2019/00299/A3
IN THE COURT OF APPEAL
CRIMINAL DIVISION
Neutral Citation [2019] EWCA Crim 1539

Royal Courts of Justice
The Strand
London
WC2A 2LL

Thursday 4 July 2019

B e f o r e:

LADY JUSTICE RAFFERTY DBE

MR JUSTICE NICOL

and

MR JUSTICE FREEDMAN

R E G I N A

- v -

KEVIN BOLD

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Mr J Nutter appeared on behalf of the Applicant

J U D G M E N T
(For Approval)

Thursday 4th July 2019

LADY JUSTICE RAFFERTY: I shall ask Mr Justice Freedman to give the judgment of the court.

MR JUSTICE FREEDMAN:

1. The Applicant, Kevin Bold (aged 31), renews his application for leave to appeal against sentence after refusal by the single judge.

2. On 3 December 2018, in the Crown Court at Woolwich before His Honour Judge Kinch, the Applicant pleaded guilty to one count of conspiracy to supply a controlled drug of Class A and was sentenced to 12 years' imprisonment.

3. The single ground of appeal is that discount for the guilty plea should have been one-third, rather than 25 per cent, resulting in a sentence of 10 years and 8 months' imprisonment.

4. The facts may be stated relatively shortly. On 2 November 2018, the Applicant walked from his Mondeo car in Purfleet to a white van where his co-accused, Sean Boyd, was in the driver's seat. They spoke and the Applicant opened the rear door. A third male emerged from the Mondeo carrying a blue holdall, which he put into the van. The Applicant closed the door and both returned to the Mondeo.

5. Police officers detained the Applicant and Boyd. The third man escaped. In the van were ten blocks of cocaine, comprising 10 kilograms at 89 per cent purity, two mobile phones and paper containing two telephone numbers. The phones showed an email chain directing Boyd to pick up something from the Mondeo. In the Mondeo was an iPhone and a BQ Aquaris phone which was highly encrypted. The police were unable to interrogate the phones and the Applicant

refused to give the passcode for the iPhone. Just under 15 kilograms of cocaine in the Mondeo were 92 per cent to 95 per cent purity.

6. On arrest, the Applicant claimed that he had not done this sort of thing before; that he had done so out of stupidity; and that he was self-employed with a full-time job. When interviewed he answered "no comment" to most questions. In a prepared statement he admitted the offence, claimed that he had been pressurised to carry the drugs and was ignorant of their quantity. A random man gave them to him and he had been instructed on what to do by a man named James.

7. The Crown submitted that the phones indicated the sophistication of the operation and the positions of the individuals.

8. In his sentencing remarks, the judge said that others were involved higher up the chain but that the Applicant, like Boyd, had a "significant role". The mitigation was that, at the age of 31, he had few convictions, had worked hard as a metal cladder and was described as a devoted family man. There were before the judge glowing reports from an employer and a friend.

9. The sentencing guidelines were by reference to 5 kilograms. The Applicant had almost five times that amount. The judge therefore stepped outside the limits of the range of sentences in Category 1 of the Class A guideline, such that sentence after trial would have been 16 years' custody. There is no challenge to this.

10. The narrow issue is reduction for the guilty plea. The suggestion is that in the Magistrates' Court no BCM (Better Case Management) Form was filled in and that there was no record of an indication of a plea or of the triggering question. The argument for a one-third reduction was put in one of two ways, namely: either that there was no opportunity to plead in the Magistrates'

Court so that the full one-third discount should be given because the first opportunity was in the Crown Court; or that in any event the Applicant admitted his guilt at the first opportunity in the police station.

11. The Digital Case System reveals an order of the North East London Magistrates' Court on 3 September 2018, naming a representative and a firm of solicitors. The document is headed "Crown Court Details – Trial Case (CCDDET). It identifies on the second page the representative who was at the hearing, and on page 3 of 5 it identifies what happened. It says that the case was sent for trial to Woolwich Crown Court. It refers to various matters relating to bail and then there appears the following:

> *"Plea of not guilty or none indicated. Custody time limit expires on 03/05/2019."*

That document appears to perform the same function as a BCM, if it is not the same document.

12. It follows, in our judgment, that there is nothing in the first point. The Applicant, who was represented at the Magistrates' Court, did not plead guilty; nor did he give an indication of an intention to plead guilty.

13. We turn to the second point. The sentencing guidelines that were in operation until 2017 focused on a guilty plea at the first reasonable opportunity – frequently in interview under caution. The current guidelines focus upon a court appearance. Where relevant, they read as follows:

> "The guilty plea should be considered by the court to be independent of the offender's personal mitigation. Factors such as admissions at interview, co-operation with the investigation and demonstrations of remorse should not be taken into account in determining the level of reduction. Rather, they should be

> considered separately and prior to any guilty plea reduction as potential mitigating factors."

Consequently, admission at the police station amounts to potential mitigation, rather than triggering a reduction for a plea of guilty, as the judge demonstrated.

14. The learned judge was right to emphasise that the matters contained in the prepared written statement were equivocal: the claims of carrying the drugs under pressure, ignorance of their quantity and the withholding of access to the mobile phones. What admission there was at the police station does not, in our judgment, provide any mitigating factor. It follows that there is nothing in the second point.

15. For these reasons, this renewed application is refused.

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

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Tel No: 020 7404 1400

Email: rcj@epiqglobal.co.uk