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IN THE COURT OF APPEAL
CRIMINAL DIVISION

NCN: [2021] EWCA Crim 397

Case No: 2020/02489/A2



Royal Courts of Justice
The Strand
London
WC2A 2LL

Thursday 4th March 2021

B e f o r e:

LORD JUSTICE SINGH

MRS JUSTICE WHIPPLE DBE

THE RECORDER OF WESTMINSTER

(Her Honour Judge Deborah Taylor)

(Sitting as a Judge of the Court of Appeal Criminal Division)

R E G I N A

- v -

BRAD MILEHAM

Computer Aided Transcript of Epiq Europe Ltd,
Lower Ground, 18-22 Furnival Street, London EC4A 1JS
Tel No: 020 7404 1400; Email: rcj@epiqglobal.co.uk (Official Shorthand Writers to the Court)

Non-Counsel Application

J U D G M E N T

Thursday 4th March 2021

LORD JUSTICE SINGH: I shall ask Mrs Justice Whipple to give the judgment of the court.

MRS JUSTICE WHIPPLE:

1. This is a renewed application for leave to appeal against sentence, following refusal by the single judge.

2. On 3rd September 2020, in the Crown Court at Sheffield before Mr Recorder Preston, the applicant (who was then aged 21) was sentenced to a total term of 44 months' imprisonment for various drugs offences to which he had pleaded guilty. A timetable for proceedings under the Proceeds of Crime Act was set out.

3. For present purposes it is not necessary to recite the facts, beyond noting that the applicant, who was then a student, was found in possession of a sizeable quantity of a number of different drugs on the evening of 24th November 2018. He was found to be in possession of £130 in cash, and there was a cash tin containing an unknown amount at his address. The total street value of the drugs of which he was found in possession was around £3,000. There were a number of text messages on his phone, many of which related to drug dealing. He made full admissions in interview, including to having sold some of the tablets recovered from him that night.

4. For reasons unconnected with the applicant, there was a delay of almost two years in bringing the matter before the court for sentence.

5. In passing sentence, the Recorder considered the guidelines and concluded that the applicant's offending fell within category 3 as street dealing with a "significant role". The

starting point was four and a half years' custody, in a range of three and a half to seven years. There is no appeal against that aspect of sentence, or against the imposition of a custodial sentence as a matter of principle. It is only the length of that sentence which is in issue and in relation to which leave is sought.

6. In the course of his sentencing remarks, the Recorder referred to the applicant's "substantial mitigation". That was a reference to the applicant's previous good character and his young age (he was only 21 at sentence); the fact that he had started taking drugs after a three year relationship broke down; that the offending was relatively short-lived (over a period of a couple of months); that it was unsophisticated; that the applicant was intelligent and was at university at the time and knew that he had put his future in jeopardy; that he had since then moved away and tried to better himself; that he had weened himself off drugs and alcohol; that he had caused his own mental health to suffer; and that he had caused stress to family members. These were all points recorded by the Recorder in his sentencing remarks. In addition, and not specifically noted by the Recorder, there was some evidence in the pre-sentence report that the applicant was immature for his chronological age; that he had insight into his offending; and that he was remorseful

7. Later in his sentencing remarks (at page 3E), the Recorder said that the notional sentence after trial would be six years' custody, which he reduced to five and a half years for the delay and "progress made". The Recorder then deducted one-third to reflect the guilty plea and arrived at the final sentence of 44 months' imprisonment.

8. We pause to note that the Recorder did not refer in terms either to the aggravating features which took the sentence in his judgment, above the four and a half year starting point in the guideline, or to any mitigating features which served to reduce it. If he had taken that approach, he might well have noted that there were no statutory aggravating factors, although the multiple

offending might have served to elevate the sentence, but that there were three statutory mitigating factors in play: that the applicant had shown remorse; that he had no previous convictions; and that he showed a lack of maturity.

9. It is not clear to us whether and if so to what extent the substantial mitigation to which the judge had referred was taken into account. If the six year notional sentence was intended to be the sentence after taking account of this mitigation, then the notional starting point for sentence after trial must have been in excess of six years and thus towards the top of the range. That, at least arguably, seems to us to have been too high. If that personal mitigation was intended to be reflected in the deduction of six months for "delay and progress made", such as to reduce the notional sentence after trial to five and a half years, then it is arguable, so it appears to us, that insufficient credit was given to reflect the substantial character of the mitigation.

10. For those reasons, we grant leave to appeal so that full argument may be heard.

11. We do not wish to raise false hopes in the applicant. His offending was serious, and he may not succeed in persuading the full court to reduce his sentence. The court hearing this appeal will not concentrate on the mathematics, but will wish to consider whether, overall, the sentence of 44 months' imprisonment was manifestly excessive or wrong in principle.

12. We therefore give the following directions. We direct a representation order for junior counsel; the time estimate for the hearing is 30 minutes; we direct that the applicant's counsel do file fresh grounds of appeal within 42 days, if so advised; that the prosecution be permitted to file a Respondent's Notice and be invited to attend the hearing. The matter is not reserved to the current constitution. We direct that a transcript of today's hearing be provided to the court that hears the substantive appeal.

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

Lower Ground, 18-22 Furnival Street, London EC4A 1JS

Tel No: 020 7404 1400

Email: rcj@epiqglobal.co.uk
