Neutral Citation Number: [2018] EWCA Crim 3021
2018/00024/A1
IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
The Strand
London
WC2A 2LL

Wednesday 14th March 2018

B e f o r e:

LORD JUSTICE GROSS

MRS JUSTICE LANG DBE

and

MR JUSTICE PHILLIPS

R E G I N A

- v -

MOHAMMED SHABAB

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(Official Shorthand Writers to the Court)

Miss G Reed appeared on behalf of the Appellant

J U D G M E N T
(Approved)

Wednesday 14th March 2018

LORD JUSTICE GROSS: I shall ask Mr Justice Phillips to give the judgment of the court.

MR JUSTICE PHILLIPS:

1. On 29th November 2017 in the Crown Court at Kingston upon Thames the appellant pleaded guilty to two counts of bringing a prohibited article into prison. The first of those counts related to a List A item (cannabis), contrary to section 40B(1) of the Prison Act 1952. The second count related to a List B item (a mobile phone), contrary to section 40C(1)(a) of the same Act. He was sentenced by Her Honour Judge Coello to twelve months' imprisonment on each count, to run concurrently.

2. The appellant appeals against that sentence with the leave of the single judge.

3. The facts of the offences are these. On 20th June 2017 the appellant and two others visited the appellant's cousin, who was a prisoner at Her Majesty's Prison Wandsworth, and sat with him at a table monitored by CCTV. After one of the visitors had left, the appellant removed an item from under his top and slid it across the table to the prisoner. This was seen on the CCTV. A prison officer intervened. The item was seized from the prisoner and the appellant was detained.

4. On examination, within black plastic wrapping were found two mobile phones, a UBS lead and a block of cannabis measuring 4cm by 4cm.

5. The appellant immediately accepted responsibility and pleaded guilty at the first opportunity.

6. Although aged only 22, the appellant had nine convictions for fifteen offences, including a conviction for possession with intent to supply heroin in 2014, for which he was sentenced to two months' detention in a young offender institution.

7. In relation to the present offences, he wrote a letter to the judge claiming that he had felt pressured to help his cousin who was being threatened with violence if he did not obtain phones and drugs. He expressed remorse and asked for leniency, particularly given that he has two very young children and his partner is expecting another.

8. The learned judge noted that the appellant was well aware from having served custodial sentences not only that such items were absolutely prohibited, but also the consequences of their prevalence undermined authority and discipline in the prison system. The cannabis would have been a valuable commodity in prison which could have been sold, and the mobile phone would have been used for committing further crimes. The judge stated that an immediate prison sentence was necessary for those reasons. The appellant's case was seriously aggravated by his previous offending. The position for his young family was tragic, but it was brought about by his own offending. The judge gave a full one-third credit for the appellant's guilty pleas, but that was as much leniency as she could give.

9. Miss Reed of counsel, who appeared today for the appellant, accepts that there is no sentencing guideline for Prison Act offences such as these, but she contends that the judge should have had regard to the Sentencing Council's Definitive Guideline for Drug Offences. She points to the fact that the guideline expressly recognises that the supply of drugs to a prisoner constitutes a significant role, with the result that the appellant's supply of cannabis of this quantity put forward in the category which provides for a sentence between a medium level

community order and 26 weeks' custody. Miss Reed further submits that the guidelines provide a basis for consistency, with adjustment within the range, and she further submits that it cannot be said that supply in a prison environment makes matters innately more culpable and outside the guideline.

10. Miss Reed further points to decisions of this court in *R v Melim* [2014] EWCA Crim 1915 and *R v Hamilton* [2016] EWCA 78, in which the court has had regard to the guidelines. The supply of such items into prison is a highly aggravating factor which raised the sentence to the very top of the appropriate range. Miss Reed therefore contends that a sentence of 26 weeks' custody, prior to credit, was the most that should have been imposed for the cannabis offence as a List A offence carries a maximum sentence of ten years' custody and a List B offence only two years' custody. She further submits that the sentence for the mobile phone offence should not have been any greater and that a total sentence of eighteen months' custody, prior to credit for the guilty plea, was on any basis manifestly excessive.

11. Whilst we accept that the court should have regard to the guidelines in such cases, they should not be applied automatically or over-mechanistically, as indeed was expressly stated in *Hamilton* at [15]. Regard must be had to the specific context of an offence of supplying into a prison, the nature of that supply and the need for deterrence. These factors were emphasised by the President of the Queen's Bench Division in R *v Ormiston* [2016] EWCA Crim 363, [2016] 2 Cr App R(S) 4, where a similar argument was mounted, as follows:

> "10. In this court, Mr Ridgway [the appellant's advocate] argues that the approach of the judge failed to take proper account of the sentencing guideline issued by [the] Sentencing Council, in relation to misuse of drugs in which reference is made to articles being brought into prison. He recognised however that drugs and drug substitutes are entirely inimical to the rule of the law within a prison and become a currency within prison. They are used to

> extort or bully and the evil they do is even worse than the evil done within our open society – see *R v Akhtar and Ashfaq* [2008] EWCA Crim 791, per Lord Judge CJ and *R v Wilkinson* [2012] 1 Cr App R(S) 54 (page 310) at [10].
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> 11. It has to be said that mobile phones are similarly of enormous value in prison in both cases. Therefore, those who smuggle or seek to smuggle such items into prison must expect deterrent sentences of some length. There are of course different types of offender. The hard pressed family member who is persuaded to bring illegal drugs into prison is in a very different division to that which encompasses the sophisticated and well experienced criminal who behaves in this way. Into this second category undeniably this appellant is to be included.
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> 12. It is important to underline that the gravity of the offending is in relation to the prison setting and that therefore the use of the drugs guideline is not entirely appropriate notwithstanding that it might be appropriate in certain cases of offender. In the case of this offender, however, we have no doubt that the judge was entirely entitled to approach sentence on the basis that he did."

12. The present case is one where the appellant attempted to smuggle both mobile phones and drugs into prison in circumstances where he himself had not long before left that environment. It falls within the category of a sophisticated and well-experienced criminal abusing the system. Even having regard to the guideline for drug offences in relation to just the cannabis offence, the judge was fully entitled to impose a significantly higher sentence to reflect the overall criminality and the aggravating factors of the appellant's offending history.

13. The appellant's total sentence of twelve months' imprisonment, after credit for his guilty pleas, was neither wrong in principle nor manifestly excessive. Accordingly, we dismiss this appeal.
