

WARNING: reporting restrictions may apply to the contents transcribed in this document, particularly if the case concerned a sexual offence or involved a child. Reporting restrictions prohibit the publication of the applicable information to the public or any section of the public, in writing, in a broadcast or by means of the internet, including social media. Anyone who receives a copy of this transcript is responsible in law for making sure that applicable restrictions are not breached. A person who breaches a reporting restriction is liable to a fine and/or imprisonment. For guidance on whether reporting restrictions apply, and to what information, ask at the court office or take legal advice.

This Transcript is Crown Copyright. It may not be reproduced in whole or in part other than in accordance with relevant licence or with the express consent of the Authority. All rights are reserved.

IN THE COURT OF APPEAL

CRIMINAL DIVISION

[2020] EWCA Crim 1428



CASE NO 202001923/A3

Royal Courts of Justice
Strand
London
WC2A 2LL

Thursday 22 October 2020

LORD JUSTICE MALES
MR JUSTICE SPENCER
HIS HONOUR JUDGE AUBREY QC
(Sitting as a Judge of the CACD)

REGINA
V
STEPHEN BROAD

Computer Aided Transcript of Epiq Europe Ltd,
Lower Ground, 18-22 Furnival Street, London EC4A 1JS
Tel No: 020 7404 1400; Email: rcj@epiqglobal.co.uk (Official Shorthand Writers to the Court)

Mr M Saffman (Solicitor Advocate) appeared on behalf of the Appellant

J U D G M E N T

1. MR JUSTICE SPENCER:

2. This is an appeal against sentence brought by leave of the single judge.
3. On 9 July 2020 in the Crown Court at Stoke-on-Trent, the appellant, who is now 44 years of age, was sentenced by His Honour Judge Glenn to a total of six years' imprisonment for offences of possessing class A drugs with intent to supply (crack cocaine and heroin). There had been a late plea of guilty to the offences some three days earlier for which the appellant was afforded credit of one-sixth.
4. There were four offences in pairs, one for each drug, on two separate indictments. The judge imposed concurrent sentences of three years' imprisonment on each indictment but ordered that the sentences on the two indictments should run consecutively.
5. The grounds of appeal in short are that the judge was wrong to pass consecutive sentences and that the total sentence of six years was in any event manifestly excessive.
6. The first indictment related to offences committed on 27 June 2019. The appellant was the front seat passenger in a car stopped by police at 11.15 pm on the M6 motorway as he was returning to Staffordshire from the Merseyside area. There were two other men with him in the vehicle. In the front footwell there was a Kinder egg, commonly used for transporting drugs, inside which were 176 separate wraps of crack cocaine, a total of 9.25 grams at a purity of 82 per cent. They were in 11 sealed batches. There were also 87 wraps of heroin at 44 to 48 per cent purity. The appellant's DNA was found on some of the knots on the packages, indicating that he had been involved at least to that extent in dealing with them. At £10 per wrap the street value of the drugs was some £2,600.
7. The appellant was arrested and interviewed. He made no comment. He was released under investigation. It was therefore an aggravating feature of the case that the second pair of offences were committed whilst effectively on bail, which would normally attract a consecutive sentence.
8. On 18 March 2020, some nine months later, the appellant was stopped by the police at 12.40 pm, lunchtime, on Congleton Road, Stoke-on-Trent in a different vehicle. Again he was the passenger. There was only one other man in the van (the driver). The police found four individual wraps of heroin in the appellant's trouser pocket. When he was searched it was found that he had a Kinder egg between his buttocks containing 17 further wraps of heroin amounting to 6.3 grams, and five wraps cocaine.
9. This time the appellant was very forthcoming in interview. He said that from around Christmas 2019 he was living on the streets. He had been approached by someone asking if he wanted work. He was given food and slept in the back of a van. He was already a heavy drug user and was told to deal drugs. His benefit money was paid into the account of the men who were controlling him. He was dealing in drugs to fund his own habit. He accepted that he had opportunities to get out of the situation, but because of his addiction and because he was homeless he felt this was his only option. He was frank enough in this interview to admit that he was selling around £2,000's worth of drugs each day. The four wraps of heroin found in his pocket were his wages for selling the drugs, he said. The wraps concealed in the Kinder egg were for him to sell. He was asked about the previous time that he had been arrested in June 2019 when he had answered no comment in interview. He said that at that stage he was dealing for a "Scouse" line but again was dealing to feed his own habit. Recently he had been running a different drugs line.

10. The appellant entered his guilty pleas on a factual basis which the prosecution did not dispute and upon which the judge made it clear he was content to sentence him. The basis of plea was to the effect that the appellant was a long-term class A drug user as a result of which he had run up debts to the tune of £5,000. He had been homeless. His benefits were paid into the accounts of those to whom he owed money. The debt he owed was passed between gangs and the appellant worked to pay off the money he owed and to fund his own habit. He received no direct financial reward from the drug dealer. It was said in the basis of plea that the police were aware of this drug debt and had previously placed him in protective custody. He had been hospitalised in March 2019 by those to whom he owed money; this was some three months before the first offences. Threats had been made to him in relation to his son.
11. The appellant had 28 previous convictions for 60 offences dating back to 1993. Several were for drug-related offending. In 2016 he was sentenced to eight weeks' imprisonment for permitting premises to be used for the production of cannabis. He had no previous convictions for supplying class A drugs. His other offences included attempted rape, fraud, handling, violent disorder, non-dwelling burglary and robbery. The longest sentence he had previously served seems to have been two years for robbery in 2003.
12. We note that whilst under investigation for the first set of drugs offences committed in June 2019, he also committed an offence of theft in about January 2020 for which he was on bail at the time of the second set of drugs offences. He was sentenced by the magistrates to six months' imprisonment for that offence of theft on 19 March 2020, the day after he had been stopped by the police for the second set of drugs offences. He was therefore effectively on bail twice over when this second set of offences was committed.
13. There was no pre-sentence report, nor was any report necessary. A substantial period of immediate custody was inevitable. The appellant had written a letter to the judge setting out his unfortunate family background and assuring the judge that he meant to take advantage of whatever help could be given him. The judge acknowledged this as a positive feature. The appellant had been serving the six-month sentence the magistrates had imposed so he had been in custody for quite a number of weeks before he was sentenced for these offences.
14. It was common ground that both sets of drug offences were Category 3 offences under the relevant Sentencing Council Guideline because they involved street dealing. As to role, the judge said there were features of both significant role and lesser role. The appellant's motivation was financial, working to pay off money that he owed to fund his own drug habit, and he was plainly well aware of the scale of the operation. It was a significant operation in that he was carrying drugs worth in excess of £2,600 and accepted selling drugs up to £2,000 daily. Those were features of significant role, the judge said and, as the judge rightly observed, the actions of people such as the appellant enable those higher up the chain to go undetected. However, the judge also accepted that the appellant was not influencing those above him in the chain and accepted that the appellant was engaged by pressure and intimidation. Those were features of lesser role. The judge observed that the appellant was not naïve; he was an experienced man of the world; he knew that by accruing drug debts he was likely to experience problems from the people to whom he owed money. He was dealing in two highly addictive class A drugs which ruin lives, as the appellant knew all too well from his own experience. He was not put off by his first arrest; he had returned to dealing drugs, albeit for a different

- employer, and that was an aggravating factor.
15. The judge said in terms that he had regard to totality in the assessment of the appellant's overall criminality. He went on to pass the sentences of three years on each indictment, one consecutive to the other, a total of six years. The reduction for his guilty pleas was one-sixth, as to which there is no complaint.
 16. On behalf of the appellant, Mr Saffman in his grounds of appeal submitted that the judge was wrong to pass consecutive sentences. The better course would have been to identify an appropriate starting point for the first set of offences and increase that to reflect the second set, making the sentences concurrent. Mr Saffman submits that by passing consecutive sentences the judge arrived at an artificially high starting point, somewhere in excess of seven years, which is beyond the upper end of the range for Category 3 significant role.
 17. In his oral submissions, Mr Saffman maintained the submission that the judge was wrong to pass consecutive sentences, suggesting that that was inconsistent with the sentencing guideline on totality. He pointed out that bad as the appellant's record is, there have been some long gaps between his previous convictions, demonstrating that he is capable of keeping out of trouble when free of drugs. He pointed out, correctly, as we have mentioned already, that the appellant had no previous conviction for dealing in class A drugs.
 18. Mr Saffman suggested, in answer to the court's enquiry, that the appropriate starting point, certainly for the first batch of offences, would have been halfway between the starting point for lesser role and significant role, in other words three years nine months. Mr Saffman submitted that there could then properly have been an uplift of that sentence to reflect the criminality in the second set of offences, up to something like five years in total before credit for plea.
 19. Mr Saffman reminded us finally in his oral submissions that this appellant, like many others, has been serving his sentence under the restrictive conditions necessitated by the current pandemic: for 23 hours a day he is confined to his cell and, perhaps more significantly in this appellant's case where he has a drug problem with which he has been seeking to come to terms, he has not been able to engage in any course work or the like.
 20. We have considered all these submissions carefully. In our view there can be no complaint that the sentences were made consecutive. The grounds of appeal, with respect, overlook the very important fact that the second set of offences in March were committed when the appellant was already effectively on bail for the first set of offences. It may not technically have been bail but it came to the same thing, for the purpose of applying ordinary established sentencing principles. It was also an aggravating factor in the second set of offences that he was on bail in the Magistrates' Court for the theft offence as well.
 21. In principle therefore the judge was quite correct to impose consecutive sentences for the two sets of offences provided there was an appropriate adjustment of the overall sentence for totality to ensure that the total sentence was just and proportionate.
 22. The judge did not specify in terms what the individual sentences were before credit for plea and before adjustment for totality. However, a sentence of three years after one-sixth credit for plea means that the starting point for each set of offences was in the region of 43 months, that is to say 3 years months. So the judge's total sentence before credit for plea would come out at somewhere in the region of seven years and two to

three months.

23. The judge found that the appellant's role lay somewhere between significant role and lesser role. The starting point for lesser role was three years and for significant role four-and-a-half years. Taken individually, the appellant could not have complained at a sentence of four years for each set of offences before credit for plea. If consecutive sentences of four years were appropriate, the judge's total would have been eight years and it would follow that he had made only a reduction of around nine or ten months for totality.
24. We observe that although in relation to the second set of offences the appellant was very frank in admitting the scale of his drug dealing, £2,000 a day, he was charged in those offences with possession of only 26 wraps with intent supply. The judge plainly had to be careful not to sentence him for offending on a scale beyond that which was charged: see R v Twisse [2001] 2 Cr.App.R (S) 9. The appellant could have been charged, for example, with being concerned in the supply of the class A drugs on the second occasion but he was not. Having said that, Mr Saffman pointed out, very fairly in his oral submissions, that the judge was entitled at least to take into account that factor, the admission of £2,000 a day, in assessing the appellant's role as significant as evidence of his awareness of the scale of the operation in which he was involved.
25. We agree that in the end the sole question is whether the total sentence of six years was manifestly excessive. This was serious, persistent class A drug supply on a significant scale with the serious aggravating factor of continuing whilst on bail. However, the features in his basis of plea, accepted by the judge, afforded significant mitigation. We also bear in mind that the appellant was sentenced after the lockdown and is serving his sentence in very difficult conditions, and we make some allowance for that as well, although it was not raised as such in the grounds of appeal.
26. With some little hesitation, we are persuaded that the overall sentence of six years after credit for plea did not sufficiently take account of totality. We think the total sentence should have been five years, not six years.

We therefore allow the appeal and reduce the total sentence to five years. To achieve that we quash the concurrent sentences of three years on the second indictment and substitute concurrent sentences of two years. That total sentence of two years on the second indictment will remain consecutive to the sentence of three years on the first indictment.

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

Lower Ground, 18-22 Funnival Street, London EC4A 1JS
Tel No: 020 7404 1400
Email: rcj@epiqglobal.co.uk