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IN THE COURT OF APPEAL

CRIMINAL DIVISION

CASE NO 2021/01548/A2



Royal Courts of Justice
Strand
London
WC2A 2LL

Friday 17 September 2021

LADY JUSTICE CARR DBE
MR JUSTICE MARTIN SPENCER
MR JUSTICE BUTCHER

REGINA
V
RACKEEM COLEMAN

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MISS H BUTCHER appeared on behalf of the Applicant

J U D G M E N T

LADY JUSTICE CARR:

Introduction

1. The appellant is now 20 years old. On 14 September 2020, having pleaded guilty before North Essex Magistrates' Court in respect of two offences of possession with intent to supply controlled class A drugs (crack cocaine and diamorphine), contrary to section 5(3) of the Misuse of Drugs Act 1971 ("the Colchester offences"), the applicant was committed for sentence pursuant to section 3 of the Powers of Criminal Courts (Sentencing) Act 2000.
2. On 4 January 2021 in the Crown Court at Leeds the applicant pleaded guilty to two offences of conspiracy to supply controlled class A drugs (cocaine and diamorphine), contrary to section 1(1) of the Criminal Law Act 1977 ("the York offences").
3. On 29 April 2021 His Honour Judge Clark ("the Judge") sentenced the applicant as follows: 16 months' detention in a Young Offender Institution on each of the Colchester offences (to run concurrently *inter se*, but consecutively to the sentences imposed on the York offences); 40 months' detention in a Young Offender Institution on each of the York offences to run concurrently *inter se*.
4. Thus, the overall sentence was one of 66 months' detention. This was the applicant's first time in custody. He was 18 years old at the time of the offending.
5. Three of his co-accused also pleaded guilty. We refer to them below as Mola, Gaawo and Daahir.
6. This is the applicant's renewed application for leave to appeal against sentence for which purpose he has had the significant benefit of pro bono representation by Miss Butcher, to whom we extend our thanks.

The facts

The Colchester offences

7. On 30 September 2019 the applicant was stopped by police whilst loitering in an alleyway in Colchester well-known for the supply of drugs. He made off when officers approached. When eventually caught he volunteered during a strip search that he had concealed class A drugs between his buttocks. Police found 24 wraps of heroin and 59 wraps of crack cocaine. Also seized were £28 in cash and an i-Phone. The applicant pleaded guilty at his first appearance in the Magistrates' Court.

The York offences

8. The York offences involved a drugs line in the York area set up from London. The conspiracies indicted covered a period between 23 December 2019 and 19 February 2020.
9. At 9am on 8 January 2020 a plain-clothed police officer saw the applicant riding a bicycle from the rear of London Mews on East Parade, York. When the applicant returned the officer stopped him. Thereupon the applicant became aggressive and said: "You're not a fucking copper" and tried to get away. A knife was found in the waistband

of the applicant's trousers.

10. A search of 5 London Mews revealed another kitchen knife, a bag containing wraps of black plastic, a small amount of white substance, scales, gloves, bin bags, £110 in cash and £117 in coins, torn clingfilm and a small wrap of herbal matter. There was also 28.7 grams of heroin, 27 grams of crack cocaine and 19 packages totalling 2.13 grams of heroin. Other drugs were dropped to the floor by the applicant: 4.65 grams of crack cocaine in 45 packages and 2.15 grams of heroin in 18 packages. The total amount of cash found on and around the applicant was just over £1,500.
11. Mola had been responsible for the booking of the London Mews property for which he had paid the rent; he was also present in the flat. He was arrested on 17 January on the A64. He was found to be in possession of a telephone known as "Avon 1". The top contact in Avon 1 was the applicant. Between Christmas Eve and the applicant's arrest on 8 January 2,150 messages were sent from Avon 1, mostly from York and Leeds, and four sets were sent out from London. A further 1,161 bulk messages were sent out from Avon 1 from locations in Leeds and York in the period between the applicant's arrest and Mola's arrest. Avon 1, which was the telephone directing the applicant, had 107 messages out on the day of the applicant's arrest itself. Mola's telephone had travelled together with Avon 1 up to Leeds with Mola returning to Leeds several times between the original trip there and his arrest.
12. Daahir and Gaawo were arrested in the early evening of 18 February 2020 on Wakefield Road in Leeds. Both men were from London. Their personal telephones and the Avon 3 telephone were seized. 903 text messages had been sent from Avon 3 between 6 and 13 February, and a further 961 from Avon 1 in the week beginning 14 February. Daahir and Gaawo were each linked to more than one Avon telephone through contact and co-location.
13. The applicant had four previous convictions for six offences, including for possession of a bladed article in 2016 and offences of affray, public order and common assault in 2017.

Material before the Judge

14. The Judge had before him a psychological report of Dr Lambert-Simpson dated 10 July 2020 and a psychiatric report of Dr Misch dated 9 December 2020. The applicant has various difficulties, in particular hyperkinetic disorder (severe ADHD), depression and anxiety.
15. Dr Lambert-Simpson opined that the test results suggested the applicant was highly suggestible. Given his presentation, lack of deception, his historical information, his past ADHD diagnosis and the author's experience, it was clear that the applicant was a person likely to be easily manipulated by more sophisticated peers. A primary diagnosis was ADHD, combined type, moderate and adjustment disorder, with mixed anxiety and depressed mood. The applicant presented as younger than his stated age. He had a long history of attentional and behavioural issues and a lack of medication compliance. His school history was chequered and he was sent to an educational unit at the age of 15. He

would, said Dr Lambert-Simpson, be easy prey for those more sophisticated than himself.

16. Dr Misch is a consultant adolescent forensic psychiatrist. In his opinion, the applicant's history and presentation at assessment was consistent with the existing diagnosis of hyperkinetic disorder and associated behavioural difficulties. Dr Misch did not disagree with Dr Lambert-Simpson's conclusion that the applicant was highly suggestible and someone likely to be easily manipulated by more sophisticated peers.
17. The Judge also had a pre-sentence report and addendum report before him. In those reports the applicant had explained that he had felt groomed by older people who used him to buy him things to get him to sell drugs and then pay him for doing it. In the author's assessment the applicant was initially exploited by others but then appeared to be motivated independently by the financial benefits of his illegal behaviour. A maturity screen indicated low maturity. There was a medium risk of re-offending but if the areas linked to his offending were not addressed that risk would likely increase. In the addendum pre-sentence report, the applicant was recorded as accepting that his offending was purely financially motivated.

Sentence

18. The Judge rehearsed the facts after remarking in opening that each defendant understood that the York offences involved an organised criminal enterprise that was moving or expanding across the country.
19. Turning to the applicant individually, he noted the applicant's age, immaturity, background and personal circumstances. He referred to the various reports before him, including as to the applicant's ADHD, depression and anxiety. In concluding, he stated that the applicant was a street dealer. His offending was done for money and the applicant must have known the larger scale. It was aggravated by the fact that there was more than one matter but was lessened "very much" by the applicant's age and mitigation. In one sense, said the Judge, the applicant played a significant role, but with his personal mitigation it was at the top of the lesser role. The appropriate term in the Judge's opinion was one of four years and six months, which he reduced to 40 months in a Young Offender Institution after 25% credit for guilty plea.
20. In respect of the Colchester offences, totality and the applicant's personal mitigation were borne in mind. As a result, a lower term was used than otherwise would have been the case - one of two years not four' detention. The term of two years was reduced by 33% to 16 months, concurrent on each, to run consecutively to the sentences of 40 months. Thus, the total sentence of 56 months was achieved.

Grounds of appeal

21. Miss Butcher takes no issue with the conclusion which she contends the Judge reached, namely that the applicant's offending fell to be treated as top end lesser role and Category 3 offending for the purpose of the Sentencing Council Guideline on Drugs. Nor does she take any issue with the sentences imposed by the Judge in relation to the Colchester offences. That is unsurprising given the reduction the Judge made to reflect

totality.

22. However, Miss Butcher submits that the sentences for the conspiracy to supply offences are manifestly excessive. The Judge failed sufficiently to reflect the mitigating features, specifically of age and maturity which she says are very stark in the present case, when determining and adjusting the appropriate term before applying credit for guilty plea. She refers to the well-known remarks of this court in R v Clarke, Andrews and Thompson [2018] EWCA Crim 185 at [5]: reaching the age of 18 does not present a cliff edge for the purpose of sentencing. Young people continue to mature, albeit at different rates.

Discussion

23. The Judge was fully aware of the matters relied upon by the defence. Those matters had been presented to him in a full, helpful and detailed written sentencing note, including as to the applicant's youth and immaturity, his severe ADHD, his voluntary work, the support of his mother, his suggestibility and the views expressed to the effect that the applicant was initially exploited by others. He went on to say:

"In relation to York, you say you've been given the opportunity to sell drugs in York. That's what you were involved in. You were carrying a knife on 8 January, and clearly you've moved to a new area; of course, we know what you've been doing in Chelmsford was essentially the same, obviously, and you were carrying on what you were doing for small financial remuneration. You were somebody who, it seems to me, to some extent, had been groomed and been used by others more sophisticated. But you are somebody for whom this lifestyle, or job as it were for you, really, had become the normality and you were prepared to travel the country to sell drugs, and you must have known that this was beyond just you selling, given the nature of the movement and the nature of what was going on; so it was down to money ... These matters clearly involved you getting paid to travel the country and sell drugs working these drugs lines. Here you are again with connections to drugs in London and York and you're obviously a street dealer selling them, it was obviously done for money, you must have known the larger scale. It's aggravated by the fact there's more than one matter but it's lessened very much by your age and the mitigation. So I think, in one sense, you're Clearly a significant role; but, with your personal mitigation, it may take us to the top of lesser role."

24. In proceeding on the basis of lesser role, the Judge expressly acknowledged the applicant's age and immaturity. The fact remained, as he said, that this was extremely serious county lines class A drug offending. The applicant was being sentenced for two conspiracies and street dealing. He was motivated by financial gain and had a significant record of offending. He was carrying a knife at the time of the York

offences.

25. We do accept that the sentences imposed by the Judge on the conspiracy offences can be said to be severe, but not that they are arguably manifestly excessive. There was no arguable error of principle and the Judge clearly had all the relevant factual material on board. He was entitled to make the assessments that he did and to impose sentences at the levels that he did for the reasons that he gave.

26. In these circumstances the renewed application for leave is refused.

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