sentencing judge explained, the appellant had been sentenced to 6 months' imprisonment in 1998 for possession with intent to supply MDMA. In December 2012 he had received a suspended sentence order with a custodial term of 15 months and a drug treatment and testing order for an offence of offering to supply Class A drugs. In July 2003 the Appellant was convicted of offering to supply class A drugs and received 12 months imprisonment. In April 2007 he was sentenced to 40 months for supplying heroin. In January 2013 he was sentenced to 18 months imprisonment for offering to supply class A drugs. In August 2013 he was sentenced to 5 years imprisonment for supplying cocaine. In addition there were 11 further offences of possessing class A and class B drugs between 2015 and 2017.
5. In passing sentence the judge said:
 - i. "In this case there is nothing which has been placed before me which compels me to say that this is a case where exceptional circumstances apply. I cannot give you credit for your guilty pleas but I will not increase the sentence beyond the seven year threshold. The sentence on counts 1 and 2 is seven years' imprisonment concurrent on each count."
6. Earlier in her sentencing remarks the judge referred to the minimum sentence provisions of 7 years' imprisonment. That was a reference to section 110 of the Powers of Criminal Courts (Sentencing) Act 2000 which states:
 - i. "Minimum of seven years for third class A drug trafficking offence."

(2) This section applies where—

- (a) a person is convicted of a class A drug trafficking offence committed after 30th September 1997.
- (b) at the time when that offence was committed, he was 18 or over and had two relevant drug convictions: and
- (c) one of those other offences was committed after he had been convicted of the other.

(3) The court shall impose an appropriate custodial sentence for a term of at least seven years except where the court is of the opinion that there are particular circumstances which—

- (a) relate to any of the offences or to the offender; and
- (b) would make it unjust to do so in all the circumstances."

7. The judge correctly recognised that section 110 applied to the appellant's case. In saying that this was not a case where exceptional circumstances applied, we take the judge to mean that she did not consider that there were any particular circumstances which would render the imposition of the minimum term unjust. We agree. An application for leave to appeal on that basis was refused by the single judge and has not been renewed.
8. However, in saying that credit could not be afforded for the guilty pleas the judge appears to have overlooked section 144(2) of the Criminal Justice Act 2003. That says:

i. "Reduction in sentences for guilty pleas

(1) In determining what sentence to pass on an offender who has pleaded guilty to an offence in proceedings before that or another court, a court must take into account—

- (a) the stage in the proceedings for the offence at which the offender indicated his intention to plead guilty, and
- (b) the circumstances in which this indication was given.

(2) In the case of an offender who—

- (a) is convicted of an offence the sentence for which falls to be

imposed under a provision mentioned in subsection (3), and

(b) is aged 18 or over when convicted

- ii. nothing in that provision prevents the court, after taking into account any matter referred to in subsection (1) of this section, from imposing any sentence which is not less than 80 per cent of that specified in that provision.

(3) The provisions referred to in subsection (2) are—

- i. ... section 110(2) of the Sentencing Act..."

9. The Sentencing Council's Overarching Guideline on Reduction in Sentence for a Guilty plea provides at paragraph D2 that where a plea is indicated after the first stage of proceedings the maximum level of reduction is one-quarter. That is subject to the exceptions in section F of the guideline. Paragraph F5 states:

- i. "F5... prescribed custodial sentences under the Power of Criminal Courts (Sentencing) Act 2000
- ii. In circumstances where:
- iii. ...
 - a prescribed custodial sentence falls to be imposed under section 110 of the Powers of Criminal Courts (Sentencing) Act 2000 (drug trafficking offences) ...
- iv. the court may impose any sentence in accordance with this guideline which is not less than 80 per cent of the appropriate or prescribed custodial period."

10. The short point raised on this appeal by Ms Ravinder Saimbhi, on behalf of the appellant, is that this means that the minimum sentence requirement imposed by subsection 110(2) of the 2000 Act does not prevent the court from applying section 144(1) of the 2003 Act and the Overarching Guideline so as to reduce the minimum sentence by 20%. We agree. There is no other reason to withhold the credit for plea to which the appellant was otherwise entitled by section 144(1) and the Overarching Guideline.

11. Accordingly, we consider that the appellant should have been sentenced differently, in that he should have been accorded appropriate credit for his plea. The error in this case apparently arose because the judge had not appreciated the impact of section 144 of the 2003 Act on section 110 of the 2000 Act. The Sentencing Bill 2019 completed its passage through Parliament last week. It will introduce a sentencing code which consolidates a great deal of disparate legislative provisions including the two provisions that are in issue on this appeal. That may mean that this type of error may, in future, more easily be avoided.

12. Nevertheless, we agree with the submissions of Ms Ravinder Saimbhi on behalf of the appellant, and we therefore allow the appeal, quash the sentence of 7 years' imprisonment and substitute a sentence of 5 years and 8 months' imprisonment on count 1 and count 2 concurrently.

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

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