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IN THE COURT OF APPEAL
CRIMINAL DIVISION

Case No: 2020/03162/A3
NCN: [2021] EWCA Crim 208



Royal Courts of Justice
The Strand
London
WC2A 2LL

Tuesday 16th February 2021

LORD JUSTICE DAVIS

MR JUSTICE BRYAN

MRS JUSTICE COLLINS RICE

REGINA

- v -

CAMERON MURTEN

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Mr E Moss appeared on behalf of the Appellant

JUDGMENT

Tuesday 16th February 2021

LORD JUSTICE DAVIS:

1. On 26th November 2020, in the Crown Court at Chester, the appellant pleaded guilty to an offence of possessing a Class A drug (cocaine) with intent (count 1) and possessing a controlled of Class B (ketamine) with intent (count 2). On that day he was sentenced by the judge to a term of 42 months' imprisonment on count 1 and to a concurrent term of 18 months' imprisonment on count 2. The total sentence was, therefore, three and a half years' imprisonment. Various ancillary orders were also made.

2. He now appeals against that sentence by leave of the single judge.

3. The background facts may be shortly summarised and are these. On 24th August 2019, the appellant was stopped by officers as he attempted to enter the Creamfields music festival in Cheshire. In his bag and amongst his clothes, officers found a number of new snap bags, which aroused suspicion. A further search of his bag revealed a Pringles tin which contained a hidden compartment. Within that compartment were 59.6 grams of ketamine, which would have had a "festival" retail value of £3,400, if sold in 85 deals. Also discovered were 12.7 grams of cocaine at 80% purity which, depending on how it was cut and sold, would potentially have fetched a sum of between £1400 and £1800.

4. The appellant was arrested and his phone was taken. When he was interviewed he declined to comment. When the phone was thereafter examined, two significant messages were revealed. One, which was sent the day before he was arrested at the festival, read: "I'm gonna get there, weigh all my stuff up and go sell it". The second message, which was sent to his girlfriend, read: "Creamfields is gonna pay for everything", before referring to various difficulties and how they could have a weekend away.

5. The appellant has no previous convictions of any kind. Indeed, references which this court has seen (although were not produced before the judge because they had not at that time been prepared) speak positively about him and about his role in society, his good work ethic and so on. That is one of the points of complaint now raised. Mr Moss, who appeared then as now for the appellant, said that he had attended the Crown Court not anticipating that the judge would proceed immediately to sentence once the pleas had been taken. However, that is what the judge did. He did, in fact, grant a short adjournment to enable Mr Moss to prepare his mitigation. However, in such circumstances no references could be produced to the judge. Furthermore, the judge had dispensed with the obtaining of a pre-sentence report, although we can perhaps understand that, even though the appellant had not been in custody before. Quite clearly this offending would attract an immediate custodial sentence.

6. It is wholly evident that the Chester Crown Court in general, and this judge in particular, had significant experience of dealing with Creamfields drug cases. In passing sentence, the judge indicated that the appellant should receive 25 per cent credit for his guilty pleas. Although some criticism is made of that, we can see no error at all in that level of credit being given.

7. The judge then went on to summarise the background facts. He stressed, amongst other things, that those attending the Creamfields festival were warned by flyers and other such matters in advance of the dangers of dealing in drugs, and indeed the kinds of sentences they might expect if apprehended. The judge went on:

"You took that chance and like many young people ... you probably thought it would not happen to you, you would not get

caught but you were caught. It was a fairly determined effort to get the drugs in, clearly you put some work in in putting a hidden compartment into the Pringles tin to hide the drugs and that is, it seems to me, a slightly aggravating feature of the case. However, balanced against that is the fact that you have no previous convictions and that this will be your first custodial sentence. It seems to me there is an aggravation because it is a Creamfields case."

The judge went on again to state that this was a Creamfields case which had involved two kinds of drugs. He indicated that, before credit for the guilty plea, five and a half years' imprisonment would have been the appropriate sentence. However, he reduced that because of the lack of previous convictions and the fact that this would be the first prison sentence for the appellant. He further reduced the sentence by 25 per cent to reflect the credit for the guilty pleas, and reduced it by a yet further three months to reflect the Covid-19 conditions in prison during the pandemic.

8. It is said on behalf of the appellant that this sentence was excessive. It is rightly conceded that, given the circumstances, this was category 3 offending for the purposes of the definitive guideline on drug offences issued by the Sentencing Council, and the appellant was to be taken as having had a "significant role". Consequently, the starting point under the guideline is four years six months' custody, with a category range of three years six months to seven years' custody.

9. On behalf of the appellant Mr Moss primarily seeks to say that the judge went too high up in the range open to him, and in particular gave too much weight to the fact that two different kinds of drugs were involved. Mr Moss further sought to bolster his argument by reference to a number of other matters. He stressed, for example, that the appellant had no previous convictions of any kind, and that there are (at least now) the positive references available to testify as to his character. Further, Mr Moss referred to the appellant's family situation and the fact that there are children involved. He also drew attention to the significant delay that had occurred before the appellant first appeared in the Magistrates' Court – a delay which the judge had not specifically referred to in the course of his sentencing remarks. However, his principal point remained that the judge had no sufficient justification for going up as far as he did within the guideline range.

10. What this court has to consider is whether or not this sentence was manifestly excessive. As the judge had noted, the offending was careful and planned: and it was conducted in the face of every kind of warning as to the risks to those attending the festival intent on supplying drugs. Furthermore, it was certainly a legitimate factor for this judge to take into account what might be called local issues, namely, the need to deter people who attend the Creamfields festival from dealing in drugs.

11. Taken overall, we think that the judge was entitled to take a stern view here in the way that he did. We cannot see that this sentence, even though it was a stern sentence especially bearing in mind the personal circumstances of the appellant, was nevertheless an excessive sentence. It was, after all, a sentence within the Guideline range open to the judge. It is not open to this court to tinker with such a sentence.

12. Accordingly, we dismiss this appeal.

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

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