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IN THE COURT OF APPEAL
CRIMINAL DIVISION



Neutral Citation Number:
[2023] EWCA Crim 1684

CASE NO 202303456/A5

Royal Courts of Justice
Strand
London
WC2A 2LL

Tuesday, 28 November 2023

Before:

LORD JUSTICE WILLIAM DAVIS
MR JUSTICE MURRAY
THE RECORDER OF LEEDS
HIS HONOUR JUDGE KEARL KC
(Sitting as a Judge of the CACD)

REX
V
OLEKSANDR HRANATYR

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MISS L STOCKDALE appeared on behalf of the Applicant

J U D G M E N T

1. LORD JUSTICE WILLIAM DAVIS: The applicant is a Ukrainian national now aged 42. He has no previous convictions whether in this country or Ukraine. On 19 April 2023, having pleaded guilty before the magistrates, he was committed for sentence in respect of offences of possession of a controlled drug of class A with intent and possession of criminal property. On 2 October 2023 in the Crown Court at Guildford he was sentenced to two years' imprisonment in respect of possession of a controlled drug with intent with a concurrent sentence of six months in relation to possession of criminal property. From that sentence, 83 days was ordered to be treated as served because he had spent 166 days subject to an electronically-monitored curfew. There were ancillary orders made in relation to drugs, money and a telephone.
2. The application for leave to appeal against sentence has been referred to the full court by the Registrar. We grant leave to appeal.
3. At about 8.50 in the evening of 17 April 2023, police officers on patrol in Guildford town centre saw a car parked with its lights on. They saw someone get into the rear of the car and then shortly afterwards leave. The car drove off. The police followed it for a short distance before pulling it over. The driver was the appellant. The car was searched. Under the driver's seat were 13 grip-seal bags each of which contained approximately half a gram of cocaine. There was £340 in cash in the driver's door pocket.
4. The appellant had a mobile telephone. There were messages on the telephone showing that the appellant had been dealing in drugs. The messages required him to go to a specific location in order to sell drugs. The appellant having conducted the deal would send a message. He would be then sent to a further location to sell drugs to someone else. This sequence continued over the course of the early evening. The appellant's home was searched after his arrest. Nothing of any significance was found.

5. When he was interviewed, the appellant answered no comment to all questions. He pleaded guilty the day after his interview on his first appearance at the Magistrates' Court. Before the hearing in the Crown Court he served a basis of plea which was accepted by the prosecution. He was sentenced by reference to that basis. It can be summarised as follows. The appellant responded to a post on a Facebook group used by Ukrainians, the post advertising night-time delivery work to be paid at £30 per hour. The appellant drove from where he lived in New Malden in South West London to Guildford, a drive of about half an hour. He met someone in Guildford who gave him the keys to a car i.e. the car in which he was ultimately arrested. Drugs and cash were already in the car. He began supplying drugs at about 7 o'clock that evening. He was due to continue until the early hours of the following morning. He had supplied two or three customers by the time of his arrest. He had no understanding of the supply chain beyond the messages he received on the mobile telephone. He had not done this before. Although he was expecting to be paid he in fact had never received any payment.
6. The judge had a pre-sentence report which showed that the appellant had been in this country for about 18 months living with his sister and her family. His wife and child remained in Ukraine. The appellant was supporting them financially from his earnings as an electrician. The offence, according to the pre-sentence report, was out of character. The author indicated that the appellant was suitable for unpaid work. There were several character references demonstrating the appellant to be a man of positive good character. The appellant himself wrote a letter to the judge expressing deep remorse for his actions.
7. The judge in sentencing referred to the basis of plea and concluded that on that basis the appellant fell within the category of lesser role within the relevant Sentencing Council

Guideline. He then said that looking at the guideline the appropriate sentence would have been one of three years' imprisonment. He did not explain how he had reached that figure but we infer that was a reference to the starting point in the guideline for possession with intent to supply Class A drugs to users on the street. We observe that the category range for such offending is two years to four-and-a-half years.

8. The judge went on to say this:

"Whilst I would wish to suspend this sentence, I would be failing in my duty if I did so. An immediate custodial sentence must be passed for deterrent purposes, for those engaging in the trade of class A drugs."

9. He went on to explain the well-known effects of class A drugs, in particular the creation of further crime as a result of that trade. He concluded by saying that the appropriate sentence was one of three years but that he was reducing the sentence to one of two years' imprisonment. He did not explain that reduction - again we must infer that that was a reduction for the plea of guilty at the earliest opportunity.

10. The sentence imposed in respect of the possession of criminal property was passed very much as an afterthought. The judge was reminded that no sentence had been imposed. He did not explain the length of the sentence imposed.

11. The appeal rests on three grounds. First, the judge did not consider any adjustment of the starting point in the Drugs Guideline by reference to the amount of drugs involved; second, the judge did not allow for the mitigating factors; third, the judge did not refer to the Imposition Guideline issued by the Sentencing Council.

12. We consider that all three grounds have merit. First, the appellant had about seven grams of cocaine in his possession. Even allowing for supplies already made before his arrest,

the overall quantity involved cannot have been much greater than 10 grams. The guideline places any case involving direct supply to users into Category 3 harm. The court is then required by the guideline to make an adjustment from the starting point by reference to the quantity of drugs in the particular case. The indicative quantity of drugs for Category 3 harm is 150 grams. The quantity of drugs with which this appellant was concerned was very much less than that. A downward adjustment from the starting point of three years for someone playing a lesser role was required.

13. Second, there were no aggravating factors applicable to the appellant's case. There were several mitigating factors, namely no previous convictions, positive good character, remorse and an isolated episode of dealing. This meant that the sentence required further reduction from whatever starting point was appropriate after the downward adjustment to which we have already referred.
14. Taking those two matters together, we conclude that the proper sentence before reduction for plea would have been 24 months. A reduction of one-third means that a custodial term of 16 months was appropriate.
15. We turn then to the third matter raised in the grounds of appeal, namely the failure to refer to the imposition guideline. The judge's sentencing remarks suggested that immediate custody is mandatory for anyone involved in supplying class A drugs. Whilst immediate custody is very likely in such cases, it is not inevitable. A judge presented with someone involved in a limited way in such supply has to consider whether the custodial term can be suspended by reference to the Imposition Guideline. In this case the only possible factor in favour of immediate custody was that this was the only means by which appropriate punishment could be achieved. On the other side of the equation, the appellant had strong personal mitigation and his incarceration was bound to result in

the loss of his financial support to his wife and child.

16. This court will not interfere lightly with a sentencing judge's conduct of the balancing exercise that is required by the Imposition Guideline. It is a matter of judgment which is only interfered with where it is clear that the judge has gone seriously wrong. In this instance the judge did not carry out any kind of balancing exercise, still less refer to the Imposition Guideline. Thus, it is necessary for us to carry out that exercise afresh. Given the limited nature of the appellant's offending, we do not find that appropriate punishment could only be achieved by immediate custody. Rather, the other factors meant that the sentence should have been suspended.
17. It follows from all we have said that we quash the sentence of two years immediate imprisonment in respect of the offence of possession of drugs with intent to supply and substitute for that sentence a custodial term of 16 months which we shall suspend for two years. That sentence will take effect from the point of the original date of sentence.
18. Had that been the sentence imposed at the Crown Court it would have been appropriate to attach a requirement of unpaid work. In fact the appellant has now served nearly two months in custody and has also spent a considerable time subject to an electronically-monitored curfew. In those circumstances, we are satisfied that no further punitive requirement is necessary.
19. In relation to the offence involving the possession of criminal property, the judge made no reference at all to the specific offence guideline. The amount involved placed the offence in the very lowest category of harm. On the basis of low culpability that guideline provides a category range of a fine up to a medium level community order. It follows that the sentence of six months' imprisonment was wrong in principle. Possession of this amount of criminal property in the circumstances of this case very

often is not met with a separate count; it really forms part and parcel of the offence of possession with intent to supply. Here it was separately charged. We consider it adds nothing to the criminality and therefore the sentence of six months' imprisonment is quashed and we impose no separate penalty. To that extent this appeal is allowed.

20. The appellant must listen very carefully. You are now the subject of a suspended prison sentence. That means that you are subject to a sentence of 16 months' imprisonment and that suspended sentence runs from October 2023 through to October 2025. If you commit any more offences in the next two years you will have to serve such part of that 16 months as is still outstanding. Do you understand?

21. THE APPELLANT: Yes, I understand.

22. LORD JUSTICE WILLIAM DAVIS: The 83 days which was taken into account in the Crown Court will also be taken into account should you have to serve this 16 month sentence.

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