IN THE COURT OF APPEAL

CRIMINAL DIVISION

CASE NO 202203319/A1

[2023] EWCA Crim 229
Royal Courts of Justice
Strand
London
WC2A 2LL

Thursday 9 February 2023

Before:

LADY JUSTICE WHIPPLE DBE
MRS JUSTICE CUTTS DBE
THE RECORDER OF NORWICH
HER HONOUR JUDGE ALICE ROBINSON
(Sitting as a Judge of the CACD)

REX
V
BABAK RASOULI

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)

MR I KHAN appeared on behalf of the Appellant

J U D G M E N T

1. LADY JUSTICE WHIPPLE: On 22 April 2021 the magistrates committed the appellant to the Crown Court for sentencing, he having pleaded guilty to a single count of possession of class B drugs. On 21 October 2021 the appellant pleaded guilty to five drugs offences which were charged by way of separate indictment. Counts 1, 3 and 4 were offences of supply of class A drugs (Methylamphetamine); count 2 was a count of supply of class C drugs (GHB); count 6 was a count of possession of class A drugs (cocaine). A further count of possession of class A drugs with intent to supply (originally count 5) was ordered to be left on the file.
2. The appellant was sentenced for the matters to which he pleaded guilty on 25 April 2022 by Her Honour Judge Francis sitting at Harrow Crown Court. She took count 1 as the lead offence and sentenced the appellant to a custodial term of 42 months (or three-and-a-half years) on that count. The same sentence of 42 months was imposed to run concurrently in relation to counts 3 and 4. She imposed shorter concurrent sentences for counts 2 and 6 and for the class B possession count which had been sent up from the magistrates. The overall sentence that she imposed was therefore three-and-a-half years' imprisonment (42 months if counted in months).
3. The appellant appeals against sentence with the leave of the single judge. He raises a single ground of appeal which was that the judge had failed to give him the appropriate amount of credit for his guilty plea.
4. Given the narrow point raised by this appeal, it is not necessary to set out the facts in detail. It is sufficient simply to note how the judge described this offending in her sentencing remarks. She stated that the appellant had met with an undercover police officer on three different occasions and on each occasion had supplied that officer with class A drugs and on one occasion with class C as well as class A drugs. This conduct

gave rise to counts 1, 2, 3 and 4. When the police searched the appellant's address they found cocaine (count 6). The matter sent up by the magistrates was a charge of possession of class B on a different occasion.

5. In her sentencing remarks the judge concluded that the appellant was dealing at a low level but had a significant role. She noted his mitigation, including his positive previous good character and his exemplary conduct while in prison. She recorded that he had shown remorse and had experienced particularly difficult circumstances in custody given the pandemic, his limited ability to speak English and other reasons. She arrived at a notional sentence after trial, taking account of all aggravating and mitigating features, of four years' imprisonment to reflect the totality of offending. She then said this:

> "Having given you credit of 25%, what that means is for count 1, which was supplying a Class A drug, I am imposing a sentence of three years and six months."

6. She went on to impose concurrent sentences of the same or shorter lengths on the other counts.
7. The appellant submitted his own grounds quite simply saying that the judge made a mathematical error in calculating the sentence. If she had deducted 25 per cent from her notional sentence after trial of four years, as she said she was intending to do, she would and should have arrived at a sentence of three years (or 36 months).
8. At the time of granting permission the single judge granted a representation order for Mr Khan who appears helpfully before us. He adopts the appellant's own grounds. The point of this appeal is that the sentence of three-and-a-half years was manifestly excessive and wrong in principle.
9. We agree with that submission. We have no reason to interfere with the judge's notional

sentence after trial and after taking account of all aggravation and mitigation of four years. The judge indicated that the appellant was entitled to a discount of 25 per cent to reflect his guilty plea. We have no reason to interfere with the judge's assessment of that amount of credit due for the guilty plea. The correct sentence applying the judge's own approach was three years' imprisonment, or 36 months.

10. It was a pity that neither counsel present at the sentencing hearing asked the judge to clarify her sentence, which she stated to be three-and-a-half years. It appears that the judge simply made a mistake. It happens and we can and should correct it.
11. We therefore allow this appeal. We quash the sentence of 42 months and substitute a term of imprisonment of three years or 36 months.

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