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Neutral Citation Number: [2023] EWCA Crim 1511

IN THE COURT OF APPEAL

CRIMINAL DIVISION

CASE NO 202301683/A1

Royal Courts of Justice  
Strand  
London  
WC2A 2LL

Wednesday, 6 December 2023

Before:

LORD JUSTICE EDIS  
MR JUSTICE JEREMY BAKER  
SIR ROBIN SPENCER

REX  
V  
JORDAN MURRAY

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NON-COUNSEL APPLICATION

J U D G M E N T

SIR ROBIN SPENCER:

1. This is a renewed application for an extension of time in which to apply for leave to appeal against sentence, following refusal by the single judge. The extension required is three days. Like the single judge we have concentrated on the merits of the proposed appeal.
2. The applicant, now aged 30, seeks to appeal against a sentence of four-and-a-half years' imprisonment imposed for offences involving the smuggling of drugs and mobile phones into the prison where he was on remand awaiting sentence for very serious offences. He was convicted after a trial in the Crown Court at Leicester and was sentenced by Miss Recorder Ackland.
3. The offending was charged as four counts of conspiracy to bring, throw or convey prohibited items into prison. There were separate counts for phones, for cocaine, for cannabis and for the class C drug stanozolol, which is an anabolic steroid. There were two co-defendants but no issue of disparity arises.
4. The plan was for a bag to be fixed to a line made from dental floss which was thrown from a prison window to men positioned outside the prison wall. This was on the night of 27 April 2020. The men on the outside attached the bag to the line which was hauled up to the cell occupied by the applicant and one of the co-defendants. The plan failed because on the way up the bag fell to the ground where it was recovered by a prison officer. The bag contained seven mobile phones, 20 grams of cannabis, 2.85 grams of cocaine and 60 stanozolol tablets. These items had a value in prison of some £6,500.
5. The applicant was in prison at this time on remand awaiting sentence for very serious offences of conspiracy involving firearms and perverting the course of justice committed

in 2018. He had pleaded guilty in November 2019 and was subsequently sentenced on 28 May 2021 to an extended sentence of 20 years' imprisonment, with a custodial term of 17 years. Despite his comparative youth, the applicant had a long record of offending for violence, dishonesty and drugs.

6. In passing sentence the judge noted that there is no Sentencing Council guideline for offences under the Prison Act 1952 such as these. However in relation to the smuggling of drugs into prison she correctly identified the Sentencing Council guideline on supplying drugs as relevant. She was satisfied that the applicant had played a “significant” role in the offences. She noted that the supply of drugs in a custodial setting usually falls within Category 3 for harm. In respect of supplying cocaine into the prison the starting point under the guideline was therefore four-and-a-half years' custody.
7. The fact that the offence took place in a prison setting justified an increase to five years. The applicant's serious previous convictions were an aggravating feature but the judge did not increase the sentence on that account; she considered that the mitigating factor of the long delay in bringing the matter to trial (arising from the pandemic) offset any such increase. The judge concluded correctly that the sentence for these offences must be consecutive to the sentence he was already serving. Mindful of totality she reduced her provisional sentence from five years to four-and-a-half years. On each of the other three counts of conspiracy she imposed concurrent sentences of 12 months, reflecting the overall criminality in the lead sentence for cocaine.
8. The grounds of appeal settled by trial counsel acknowledge the correctness of the judge's approach and analysis. The sole complaint is that the judge gave insufficient discount for totality in respect of the sentence the applicant was already serving.
9. Although these later offences were committed before he received his 20-year sentence in

2021 for the firearms conspiracy, he could not have been sentenced for the current offences at the same time. He had only very recently been charged with them and sent for trial, and we note that he refused to engage with the court process thereafter, leading to the eventual trial in 2023. We therefore have difficulty in understanding counsel's suggestion in the grounds of appeal that the sentencing exercise in 2023 should have been conducted "through the prism of that undertaken in 2021".

10. The judge was obliged to ensure that the total sentence, taking account of the earlier sentence, was just and proportionate. She gave the point careful consideration and discounted the sentence by six months. That was quite sufficient in the circumstances. The sentence was plainly just and proportionate.

11. Like the single judge, we are satisfied that there is no arguable merit in this appeal. Accordingly we refuse leave to appeal against sentence and consequently we refuse the extension of time.

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

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