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IN THE COURT OF APPEAL

CRIMINAL DIVISION

[2021] EWCA Crim 477



No. 202002875 A1

202002980 A1

Royal Courts of Justice

Friday, 12 March 2021

Before:

LADY JUSTICE CARR

MR JUSTICE JAY

HER HONOUR DEBORAH TAYLOR
(RECORDER OF WESTMINSTER)

REGINA

V

JAMES MICHAEL HUGHES
PETER POWELL

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5 New Street Square, London, EC4A 3BF

Tel: 020 7831 5627 Fax: 020 7831 7737

CACD.ACO@opus2.digital

MR R. BOAG appeared on behalf of the Appellants.

The Crown were not represented.

J U D G M E N T

LADY JUSTICE CARR:

Introduction

- 1 These are two appeals against sentence brought by James Hughes (“Hughes”), now 39 years old, and Peter Powell (“Powell”), now 53 years old. Both pleaded guilty in the Crown Court at Mold to conspiracies to supply cocaine and heroin (counts 3 and 4 of the indictment). On 11 September 2020 HHJ Parry (“the Judge”) imposed on each of them two sentences of four years and six months' imprisonment to run concurrently.
- 2 The appellants were sentenced alongside some sixteen further co-accused, who received custodial terms ranging between 4 and 21 years' imprisonment.
- 3 Both Hughes and Powell have had the benefit of representation from Mr Boag. We express our gratitude for his clear and able submissions on this appeal.

The Facts

- 4 The overall offending of these conspiracies came to light as a result of a police operation called Operation Tide. This was an investigation into a sophisticated and well-organised criminal network that had been responsible for the large-scale commercial supply of cocaine, heroin and class B drugs into North Wales, Scotland and the South of England. The criminality involved high purity cocaine and heroin. A huge amount of cutting agents had been recovered during the police investigation and it was estimated that the conspirators had traded in drugs worth in excess of £2 million. Colin Jones (“Jones”) had been at the head of the organised crime group and had controlled operations from the Liverpool area. Although arrests and seizures had been made during the course of the conspiracies, the organised crime group had continued with its activities.
- 5 There was, as is common, a sophisticated hierarchy in place, dealing with procurement and logistics. Powell was said to have played an important part in the distribution side of the operation in Connah's Quay in North East Wales. He had been responsible for vehicle logistics and had on occasion travelled in his own vehicle to meet or facilitate meetings between upstream suppliers and Liverpool. Hughes' role was described as a low level runner, who physically dealt the drugs to the end customer. Hughes had been one of the conspirators who had been regularly dealing drugs on behalf of the organised crime group as part of the Connah's Quay operation as well. He had been seen frequently travelling to and from the address of another co-accused Anthony Stagg (“Stagg”), and had been collecting drugs from that address which he then sold on behalf of the organised crime group.
- 6 Jones had controlled the Echo Line which was the top-up mobile telephone line used in the conspiracies, and he made sure that that line had been active and operational seven days a week. Powell had been seen to purchase a top-up for Echo Line. In a three-month period in 2018 the line had 160,000 calls and text messages to it. The line was, therefore, of critical importance to the conspirators. When it was analysed by the police, Powell and Hughes were amongst its top ten contacts.
- 7 After a thorough police investigation, the conspirators were arrested by the police. Hughes and Powell made no comment in response to questions asked by the police.
- 8 Hughes had five convictions for seven unrelated offences, spanning between October 1999 and September 2016. Powell had 17 convictions for 27 unrelated offences, spanning

between December 1987 and December 2018.

- 9 Both Hughes and Powell pleaded guilty on a basis. Hughes' basis was that he had acted as a street level dealer for about a month in November/December 2018. He was a regular user of heroin and crack cocaine himself and had agreed to act as a street level dealer when the person previously active in that role had been arrested. He lost his position after being admitted to hospital shortly before Christmas 2018.
- 10 Powell's basis on his guilty plea (which was entered only after trial had started) was that his involvement was limited to two specific occasions in September 2018, once when he purchased the top-up drug for the Echo Line on 17 September 2018, and secondly, when he gave Stagg a lift to Liverpool, but he himself had not attended the meeting when drugs were passed.

Sentence

- 11 The Judge prepared detailed and lengthy written sentencing remarks relevant to each of the 18 defendants before him. This was a sophisticated, well-organised, criminal enterprise responsible for large scale commercial supply into North Wales, Scotland and the South of England, one of the large scale, so-called county lines organised crime groups. The conspirators were highly sophisticated, extremely surveillance conscious and aware, and adopted counter measures to frustrate detection.
- 12 The Judge reminded himself that the Sentencing Council Guidelines, which he had considered carefully, embodied a good deal of flexibility. Calculation of harm had to be reflective of the reality of the overall facts. He commented — and no criticism is made of this — that the assistance of the Guidelines was, however, of some limitation in a case such as this of conspiracy, being relative to single offences by single offenders. The Judge set out his approach to the sentencing exercise under the Guidelines, amongst other things commenting that the court was entitled to take into account that each individual was part of a wider, more serious criminal activity. Involvement in a wider conspiracy was in itself an aggravating feature, each defendant playing a part which supported others. The court was entitled to, and indeed, should reflect in any sentence the bigger and more serious picture.
- 13 Turning to the sentencing exercise specific to Hughes and Powell, the Judge described counts 3 and 4 as relating to the operation of a widespread conspiracy in North East Wales. Each of the conspirators had been damaging their local community, a part of Wales that each of them knew had been suffering the dreadful consequences of class A dependency. Each of the conspirators had played a significant role in the conspiracy. Each of the conspirators, from the mobile telephone contact that had been analysed, had clearly been important contacts for the county line phones based in the north-east of England.
- 14 In relation to Powell, his role had been a lesser role than others, but he was nevertheless on the very cusp of level 2 and level 3 in relation to harm. His role had been to provide Stagg with transport. He had also bought top-up mobile telephones for the county lines enterprise, which had made detection of the main conspirators more difficult. He had a poor record of previous convictions, and had foolishly left it very late after a trial had started, before pleading guilty. The Judge would exceptionally give Powell 10 % credit in this regard. He would sentence Powell faithfully on his basis of plea. In terms of mitigation, Powell had no previous convictions for drug trafficking offences, and a good work ethic. The Judge said that he took into account the mitigation urged on his behalf.

- 15 In relation to Hughes, Hughes also stood to be sentenced in relation to counts 3 and 4. He had been a street dealer, selling the product with what he had known was a county lines drug operation. Hughes had played a significant role, having personally been handed a mobile telephone by Stagg, someone whom Hughes had known well. Hughes would also have known that Stagg had been involved in something far bigger. Hughes' position was aggravated by his previous convictions, but Hughes had had the good sense to plead guilty to counts 3 and 4, and would be afforded 25 % credit accordingly. He had no previous convictions for drug related offending. The Judge said in terms that he took into account the basis of plea for Hughes, and in particular, the aspect that confirmed that Hughes's involvement in the conspiracy was for a very short period. The Judge also took into account the fact that Hughes had been drug dependent at the relevant time.
- 16 He then passed the sentences to which we have already referred, namely sentences of four years and six months overall on each appellant.

Grounds of appeal

- 17 For Hughes, Mr Boag submits that Hughes should have been treated as a street level dealer, category 3, significant role, with a starting point of four and a half years. Hughes had originally been a customer. He had been recruited only to take over from somebody who had been arrested. His services were terminated after a month. There was no basis for treating Hughes as providing anything other than end of line street dealing. Hughes' basis of plea, the prosecution opening and sentencing grid all made it clear that his role was as a street level dealer for a period of about four weeks in November and December 2018. A term of six years, before 25% credit for guilty plea in those circumstances was manifestly excessive. An appropriate sentence would have been around three to three and a half years, after credit. That would be based on a term of four and a half years, taking into account the aggravating features of Hughes' previous convictions balanced out by the impact of the pandemic on prison conditions.
- 18 For Powell, Mr Boag submits that, whilst the prosecution sentencing grid was consistent with Powell's basis of plea, allocating him a lesser role, albeit by reference to category 2/3 harm, the prosecution oral opening for sentence was at odd odds with it. It was stated that Powell had played an important role in the distribution side of the operation, his involvement on 9 September 2018 being but an example. Mr Boag suggests that this may have caused the Judge to pass a harsher sentence than was justified. Powell should have been placed in lesser role, category 3, with a starting point of three years' custody, it is submitted. His basis of plea indicated that there were only two occasions when Powell was involved. That basis was accepted. There had been no trial of issues. The term of five years before credit for guilty plea in these circumstances was manifestly excessive. Powell's previous convictions were relatively minor and spread over a lengthy period. Further, Mr Boag informs the court that there are, uniquely so far as Powell is concerned, no proceedings under the Proceeds of Crime Act 2002 against him. There are such proceedings against all other 17 defendants. This, suggests Mr Boag, emphasises the lesser role that Powell played by reference to which he ought to have been, but was not, sentenced.

Discussion

- 19 As identified in *R v Williams (Declan Craig)* [2019] EWCA Crim 279; [2019] Cr App R (S) 15 at [3] and [4], this court will not usually review the approach of a sentencing judge sentencing many defendants for their various roles in a large conspiracy to supply drugs. In such a case the judge will usually have heard read or heard the prosecution evidence as it relates to all of the defendants and will be uniquely well placed to consider the different roles of the various conspirators and the nature and extent of each

person's involvement. He or she is, thus, also uniquely well placed to calibrate the sentences imposed so as to achieve parity among the defendants and reflect their various levels of responsibility. Only if it can be shown that in sentencing a particular defendant the judge did so on a factual basis which is obviously mistaken or made an error of principle, or when assessing weight formed a view which no reasonable judge acting reasonably could have formed, is this court likely to think it right to interfere. Arguments based on misappraisal or level of role or disparity will seldom have any realistic prospect of success.

- 20 We respectfully adopt those remarks. Here, the Judge undoubtedly had a material advantage over this court with an in-depth understanding of the conspiracies as a whole and the role and involvement of each of the 18 co-accused. He carried out a three-day sentencing exercise. There would need to be a clear, established error of fact or principle before there would be a proper basis for intervention by us.
- 21 As for Hughes, we are not persuaded that there are any such proper grounds to interfere with the Judge's conclusion as to the appropriate custodial term of six years before granting credit for guilty plea. The Judge was fully aware of the relevant facts and took into account Hughes' basis of plea and his available mitigation alongside his poor offending record. Hughes was being sentenced for two class A drug conspiracies. As the Judge was entitled to conclude, he was not dealing with any end of the line street dealing but more serious offending. Even if Hughes was only involved for a relatively short period, he played an important role and he was linked closely to Stagg. His involvement only ceased because of his ill-health. Moreover, as the Judge indicated, he was entitled to sentence Hughes by reference to the wider picture, whilst remaining faithful to Hughes' basis of plea. Hughes was, as we have already indicated, one of the top ten contacts on the Echo Line.
- 22 Nor are we persuaded that there is established a clear error of fact or principle giving rise to proper grounds for us to interfere with the Judge's conclusion as to the appropriate custodial term of five years before credit for guilty plea for Powell. Again, the Judge was fully aware of the relevant facts and took into account Powell's basis of plea and available mitigation alongside his poor offending record. Powell purchased the top-up of the Echo Line to support the activities of the organised crime group. The Echo Line was a critical part of the group's activities. Powell also was in the top ten contacts on that telephone. He was a friend of Stagg, someone who was in or close to the inner circle of those allowed to visit Jones's base in Liverpool, and again, even if Powell's direct involvement was limited to two instances, the Judge was entitled to sentence him by reference to the wider picture. Each defendant, albeit to varying degrees, knew that he or she was assisting many others in his or her criminality. Further, it can be said that Powell could consider himself extremely fortunate to have received the credit that he did for the guilty pleas that he entered after the commencement of trial.
- 23 In conclusion, whilst we consider that the sentences passed on Hughes and Powell can be said to be severe, we are unable to conclude that they are manifestly excessive. For these reasons both appeals will be dismissed.
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CERTIFICATE

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5 New Street Square, London, EC4A 3BF
Tel: 020 7831 5627 Fax: 020 7831 7737
CACD.ACO@opus2.digital

This transcript has been approved by the Judge.