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IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
The Strand
London
WC2A 2LL

ON APPEAL FROM THE CROWN COURT AT ISLEWORTH
(MR RECORDER KREPSKI) [01MP1326823]

Case No 2024/01346/A2
[2024] EWCA Crim 1038

Friday 16 August 2024

B e f o r e :

LORD JUSTICE WARBY

MR JUSTICE CAVANAGH

MR JUSTICE WALL

R E X

- v -

SOPHIE THOMPSON

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Miss G Lewis appeared on behalf of the Appellant

J U D G M E N T
(Approved)

Friday 16 August 2024

LORD JUSTICE WARBY:

1. This is an appeal against sentence for Class A drug offences brought with the leave of the single judge. The appellant, Sophie Thompson, is now aged 25.

The facts

2. In the early morning of 14 November 2023 the appellant was arrested at an address in Feltham for her role in a West London drug dealing operation known as “the T Line”. Police had executed a search warrant based on intelligence about the T Line which was known to have been in operation between 4 September 2023 and 25 October 2023. Analysis of a known drug user's phone had identified two phone numbers that had been used to send out bulk messages inviting purchases of heroin and cocaine. The messages were initially sent to a list of 11 numbers, but over the course of September the list grew to over 50. Both phone numbers had been linked and attributed to the appellant and another individual arrested at the same time, to whom we shall come later in this judgment. The two phones ceased to be used in late October, but it was apparent that the dealing operation had continued nonetheless.

3. On arrival at the Feltham address, officers found and seized seven mobile phones and SIM cards, £1,615 in cash, a snap bag containing 1.1 grams of crack cocaine, and a cling film wrap containing 1 gram of heroin. They also found a set of keys, which led them to the appellant's home nearby, where they found 31.6 grams of crack cocaine, three sets of digital scales and a "burner" phone. The total value of the drugs seized was in the region of £2,200.

4. At the time of her arrest, the appellant was 24 years old and six months pregnant.

5. At the plea and trial preparation hearing on 13 December 2023 she pleaded guilty to five of the nine counts on the indictment. She admitted being concerned in supplying cocaine to another between 4 September and 15 November 2023 (count 1); being concerned over the same period in the supply of heroin (count 2); simple possession of heroin and cocaine (counts 4 and 6); and possessing crack cocaine (the quantity found at her home) with intent to supply (count 7).

6. Her plea was on a written basis, namely that she had become involved in drug dealing in order to pay off a debt to a former partner (whom she named) and of whom she was scared, and who had threatened her and her co-defendant with "serious consequences" should they refuse to supply drugs as directed by him. On 24 January 2024, the prosecution expressly accepted that basis of plea.

7. On 12 February 2024, the appellant gave birth. She was sentenced on 13 March 2024 by Mr Recorder Krepski in the Crown Court at Isleworth.

Sentencing

8. The Recorder had details of the appellant's antecedents, which consisted of 12 convictions for 28 offences between April 2015 and May 2022. They included convictions for possessing Class A drugs on 6 July 2019, but no previous convictions for any drug trafficking offences. Most of the appellant's convictions were for offences against the person. They included possessing a prohibited weapon and two counts of wounding with intent to do grievous bodily harm – offences which were also committed on 6 July 2019. For all the offending on that date the appellant had been sentenced to 54 months' detention in a young offender institution.

9. The Recorder did not have the benefit of a pre-sentence report, the court having declined two previous applications for such a report.

10. The Recorder took the supply offences (counts 1, 2 and 7) as the lead counts on which to pass a sentence to reflect the overall criminality. He said that the appellant's involvement in operating the T line amounted to street dealing and placed the case in harm category 3. As for culpability, the Recorder said that the appellant's role fell somewhere between lesser and significant. He identified two features of significant role, namely: awareness and understanding of the scale of the operation, and an expectation of financial advantage that was more than limited, although (as he put it) "perhaps not rising to the complete level of significant". There were, however, two lesser role features, namely, engagement through intimidation and exploitation and only what the Recorder called a "limited influence" on those higher in the chain.

11. The Recorder identified the previous convictions as a "significant aggravating factor". He took account of the appellant's young age and her new baby, which he described as "significant mitigating factors". But, having balanced these various matters, he said that an uplift from the starting point was required. Accordingly, he said that the appropriate sentence following a trial would be one of four years and six months' imprisonment. He reduced that by 25 per cent to reflect the guilty pleas, and thus arrived at 38 months' imprisonment. That is the sentence which the Recorder passed concurrently on each of counts 1, 2 and 7. For each count of simple possession, he passed concurrent terms of nine weeks' imprisonment.

Grounds of Appeal

12. The grounds of appeal advance three main propositions. First, it is argued that the Recorder miscategorised the appellant's role. It is accepted that this was street dealing in

harm category 3. The submission is, however, that the appellant's culpability was towards the bottom end of the scale. Her basis of plea having been accepted, her part in the offending could not, on a proper analysis, be said to exhibit any of the features of significant role, as listed in the guideline; she should have been sentenced within the range for lesser role.

13. Secondly, it is argued that too much weight was attached to the appellant's antecedents when they contained no previous offending of a similar kind. Thirdly, it is said that the Recorder failed to give sufficient weight to the appellant's mitigating circumstances – in particular the fact of her being a new mother.

14. So far as the facts are concerned, Miss Lewis, who has presented the case clearly and attractively, points to the absence of a pre-sentence report, and relies on the decision of this court in *R v Petherick* [2012] EWCA Crim 2214; [2013] 1 WLR 1102.

15. Miss Lewis also contrasts the sentence imposed on this appellant with that passed on her co-defendant, Cardell Hyman. He was the appellant's most recent partner. He was aged 23. He was arrested at the same time and place and jointly charged with the appellant on all nine counts. Like her, he pleaded guilty at the plea and trial preparation hearing, when he admitted counts 1 and 2, as well as count 9 (possessing criminal property, namely the cash found on the initial search in Feltham). His pleas were also entered on a basis that was accepted by the prosecution. This was a rather more detailed document than the basis relied on by the appellant. It set out that he had been operating the drugs line under the instructions of the appellant's former partner, known to him as "catman". Hyman said that the appellant had told him that catman had threatened her. Hyman said that he did not buy the drugs or arrange the pricing, or possess the list of customer numbers. He sent out the messages, supplied the drugs and collected the money. The money was then given to catman or someone sent by catman.

16. Hyman was sentenced at the same time as the appellant, and the Recorder assessed the harm caused by his part in the drug supply and his level of culpability for that offending in the same way as that of the appellant. Hyman had similar antecedents. These included involvement in the same July 2019 offending as the appellant, for which Hyman also received a sentence of 54 months' detention in a young offender institution. The sentence passed on Hyman on the present occasion was one of 40 months' imprisonment (two months more than the sentence imposed upon the appellant), yet, Miss Lewis submits, he did not have comparable mitigation.

Decision

17. We have not been persuaded that the appellant's part in this offending falls to be categorised as an unqualified or unequivocally lesser role. She and Hyman ran the operation for a period of over two months. At the time of their arrest, they were in joint possession of at least seven phones. The appellant was also holding a substantial quantity of crack cocaine, ready for supply. She was performing an operational role within a chain. She clearly had a fair awareness and understanding of the nature and scale of the operation in which she was an intermediary. There were, therefore, characteristics of significant role present.

18. That said, we do consider that the Recorder erred in his approach to the appellant's culpability. On the facts as accepted by the prosecution the lesser role features were by far the more prominent here. Although the appellant and Hyman were links in a chain which they broadly understood, they were not performing a management function; they were not free agents but were performing a limited agency role for and on the direction of a third party, and under strict instructions from him. She, at least, was doing this out of fear of her previous ex-partner, who had threatened her. She had no influence at all on that ex-partner.

In our judgment, there was no adequate basis for concluding that the appellant expected any "significant" financial or other advantage. She did not admit possession of any of the cash found at the Feltham address. Nor was it proved or admitted that any part of that money, or of any cash generated by the drug dealing, had or would have come to her.

19. In these circumstances, whilst we agree with the Recorder that the appellant's culpability was such as to justify some uplift from the starting point for category 3 lesser role, which is one of three years' imprisonment, we cannot find that the part she played in this offending justified an increase to four and a half years' imprisonment, which is the top of the range for that category and the starting point for "significant role".

20. Nor do we consider that a sentence of that level can be justified by reference to the balance between the aggravating and mitigating features of the appellant's case. Rather the contrary. Her only relevant previous convictions were for simple possession of Class A drugs on a date more than four years before the present offending. We accept Miss Lewis' submission that the appellant's conviction for violence, though serious, should not have been treated as a weighty aggravating feature of this case. The modest upward influence that her antecedents exert on the sentence is comfortably outweighed by the substantial downward pressure of the appellant's personal mitigation including, in particular, the impact that a custodial sentence would have on her infant child and her relationship with that child. That aspect of the case was significant. The Recorder said as much, but we do not think that he gave it the weight it truly deserved.

21. In *Petherick* the court gave guidance on the principles to be applied when imposing a sentence that will interfere with the family life of a defendant and their family members. We identify five points of particular relevance to this case. First, the key question is whether the sentence imposed is proportionate to the legitimate aims pursued ([18]). Secondly, in

answering that question "the plight of children, particularly very young children and the impact on them ... is a major feature for consideration ...", both at common law and under the Convention (see [19]). Thirdly, the sentencing court ought to be informed about these matters, including the effect its sentence may have on the family life of others ([20]). Fourthly, where the case stands on the cusp of custody, the balance is likely to be a fine one ([22]). Fifthly, where custody cannot proportionately be avoided, the effect on family members may afford grounds for mitigating the length of the sentence ([24]).

22. It is in our opinion regrettable that the Crown Court declined to order a pre-sentence report in this case. The reason given on the second occasion was that it was considered unnecessary, because the facts could be presented in mitigation without the need for a report. No doubt it was considered inevitable, also, that the court would impose a substantial term of immediate custody. But we do think that even in such a case where a woman who is pregnant or who has recently given birth is to be sentenced, it is desirable for the court to obtain a pre-sentence report so that the sentencing judge is fully informed about the likely impact of the sentencing decision on the child and on the family, including the arrangements that will or may be made for the care of the child.

23. This appeal having by order of the single judge come on promptly we do not ourselves have the benefit of such a report. We have, however, been provided with information by counsel. She tells us that, although the position was uncertain at the time of sentence, in the event the appellant and her child are in the mother and baby unit at Bronzefield Prison and will remain there for the rest of the custodial portion of her sentence. She also tells us that there are ongoing Family Court proceedings. The first part of that information is of some comfort. Nonetheless, it cannot be considered that presence in the mother and baby unit is the equivalent of conducting a mother and child relationship outside the confines of a prison.

24. In our judgment, the seriousness of this case does mean that immediate custody cannot be avoided. Sentences must adequately reflect the pernicious influence of Class A drugs on society. But sentencing must also reflect the value that society places on the importance of unfettered family relationships and the rights of a child. In a case such as this, the child is one of the innocent victims of the parent's wrongdoing. Harm to the child is often inescapable. But a custodial sentence that would for as long as this one have such an adverse impact on the relationship between this mother and this baby would, in our judgment, be disproportionate to the legitimate aims pursued by the imposition of a custodial sentence.

25. We, therefore, conclude that the appropriate sentence after a trial was very considerably less than the one of 54 months identified by the Recorder. We assess the appropriate sentence after a trial as one of 40 months' imprisonment. The reduction to which the appellant is entitled for her guilty plea brings that down to 30 months (two and a half years).

26. Having said that much, we find it unnecessary to comment on any alleged disparity between the sentence originally imposed on the appellant and the sentence passed on her co-defendant, Cardell Hyman.

27. For the reasons we have given we allow this appeal. We quash the sentence of 38 months' imprisonment on each of counts 1, 2 and 7 and in each case substitute concurrent terms of 30 months' imprisonment. The sentences on counts 4 and 6 are unaffected.

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

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