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IN THE COURT OF APPEAL
CRIMINAL DIVISION

CASE NO 202300516/A5
[2023] EWCA Crim 624

Royal Courts of Justice
Strand
London
WC2A 2LL

Tuesday 16 May 2023

Before:

LORD JUSTICE COULSON

MR JUSTICE GRIFFITHS

HIS HONOUR JUDGE BATE
(Sitting as a Judge of the CACD)

REX

V
JAKE GOODSPEED

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MR D LAWLER appeared on behalf of the Appellant.

J U D G M E N T

LORD JUSTICE COULSON:

Introduction

1. The appellant is now 26. On 24 November 2022, in the Crown Court at Ipswich, he pleaded guilty to one count of wounding with intent contrary to section 18. In addition, on a separate indictment, he pleaded guilty to one count of conspiracy to supply cocaine and a related count of possession of criminal property.

2. On 25 January 2023 he was sentenced by HHJ Levett to a term of 4 years 9 months for the section 18 wounding and a consecutive term of 4 years 10 months' imprisonment on the drug conspiracy count, making a total of 9 years and 7 months. He appeals against that sentence with leave of the single judge.

The Section 18 wounding

3. On 9 September 2021, in a car park at the Leather Bottle public house in Shrub End, the appellant was involved in an alteration between a friend of the appellant's (Ford) and Maximillian Edwards. Ford confronted Edwards and wanted to know what Edwards had been doing to his car. Edwards denied doing anything and Ford struck him to the left side of the face before walking away.

4. The appellant, who had not been involved in the altercation thus far, then approached Edwards and hit him in the face with a glass bottle. That caused it to smash and the result was a terrible wound to Edwards's face. Edwards was taken into hospital and was treated for three lacerations that required 22 stitches. Edwards was left with significant permanent scarring to the left side of his face. We have had an opportunity to look at the photographs.

5. The appellant was charged with section 18 wounding and released on bail.

The Drug Conspiracy

6. Between 1 April 2021 and 2 July 2022, the appellant, with others, was involved in a conspiracy to supply cocaine in Colchester. The drugs line known as the "F & K" drug line was controlled by Ford, the appellant's friend and a man involved in the first part of the assault on Edwards, and Rulten. The total amount of cocaine connected to the F & K line was about 1.5 kilograms.

7. The history of the F & K line fell in to two parts. During the first period, from April 2021 to December 2021, the phone was held by Kavill. Following the arrest of Kavill and Ford in December, the line started up again with a new number almost immediately. It was run by Ford as soon as he was released on bail. The second part of the history then ran from December 2021 until April 2021. Most of the dealing, relating to just

under 1 kilogram, generating profits of around £78,000, occurred during this second period. During this second period the phone was held at different times by Welham and by the appellant. The appellant was not involved in the F & K line during the first part of its history. The man who held the phone in that period (Kavill) was sentenced to 45 months' imprisonment.

The Sentencing Exercise

8. When the judge came to deal with those involved in the F & K line, having earlier sentenced Kavill, he had a difficult task to perform because, in addition to the appellant, he was sentencing another seven defendants and, in total, there were eight separate cases. However, the judge made some remarks about the nature of the conspiracy and the roles played which, in our view, bear repeating. This can be found in the transcript of the sentencing remarks on page 3 from letter D-H. The judge said:

> "In cases such as *R v Ajayi* [2017] EWCA Crim 1011, a case that emanated from this case something like five years ago, where there is evidence which demonstrates a defendant or even part of a group of people who are organising a successful drug-dealing enterprise over a long period of time will find themselves falling within a leading role, and that is the case whether or not there is an expectation necessarily of substantial financial advantage, or those who are buying or selling drugs on a commercial scale, and even those who have an operational or management function who have the expectation of a significant advantage, whether or not they're operating alone, having some awareness of the proceedings and the scale of the organisation that they are joining. The profits involved with drugs is now vast and therefore it can indicate a high culpability in terms of planning and a high level of harm.
>
> I have carefully examined in this case each individual case and I have looked at various different factors which constituently make up whether a person is in a leading role or whether they are further down the chain having a significant role. However, the present case that I am looking at has all the hallmarks, if I might point out, of a professional organised syndicate which goes well beyond simple street dealing and therefore the assessment of a role that a person is said to have means that they are placed higher up the scale. That will suggest their involvement is far greater and their culpability is far greater than those who are merely street dealing or acting as runners."

9. The specific sentencing remarks concerning the appellant start at page 13E-F of the transcript and continue to page 15C-D. The judge noted that the appellant had ten previous convictions for 13 offences. These included various offences of violence, including battery and affray, and one previous conviction for possession with intent to supply Class A drugs, for which the appellant had received a term of 28 months' imprisonment. In consequence the judge rejected the suggestion, advanced on behalf

of the appellant, that in some way the appellant had "just lost his way".

10. The judge took the wounding offence first. He wondered whether to impose an extended sentence but concluded that he had no material on which to base a finding of *dangerousness*. By reference to the Sentencing Guidelines, he concluded that, in respect of culpability, the offence fell within category B, although it was close to category A. As to harm, he put it in category 2, although he again said it was close to category 1 because the wounds that had been inflicted on Mr Edwards affected his ability to carry out his normal day-to-day activities.

11. For an offence within category B2, the starting point recommended by the Sentencing Guidelines Council is 5 years' imprisonment, with a range of 4 to 7 years. The judge said that the starting point would have to be uplifted because of the aggravating factors and the appellant's previous convictions for violence. He said he would have sentenced the appellant to 6 years after a trial and reduced that by 20%, making a total of 4 years 9 months for the section 18 wounding.

12. As to the drug conspiracy, on behalf of the appellant, Mr Lawler told the judge that the period for which the appellant was involved in the drug conspiracy was less than the full period from December 2021 to April 2022. That was the period identified in the indictment. The judge said that that made no difference to his conclusions. The judge found, by reference to the applicable guidelines, that the quantity of cocaine (1 kilogram) made this a category 2 conspiracy. He found the appellant had played a *significant role*, so the recommended starting point was 8 years with a range from 6 years 6 months to 10 years' custody. The judge said that he had regard to the principle of totality, so he endeavoured to keep the sentence to the lowest in the recommended range. Therefore, for the drug conspiracy he took a starting point of 6½ years and reduced that by 25% for the guilty plea, making a total of 4 years 10 months. The judge then made plain those terms were to be served consecutively, making a total of 9 years and 7 months to which we have referred.

The Sentencing Appeal

13. Originally, as discussed this morning with Mr Lawler, he had accepted at paragraph 32 of his Advice that the sentence in respect of the drugs conspiracy appeared to be high but not manifestly excessive. However, Mr Lawler had pointed out that the appellant's involvement was less than the full period covered by the indictment (the point he had made to the judge) and Mr Lawler also noted that Welham, who had been involved in the conspiracy for a longer period, received the same sentence as the appellant.

14. In his written advice, it is the sentence in respect of the wounding to which Mr Lawler took objection. He did not object to the categorisation, but he said there was no allowance for totality. It is right to say that, as carefully explained by Mr Lawler this morning, totality is Mr Lawler's principal point on this appeal.

15. Whilst it sometimes does not matter which order the offences are dealt with, we consider that, here, it does make a difference. The judge took the section 18 wounding first. That was the first offence in time and the judge was therefore quite right to take that first. Furthermore, we have to consider the offences and the sentences knowing that, again as Mr Lawler properly accepts, the judge was entitled to impose consecutive sentences. These were separate offences committed at separate times.

16. We therefore start with the section 18 wounding. No issue can be taken with the B2 categorisation. Indeed, given the nature of the attack and the severe wounding caused, we consider that the judge was right to say that this was close to a category A1 offence. That would have had a recommended starting point of 12 years' imprisonment. Given that, and the appellant's previous convictions for offences of violence, we consider that the sentence of 4 years and 9 months in respect of the wounding offence was generous. It was well within the range for a category B2 offence. It could easily have been significantly longer.

17. Turning to the drug offence and the criticism that the judge did not allow for totality, we need to look at what the judge did. The judge said that he did allow for totality. In order to reflect it, he said that he would take his starting point at the very bottom of the recommended range. Since this was a *significant role* in a category 2 offence, that range started at 6½ years' custody. That was therefore the period the judge took before applying the discount for plea. But for totality the judge indicated he would have taken a higher starting point. We accept the criticism that he did not identify what that was.

18. We also accept the point that this was not a conventional way of dealing with totality. We do not recommend it. It is usually better for the sentencing judge to identify separately the amount of the reduction that he or she is making for totality. That did not happen here.

19. That said, the judge made an allowance for totality by imposing a term for the conspiracy that was less than it would otherwise have been. The question then becomes whether or not the allowance was sufficient. That involves a proper consideration of the sentence for the drug conspiracy. The position would appear to be this.

20. First, there can be no question that the conspiracy overall was a category 2 conspiracy. In addition, there could be no question that, as the holder of the phone, the appellant played a *significant role*. Furthermore, the judge's remarks at the start of his sentencing exercise, to which we have already referred, are relevant here. This was a sophisticated conspiracy, which anyone joining it would have known. Accordingly, under the Guidelines, that would have indicated a starting point of 8 years and a range of up to 10 years custody.

21. However, there were, in our view, two significant aggravating factors. The first was that the appellant had a previous Class A drug trafficking conviction for which he had served a period of 28 months' imprisonment. The second was that the appellant involved himself in the drug conspiracy at a time when he was on bail for the serious section 18 wounding offence. That was, in our view, a highly aggravating factor.

22. Those two factors, taken together, would have justified a sentence towards or at the top end of the range recommended by the Sentencing Council, that is to say one of 10 years. We recognise that there were mitigating factors. We also recognise, as the single judge pointed out, and as Mr Lawler made plain this morning, the appellant was involved in the conspiracy for a shorter period than that identified on the indictment. That would give rise to reductions in the notional term of 10 years that we have identified. In addition, there would have been an allowance for totality. But taking all of those matters together, in our view, they would not justify a reduction of more than, say, 3½ years, which would bring the sentence back to the term of 6 years and 6 months identified by the judge.

23. Finally as to totality, we note that these were different offences committed at different times. Any allowance for totality would always have been relatively modest. Any judge sentencing the appellant for these two separate and serious offences would have made some allowance for totality but would not, in our view, have made a significant reduction for it.

24. Finally, we should deal with questions of disparity, because Mr Lawler properly raised these points in the oral argument. As to Welham, it does not appear that the two aggravating factors that we have identified, the previous Class A drugs supply sentence and term of imprisonment, and the fact that the conspiracy offence was committed by the appellant when he was on bail, existed in Welham's case, so it does not appear that the cases are directly comparable. In relation to Kavill, we simply have no information as to his antecedents and there may be reasons which we simply do not know about which mean that the two sentences are not directly comparable.

25. In the end this Court has to look at the sentence overall. The sentence overall was stern. But these were two very serious offences, the second committed while the appellant was on bail for the first. We do not consider that these sentences were wrong in principle or manifestly excessive. Despite the clear and crisp way in which Mr Lawler has put the arguments today, we dismiss this appeal.

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

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