IN THE COURT OF APPEAL

CRIMINAL DIVISION

ON APPEAL FROM THE CROWN COURT AT LIVERPOOL

HHJ STUART DRIVER T20217097

CASE NO 202401550/A5

Neutral Citation Number: [2024] EWCA Crim 1637

Royal Courts of Justice
Strand
London
WC2A 2LL

Thursday, 19 December 2024

Before:

LORD JUSTICE LEWIS
MR JUSTICE GARNHAM
MR JUSTICE CONSTABLE

REX
V
DANIEL JOHN MCLOUGHLIN

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MR M LAVERS appeared on behalf of the Applicant

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**J U D G M E N T**

MR JUSTICE GARNHAM:

1. On 21 February 2024 in the Crown Court at Liverpool the applicant Daniel McLoughlin pleaded guilty, upon re-arraignment, to one count of dealing with goods with fraudulent intent, two counts of conspiracy to supply a controlled drug of class A and one of conspiracy to supply a controlled drug of class B. On 27 March, before His Honour Judge Stuart Driver KC, the applicant was sentenced to 14 years and four months' imprisonment. His co-accused, Elliot Garrity pleaded guilty to the same charges and was sentenced to eight years' imprisonment.
2. The applicant now applies for an extension of time of 14 days in which to renew his application for leave to appeal against sentence after refusal by the single judge.
3. The facts can be summarised shortly. Between 26 March 2020 and 17 February 2021 the applicant was engaged in dealing in Ketamine with fraudulent intent, in conspiracies to supply cocaine and heroin and in a conspiracy to supply ketamine.
4. The applicant and Elliot Garrity operated a “dealer” phone line with a number ending 6022 by which they supplied Ketamine and cocaine to customers. The applicant was primarily responsible for sourcing the drugs. He would prepare them into deals before passing them on to Garrity, and later to a man called Luke Bolan, to be supplied directly to users. The applicant and Garrity advertised the drug line to customers through word of mouth, reputation and through stories on Instagram. Users would telephone, iMessage or WhatsApp the dealer line held by the applicant and place an order for cocaine, Ketamine or both. The applicant would then use his encrypted EncroChat device (handles "tabooky" and "wearyspear") to pass the order to Garrity (EncroChat handle "keptcreek"). Garrity would deliver the drugs using his taxi and take payment in cash, by bank transfer or on a card machine in his licensed black cab. By treating the sales as fares and fines the

pair were able immediately to launder the proceeds. Garrity would report back to the applicant before travelling to the next customer's address. The applicant kept a running tick lists of the evening sales.

5. During EncroChat messages sent on 8 May 2020, the pair discussed how they had "turned over" £1,750 the day before. The applicant bragged to another EncroChat user that they had turned over £14,950 in a single week during the pandemic lockdown. He also explained that it was his ambition to run the business 24 hours a day with two drivers each working a 12-hour shift.
6. Users of EncroChat devices were alerted to the fact that the network had been compromised on 13 June 2020. The applicant and Garrity replaced their EncroChat devices with disposable Nokia "burner" telephones and continued as before. In December 2020 they recruited Luke Bolan to work as a driver, primarily supplying Ketamine, and Garrity continued to supply cocaine. Another person, Charlotte Smith, was also recruited to assist the company.
7. Police estimated that the drugs supply during the indictment period totalled 1.77 kilograms of Ketamine and 1.77 kilograms of cocaine. On 2 April 2020 the applicant brokered the sale of a kilogram of cocaine from EncroChat handler "activegamer" to handle "redletter" for £500. On 15 April 2020 the applicant and Garrity agreed to purchase a kilogram of heroin from EncroChat handle "blacklabel" although it appeared they only ever received a sample from him.
8. The applicant's counsel provided at trial a proposed resolution document in which the total amount of cocaine supplied, including the kilogram transaction, from "activegamer" to "redletter" totalled 2.71 kilograms. During the sentence hearing, prosecution counsel said that the Crown were content for the applicant to be sentenced on the quantities of

drugs set out in the resolution document but reserved its position as to quantum for the purpose of any confiscation or other proceedings.

9. The applicant was also involved in the exportation of Ketamine to Australia. He arranged with EncroChat handle "elflacko" to export Ketamine to Australia with a view to exporting further shipments of Ketamine and cocaine later if all went to plan. The applicant obtained 125 grams of Ketamine in April 2020. Later that month he vacuum sealed and concealed the packages in Starbucks coffee bags and posted them to a locker in Australia. They arrived in early May. There were discussions as to future shipments and arrangements were made for payment.

10. In sentencing the applicant, the judge adopted count 3 (the conspiracy to supply cocaine) as the lead offence. The judge said this:

> "... if I were sentencing you for Count 3 alone, I would apply the Sentencing Council's Definitive Guideline and take a starting point of just below mid-way for those starting points for category 1 and category 2. That is a starting point of 12 years. But I am not sentencing you for that alone. Because I am treating Count 3 as the lead count the sentence on that must also reflect the facts of Count 4, in which you agreed to play at least the significant role in the agreement to supply one kilogram of heroin, although that deal was not completed. Your leading role in the Count 5 conspiracy to supply Class B drug ketamine and you're at least significant role in Count 2, the exportation of 125 grams of ketamine to Australia."

11. The judge also pointed to the additional aggravating features in the case, namely the use of "*sophisticated EncroChat telephones to avoid detection*", the fact that this was a conspiracy and the applicant's criminal record. He noted that the applicant had served two previous custodial sentences for class A drug supply offences. He described this as "*the worst aggravating feature*". In fact the applicant had eight convictions for 13 offences, spanning from 9 February 2010 to 9 June 2016. His relevant convictions

included offences of possessing a controlled drug of class A in 2010, 2012 and 2015 and possessing a controlled drug of class A with intent to supply in 2012 and thrice in 2016. In contrast, it is to be noted that Elliot Garrity was aged 44 at sentence and was of previous good character.

12. The Court sentenced the applicant without a pre-sentence report. We agree one was unnecessary then. It is not necessary now.

13. On behalf of the applicant, Mr Lavers has advanced three grounds of appeal.

    1. The judge erred in concluding that the applicant had committed offences falling within Category 1 of the sentencing guidelines for drug offences.
    2. The judge was wrong to distinguish between the roles played by the applicant and Elliot Garrity. The applicant pleaded guilty on an agreed basis which included a reference to the two of them having equal roles. By drawing a distinction between the applicant and Garrity, the judge reneged on an earlier indication that he would honour the proposed resolution document and sentence on the basis of its contents. In light of that indication, it is argued it was not open to the judge to ascribe disparate roles to the applicant and Garrity when the parity was enshrined in the agreed basis.
    3. The judge took a notional starting point which was not commensurate with the seriousness of the applicant's overall offending.

14. Refusing leave to appeal against sentence the single judge gave the following reasons:

> "**Categorisation**: The Judge was required to impose a sentence that reflected the overall offending. For that reason, the Judge was justified in considering the overall quantity of drugs, and adopting a starting point accordingly. If count 3 had stood alone, he would have adopted a starting point between category 1 and category 2, but, as the Judge recognised, he had to take account of the other offences. That justified applying category 1.

> The Judge was also entitled to treat the applicant as having a leading role. That was not inconsistent with the basis of plea. It may be that the treatment of the co-defendant as having just less than a leading role was generous to the co-defendant, but that does not mean that the sentence of the applicant was manifestly excessive.
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> Having justifiably applied category A1, the starting point 14 years, with a range of 12-16 years.
>
> **Aggravating/mitigating features**: The applicant's criminal record was a significant statutory aggravating feature which required a significant upward adjustment. The use of EncroChat was also an aggravating feature. The Judge had regard to all relevant mitigation. The indicative sentence following trial of 16 years was not manifestly excessive.
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> **Plea**: The Judge was generous in allowing a 10% reduction for the plea resulting in a sentence of 14 years and 4 months.
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> It is not arguable that the resulting sentence is manifestly excessive or wrong in principle."

15. We agree with each of those observations. The judge was plainly entitled to adopt a starting point significantly above that which would have been appropriate on count 3 alone, so as to reflect the total criminality involved. He was also entitled to treat the applicant as having a leading role. It was, as the judge put it, "his business". Such a conclusion was not inconsistent with the resolution document.
16. There is nothing objectionable in the fact that Garrity received a lower sentence. He was much less heavily convicted and he pleaded guilty at an earlier stage than did the applicant. In any event, any generosity towards Garrity does not make the sentence imposed on the applicant excessive. On the contrary, it was entirely justified on the facts.
17. The judge had regard to the applicant's mitigation, but was entitled to conclude that it was outweighed by the powerful aggravating factors. The allowance for plea the applicant received was generous given the matters identified by the judge. The applicant only

pleaded after a jury had been sworn and discharged.

18. For these reasons, this application for an extension of time is refused and the application for leave is dismissed.

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

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