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Neutral citation No. [2023] EWCA Crim 846

IN THE COURT OF APPEAL
CRIMINAL DIVISION



No. 202300449 A3

Royal Courts of Justice

Tuesday, 11 July 2023

Before:

LORD JUSTICE DINGEMANS
MR JUSTICE TURNER
HER HONOUR JUDGE MUNRO KC

REX
V
CHINONYE DAVID ANYIAM

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Ms C. Topolski appeared on behalf of the Appellant.
The Crown were not represented.

J U D G M E N T

Introduction

- 1 The appellant is now a 26-year old man who appeals against his sentence of 27 months' imprisonment for offences of: possessing a controlled drug of class B with intent to supply; and offering to supply a class B drug imposed in the Crown Court at Wood Green on 18 January 2023. Those two sentences were made concurrent with each other. That aggregate sentence was ordered to be served consecutively to a sentence of 30 months' imprisonment for offences of violent disorder and possession of a machete imposed on 27 May 2022. It seems that the appellant's release date, having regard to time that he spent on remand and tagged bail for that offence, was 20 May 2023.
- 2 The appeal raises the issue of totality.

Factual Background

- 3 Police officers were investigating drug dealing on social media in the Hackney area. The police located an account on Snapchat with the name Big Crisis which, between the middle of August 2020 and the middle of February 2021, was repeatedly offering skunk cannabis for sale. Some of the offers appeared to be for sales relating to single kilograms of the drug. There was also a photograph showing five strains of premium skunk cannabis which had been obtained from California. There was a price list for various strains of cannabis, offering them at £25 and £30 per gram and four grams for £110. The starting date for the offences on the indictment was 17 May 2019 and the end date was 7 September 2021. This is significant for the issue of overlap with the other offending.
- 4 The appellant was identified as using the Snapchat account. He posted images of himself on the account, and advertised a legitimate business selling fruit through that account.
- 5 On 9 July 2021 a search warrant was executed at the flat. As police were trying to enter the

premises, a large laundry bag was thrown from the flat window. That was found to contain some 608 grams of skunk cannabis which had been divided into smaller quantities in freezer bags. The smaller quantities were not street dealing amounts but rather quantities that could be passed on to someone who could then sell them divided into street deals. Essentially, therefore, this was wholesale supply. The estimated value of the 608 kilograms was £2,700 wholesale and £5,500 at street-dealing level. The appellant and a female were present. The police also found a small amount of cannabis, digital scales, £1,500-odd in cash and a number of mobile phones.

- 6 The appellant was interviewed when arrested. He said the flat belonged to a friend and answered "no comment" in relation to questions about the drugs. He said that the cash had come from his fruit-selling business. He was bailed to live at an address in Leicester. He was then arrested there in January 2022, and an iPhone was recovered from him. The iPhone was unlocked at the time the police seized it. The phone revealed the appellant's involvement in the sale of quantities of cannabis since May 2019, with Snapchat adverts for cannabis and apparent evidence of a lavish lifestyle.
- 7 The appellant boasted on the phone about using an iPhone as opposed to a "brick" phone that would result in people going to jail. One post put up by the appellant commented on the fact that people say weed is slow money, meaning that it was difficult to make money selling cannabis, and that people who said that never knew money. A letter found in the "notes" section of the iPhone seemed to demonstrate the sale or acquisition of a box or kilogram of cannabis and a further box and two ounces from someone. There was a tick list on the phone, a list of six or more names, and against those names was listed quantities and values in hundreds of pounds. There was a further column which contained amounts in thousands.

The sentence

- 8 The appellant was aged 26 at sentence, having been born on 11 January 1997. He had five

convictions for 16 offences, spanning from 2018 to 2022. He had received non-custodial sentences for possessing class B drugs in 2018 and 2019. In 2019, he received a community order for possessing a knife, obstructing a constable and driving offences.

- 9 On 27 May 2022, he was sentenced to 30 months' imprisonment for an offence of violent disorder and possessing an offensive weapon, offending which occurred on 7 June 2020 in the period covered by the indictment for these offences. In 2022, he was sentenced to 19 weeks' imprisonment for possessing criminal property and 16 weeks' imprisonment for dangerous driving concurrent with any sentence that he was already serving. That offending occurred on 2 March 2020, even earlier than the violent disorder but it was also in the period covered by the indictment for these offences. We will return to these separate offences later.
- 10 It was apparent, in particular from the number of references that were made available at the sentencing, that the appellant has the potential to become a law abiding and useful member of society.
- 11 So far as the sentence was concerned, the judge considered that before a discount for a guilty plea the sentence would be one of 36 months. The judge had found that the appellant's role fell in between significant and leading role given that the evidence was that the appellant was dealing in kilo batches and, therefore, wholesale. The appellant was placed at the bottom of leading role and at the top of significant role. The judge identified that for a significant role (category 3 offending) the starting point was one year's custody with a range of 26 weeks to three years, and for a leading role (category 3) the starting point was four years' imprisonment with a range of two years and six months to five years' imprisonment. The judge identified that an aggravating feature was the appellant's attempt to dispose of the evidence by throwing the laundry bag out of the window which contained the skunk cannabis. It seems that the judge must have identified a starting point, before aggravating factors, towards but not at the top of the significant role range and then

increased it to 36 months before giving the discount for plea.

- 12 At the date of sentencing, as already indicated, the appellant was serving a term of imprisonment of two years and six months relating to the violent disorder and possession of an offensive weapon. The judge ordered that the 27 months sentence of imprisonment was to run consecutively to that imprisonment term, having regard, said the judge, to the different nature of the offending.

The appeal

- 13 Miss Topolski, appearing on behalf of the appellant, submits that making the whole sentence consecutive to the sentence of two years and six months for the other offences was wrong in principle and disproportionate, and that there should have been some reduction to reflect totality. We are very grateful to Miss Topolski for her helpful written and excellent oral submissions.
- 14 The overarching Sentencing Council guideline on totality provides, under the drop-down heading "Sentencing for offences committed prior to other offences for which an offender has been sentenced", as follows:

"The court should first reach the appropriate sentence for the instant offences, taking into account totality in respect of the instant offences alone. The court then has a discretion whether to make further allowance to take into account the earlier sentence (whether or not that sentence has been served in full). The court should consider all the circumstances in deciding what, if any, impact the earlier sentence should have on the new sentence. It is not simply a matter of considering the overall sentence as though the previous court had been able to sentence all the offences and then deducting the earlier sentence from that figure.

A non-exhaustive list of circumstances could include:

- a. how recently the earlier sentence had been imposed ...
- b. the similarity of the offences sentenced earlier to the instant offences
- c. whether the offences sentenced earlier and instant offences overlapped in time
- d. whether on a previous occasion the offender could have 'cleaned the slate' ...
- e. whether taking the earlier sentences into account would give the offender an

undeserved bonus - this will particularly be the case where a technical rule of sentencing has been avoided ...

f. whether the instant offence qualifies for a mandatory minimum sentence

g. the offender's age and health ...

h. whether, if the earlier and instant sentences had been passed together as consecutive sentences, the overall sentence would have required downward adjustment to achieve a just and proportionate sentence."

- 15 In this case, the judge said that the sentence should be consecutive because of the different type of offending between the violent disorder and possession of an offensive weapon and the drugs offences. It is apparent from the Sentencing Council guideline on totality that this is a relevant consideration but it is necessary to consider whether it justifies simply adding on the separate sentence for the drugs offences, about which Miss Topolski complains.
- 16 Other relevant considerations, however, are the fact that in this particular case the appellant already had the benefit of concurrent sentences for separate offending committed on an earlier date, being possessing criminal property and dangerous driving. If we have regard to a notional situation where the earlier and instant sentences had been passed together, in our judgment, a sufficient account of totality would have been made by imposing: the 30 months for the violent disorder and possession of a machete; imposing concurrent sentences of 19 weeks and 16 weeks for possession of criminal property and dangerous driving; and then imposing consecutive sentences for the drugs offences before us.
- 17 Taking account of all these factors, in our judgment, the overall effect is that sufficient account has been taken of totality and that the sentence is not disproportionate or wrong in principle.
- 18 We, therefore, dismiss the appeal.

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