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IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
Strand
London, WC2A 2LL

Thursday 12 September 2019

B e f o r e:

LORD JUSTICE SINGH

MR JUSTICE FRASER

MR JUSTICE MARTIN SPENCER

R E G I N A

v

HARRY GOODMAN

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Miss A Byrnes appeared on behalf of the **Appellant**

J U D G M E N T

(Approved)

MR JUSTICE MARTIN SPENCER:

1. This is an appeal brought with the leave of the single judge against a sentence of 32 months' imprisonment imposed by His Honour Judge Spragg in the Crown Court at Newcastle-upon-Tyne on 15 March 2019 for a single offence of being concerned in the supply of a controlled drug of class A, contrary to section 4(3)(b) of the Misuse of Drugs Act 1971. The appellant, born on 5 April 1998, pleaded guilty at the first opportunity on 11 July 2018. The reason for the delay between the date of conviction and the date of sentence was because the appellant's case awaited the outcome in relation to co-defendants.
2. The basis of this appeal is that the sentence reached by the learned sentencing judge before credit for plea was applied, namely four years' imprisonment, was too high and failed adequately to distinguish between the role of this appellant and the role of his co-defendants and that the learned judge was wrong in effectively treating all the three defendants (to whom we shall refer in due course) in the same way. It is submitted that the learned judge should have alighted on a sentence of two years or less and having done so the sentence should have been suspended.
3. The facts of this matter are that in the second half of 2017 undercover officers were engaged in the investigation of the supply of class A controlled drugs in Newcastle City Centre. Drugs were being supplied in association with the night life of the city which revolved around clubs and other licensed premises in the vicinity of the Cathedral. These clubs were supported by promotion companies which organised theme nights held throughout the week and the events were publicised by the promotion companies through social media, targeting in particular the young student population of the city. There were apparently seven such companies operating in Newcastle and the promoters had invitation lists for particular individuals, so as to ensure that the venues were busy and to encourage a feeling of exclusivity.
4. The appellant was a junior manager for one of these promotion companies. He was also a student at the university. His job was to stand outside one of the clubs on a Monday night and persuade customers to come in.
5. The undercover operation was a lengthy one involving many other defendants apart from the appellant. On Monday 18 September 2017, two undercover officers known as 'Kim' and 'Sarah' went to a club called Florita's. Outside the club they spoke with the appellant who was working there and asked him if he knew anyone from whom they could purchase drugs and he provided a phone number which was listed in his contacts as "coke". He asked them to take a screen shot of another number which was listed in his phone as "coke 2". He told them to ring the coke number and they would be met at the bus stop around the corner.

6. At 11.50 pm that night the undercover officer Sarah rang the number provided by the appellant and ordered two bags of cocaine which she was told would be £50 each and there would be a 15-minute wait before the drugs would be delivered in a black Vauxhall Corsa. The drugs were then delivered by one of the co-defendants, Sean Moulding, who called himself 'John'. He told Sarah to get into the car, saying he was conscious of the CCTV in the area. She got into the back of the car which drove off for about 100 yards, while Sean Moulding told the officers he was available to supply drugs up to 2 am on weekdays and 4 am on weekends. He supplied them with two bags of cocaine containing respectively 353 and 392 milligrams.
7. There were further exchanges of messages between the undercover officers and Paul Moulding on 24 and 26 September, and further drugs were supplied. Then on 2 October at 9.20~pm, the officers again went to Florita's where the appellant again was working. There was a conversation about the phone numbers of cocaine dealers previously supplied by the appellant to the officers and the appellant stated that the first number was the more reliable one; the second one was for a different dealer. The appellant told the officers that he was getting sorted from a mate who offered cheaper rates but he gave no further details at that stage. The undercover officer Sarah then contacted Paul Moulding and he supplied her with £50 worth of cocaine, again using the black Vauxhall Corsa motorcar.
8. There was a further supply of drugs on 11 October 2017 on which occasion the officers were met in a blue Nissan Qashqai driven by another co-defendant, Daniel Young. He told them he was a mate of Paul Moulding and that he might be working on Saturday. He supplied two plastic bags containing cocaine in exchange for £100.
9. On 17 October Sean Moulding supplied the undercover officers with £50 worth of cocaine from a white Fiesta motorcar.
10. On 25 October 2017 the officers tried the "coke 2" number but the call was diverted to voice-mail. Officer Sarah then received a text message asking who it was. She explained she got the number from Harry, whereupon "coke 2" replied asking her to get Harry to confirm that he gave her the number. So on 30 October the officers went back to Florita's and spoke to the appellant asking him to contact "coke 2", but he declined saying that "coke 2" often did not answer and he suggested that Sarah take down another number stored in his phone as "DD Kev". They were then later supplied with two bags of cocaine by Kevin Ashong who told them that he was available any time. There were further supplies of cocaine to the officers through Kevin Ashong through November and December 2017.

11. In addition, Paul Moulding sent out advertising messages so that on 22 September he texted "Charlie, MDMA and pingers let me know if anyone needs" and that was sent out to 21 different telephone numbers. This instigated over 400 drugs related messages exchanged between the Mouldings, Young and others on 30 September and 1 October 2017.
12. The appellant was arrested on 18 December 2017. In addition search warrants were executed at the homes of Paul and Sean Moulding. Paul Moulding was found in possession of eight packages of MDMA, two mobile phones and £1,300 in cash. Sean Moulding had a bag containing 339 milligrams of cocaine, a mobile phone and £310 in cash. A co-defendant, Kamar Hussain was arrested at the same time as Sean Moulding and a plastic pot containing five packages of skunk cannabis were found in his bedroom. A search warrant executed at a third address frequented by the Mouldings yielded 17 Ecstasy tablets, skunk cannabis, a quantity of MDMA, cocaine and other drug dealing paraphernalia.
13. The appellant was interviewed after his arrest and he immediately admitted passing the drug dealer numbers to the undercover officers. He did not ask for legal representation when interviewed by the police and he submitted his phone for analysis.
14. At the hearing the role of the appellant was characterised very differently by the prosecution and the defence in the course of their submissions to the learned sentencing judge. Counsel for the prosecution submitted the appellant was playing a leading role, asserting that he was "directing, organising, buying and selling on a commercial scale". Counsel said: "He has substantial links to and influence on others in the chain and he used his business as a cover. He provided facilitated contact between the undercover officers and the co-accused street dealers in the autumn of 2017."
15. Counsel for the appellant below submitted that the appellant was himself a purchaser of drugs, but also supplied the undercover officers with the numbers of those from whom he purchased. It was not accepted that the club was simply being used by the appellant as a cover for the supply of drugs. It was submitted that it was obvious from the undercover recordings and the statements of the undercover officers that the appellant played no part in how much was ordered, what the price was, where the location was and in any future contact. Those submissions have been renewed before us by Miss Byrnes.
16. He was portrayed below as a naive young man who in the drugs culture prevalent in Newcastle at the time did not appear to think that he would even be doing anything wrong. He asserted in interview that he was not a dealer. It was submitted that his role was a lesser one, or alternatively straddled the border between a lesser role and a significant role for the purposes of the definitive guideline on sentencing in drugs cases. It was submitted he was certainly not in a leading role as had been submitted by the prosecution.

17. In sentencing the appellant the learned judge accepted the submissions on behalf of the appellant in part but not wholly. He said:
 - i. "I do not accept that the Crown have shown me enough to suggest that you were in a leading role, as you were not directing or buying and selling on a commercial scale and there is no evidence that you have substantial links to others in the chain, or for example that you were making substantial financial gain. You have, however, clearly played a significant role in this street dealing, providing numbers for those who wished to purchase Class A drugs and facilitating contact. There is no doubt that that is an operational role putting you squarely in the significant role category. You must have had some awareness of the scale of the operation and you were motivated by other advantage, if not financially in your role as a promoter for the club."
18. The learned judge thus placed the appellant within Category 3 of the definitive guideline with a starting point of four-and-a-half years' custody and a range from three-and-a-half to seven years' custody.
19. In sentencing the appellant, the learned judge said that in his view there was little reason to distinguish the appellant from the dealers as "without you they would not have had the customers." He said that:
 - i. "... weighing up all the aggravating and mitigating features, the sentence [after a trial] would have been four years ... "
20. This was reduced to 32 months as the appellant was entitled to full credit having indicated a guilty plea at the earliest stage.
21. So far as the co-accused Sean Moulding was concerned, the learned judge also reached a sentence of four years' custody had there been a trial and after taking into account the aggravating and mitigating features in his case. He was entitled to only 25 per cent credit, thereby reducing the sentence in his case to three years' imprisonment.
22. The learned judge adopted the same approach in relation to Paul Moulding, but as Paul Moulding faced a cannabis charge which merited a consecutive sentence, the sentence for count 1 was reduced in his case to reflect the principle of totality. His overall sentence was three years and four months' imprisonment.
23. So far as Daniel Young was concerned, he pleaded guilty to count 1, conspiracy to supply class A drugs, namely cocaine, with Sean and Paul Moulding. His basis of plea was that he accepted supplying the undercover officers on one occasion only on 11 October 2017, and although he accepted sending messages to Paul Moulding on 30 September and 1 October he had not in fact supplied any drugs, but had simply, he said, sent the

messages in the hope of impressing Paul Moulding. He was at home at the time and accepted supplying friends who were at home with him on 30 September. On the basis of that plea the learned judge considered that the sentence after trial for him would have been 33 months' imprisonment, which was reduced to 22 months after credit for plea. That sentence being less than two years was suspended by reference to the imposition guideline.

24. It is submitted by Miss Byrnes on behalf of the appellant that the learned judge was wrong in effect to treat him on a par with Sean and Paul Moulding. Thus in contradistinction to Sean and Paul Moulding the learned judge accepted that the appellant had not gained financially from his actions whilst it was clear that Sean and Paul Moulding were involved in an enterprise of supplying and selling class A drugs, as well as cannabis, on a commercial basis.
25. In written submissions on behalf of the appellant made by counsel who appeared below, it had also been submitted that the learned judge had failed to apply the sentencing guideline in relation to the reduction in sentence for a guilty plea. That guidelines state as follows:
 - i. " 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."
26. It was submitted that the appellant's good character is one such factor but in addition, and distinguishing him from the co-accused, he should have had additional mitigation taken into account in relation to his co-operation with the police. Again, these submissions have been renewed attractively by Miss Byrnes in her submissions.
27. Thus it is said that in December 2017 this appellant travelled from the family home in Hertfordshire to attend as a voluntary attendant for interview in Newcastle. In the course of that interview he made admissions and cooperated with the investigation, answering all the questions put to him and voluntarily surrendering his phone so that it could be interrogated by the police. In contrast neither Paul nor Sean Moulding answered any questions in interview.
28. In granting leave to appeal, the single judge stated as follows:
 - i. "It is arguable that in sentencing the judge erred in regarding you as, in effect, a co-conspirator with your co-defendants. You were not charged with conspiracy. Your offence was in supplying two

undercover officers, at their request, with telephone numbers of dealers from whom they could buy cocaine. The undercover officers used those numbers to buy cocaine on a number of occasions, the drugs being sold and delivered to them by your co-defendants. You had no part in the actual sale or delivery of any drugs.

- ii. It is arguable that, in those circumstances, the judge should have placed your offending at a lower point in the Guideline. It is also unclear what allowance he made for your mitigation (youth, previous good character, remorse, assistance to police) prior to applying the full one-third discount for plea."

29. It is effectively upon those grounds that this appeal has been presented by Miss Byrnes.

30. We agree with the single judge and with the submissions that have been made to us that the learned sentencing judge erred in reaching the same sentence for this appellant as for Sean and Paul Moulding before applying the appropriate discounts for plea. In our judgment, insufficient regard was had not only to the actual role of the appellant as submitted to the learned judge on behalf of the appellant and as accepted by him, but also to the mitigating factors. Nevertheless, we consider that the learned judge was right to place this appellant in the significant role category and therefore within the sentencing range that he did.

31. In our judgment the appropriate sentence before reduction, taking into account the starting point which the learned judge reached for Sean and Paul Moulding, should have been at the very bottom of the category range, namely three-and-a-half years rather than four years. Reducing that by one-third to give credit for the guilty plea, that would have reduced the sentence of one of 28 months' imprisonment. To that extent therefore we set aside the sentence that was imposed of 32 months. We allow this appeal and we impose alternatively the sentence of 28 months' imprisonment. To that extent, this appeal is allowed.

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

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