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IN THE COURT OF APPEAL

CRIMINAL DIVISION

[2021] EWCA Crim 665

CASE NO 202002418/A2

Royal Courts of Justice

Strand

London

WC2A 2LL

Tuesday 27 April 2021

LORD JUSTICE BEAN

MRS JUSTICE FARBEY DBE

RECORDER OF NEWCASTLE

(HIS HONOUR JUDGE SLOAN QC)

(Sitting as a Judge of the CACD)

REGINA

V

ANTON DANIELS

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MS L COLLIER appeared on behalf of the Applicant.

J U D G M E N T

MRS JUSTICE FARBEY:

1. On 11 September 2020, in the Crown Court at Chester before His Honour Judge Thompson, the applicant (then aged 36) was sentenced as follows. On count 1, conspiracy to supply Class A drugs namely cocaine, 6 years' imprisonment; on count 2, conspiracy to supply Class A drugs namely diamorphine (more commonly known as heroin), 6 years' imprisonment to run concurrently; on count 3, conspiracy to convey a "List A" article into or out of a prison, 4 years' imprisonment to run consecutively. The total sentence was therefore 10 years' imprisonment. The applicant had pleaded guilty to all three offences at an earlier hearing. He renews his application for leave to appeal against sentence after refusal by the single judge.
2. A co-defendant, Tania Dewar, also pleaded guilty to counts 1 to 3. The judge sentenced her at the same time as the applicant to a total of 7 years and 6 months' imprisonment. She received 4 years' imprisonment concurrent for two counts of possession of Class A drugs with intent to supply, on a separate indictment.

The Facts

3. In relation to the conspiracies charged in counts 1 and 2 the applicant, together with Ms Dewar and others, supplied drugs to customers between 20 October 2019 and 23 February 2020. They were part of a well-established "county lines" operation capable of delivering drugs nationwide. It was the applicant's operation in that, among other things, he bought drugs, was linked to multiple "graft" telephones, sent out "flare" messages to attract business, set up new business and enforced drug debts with violence. He had links to and lived in the Manchester area but travelled to Macclesfield with Dewar. The operation also extended to Scotland and there were attempts to extend it to London. Dewar was more of a street dealer albeit she too appears to have had some control over telephones.
4. In relation to count 3, the prosecution relied on phone evidence to prove that the working relationship between the applicant and Dewar continued after she was arrested on 10 January 2020 and remanded in custody at HMP Styal. Phone messages demonstrated that they worked together with the aim of bringing prohibited items into the prison including Class A drugs. At one stage Dewar asked the applicant to send her "pregabalin, crack, zencos, bacci, rizla, lighters and crack crack crack, SIM cards". On another occasion Dewar mentioned "cocaine for bank transfer". The applicant at one stage sent a message saying: "Tell Tanya her parcel is ready. Everything is here she asked for". A search of Dewar's cell revealed a notebook containing the applicant's name and bank details. Those bank details had been provided to other people. It was clear that Dewar

had made or received payments while in prison.

The Judge's Sentencing Remarks

5. Dealing with counts 1 and 2 the judge applied the sentencing guideline for the supply of a controlled drug. In relation to culpability, he agreed with the prosecution that the applicant's role in the conspiracies fell between significant and leading. In relation to harm, these were category 3 offences. The judge considered the aggravating factors: this was a county lines case; the offences covered two types of Class A drug; the operation continued over a significant period of time; the applicant made a significant amount of money; he used violence to enforce debts and had previous convictions for significant violence.
6. Taking into account these various factors the appropriate sentence on counts 1 and 2 was 8 years' imprisonment before discount for the guilty pleas. Applying a 25% reduction reflecting a timing of the pleas, the sentence on each of these counts was 6 years to run concurrently.
7. In respect of count 3, the judge applied the same sentencing guideline, saying that the offence fell at the "top end of Category 3, significant role, at seven years". He took into account the principle of totality and also the difficulties faced by prisoners in the present Covid-19 pandemic (see R v Manning [2020] EWCA Crim 592), reducing the sentence to 5 years and 4 months' imprisonment before discount for guilty plea. Applying a 25% discount, the sentence was 4 years' imprisonment, which was consecutive to the 6 years imposed on counts 1 and 2, so that the overall sentence was 10 years.
8. Ms Laura Collier, on behalf of the applicant, focuses her written and oral submissions on count 3. She accepts that the judge was entitled to apply the sentencing guideline for the supply of drugs but submits that the sentence of 5 years and 4 months before the 25% discount for guilty plea was manifestly excessive. She submits that count 3 represented one agreement to supply a parcel of items on one occasion with no evidence that any substance was in fact conveyed into the prison. The applicant was acting under the direction of Dewar, who made all the logistical arrangements in preparation for the delivery of the items. The judge took insufficient account of the principle of totality. There was no evidence of financial gain on the applicant's part as far as this one-off transaction was concerned.
9. More generally, she submits the overall sentence ought to have been reduced to reflect the applicant's significant personal mitigation. He had been operating a highly successful dog breeding business until he was the victim of kidnap and false imprisonment. His business then collapsed so that he became involved in the supply of

drugs. The applicant was, before his arrest, the primary carer of his young son.

Discussion and Conclusions

Counts 1 and 2

10. In relation to counts 1 and 2 the starting point for a category 3 offence where the offender has a significant role is 4 years 6 months' custody. The category range is 3 years 6 months to 7 years' custody. The judge was entitled to make an upward adjustment outside the category range to reflect the elements of a leading role. Although the judge did not mention the mitigating factors in his sentencing remarks the applicant's personal mitigation, including his family situation, could not even arguably outweigh the numerous and serious aggravating factors. These were well-organised conspiracies. They spanned a period of over 4 months. They relied on violence to enforce drug debts. They stretched from Macclesfield to Scotland. In these circumstances it is not arguable that a sentence of 8 years reduced to 6 years for plea was manifestly excessive.

Count 3

11. The judge was entitled to impose a consecutive sentence on count 3 as it was a separate conspiracy. There is no sentencing guideline covering the count 3 offence but there is no challenge to the judge's decision to apply the sentencing guideline for the supply of a Class A drug, reflecting the most serious aspect of the count 3 conspiracy which was the agreement to supply crack cocaine. Applying the guideline, the judge was entitled to treat the offence as category 3, significant role. The prison context was a serious aggravating factor which plainly justified a significant upward adjustment from the starting point in the guideline.

12. Even if the guideline does not apply, the applicant had agreed to organise a supply of prohibited items including Class A drugs in a sophisticated operation using phones and bank accounts. This would have enabled him to extend his sphere of operation into the prison even if by the time of his arrest the only specific arrangement related to one parcel and even if nothing was actually brought into HMP Styal. Given the seriousness of his offence a 4-year sentence was warranted. We take into account the principle of totality but the seriousness of the applicant's offending overall leads us to conclude that a 10-year sentence was not arguably manifestly excessive or wrong in principle.

13. For these reasons, and despite Ms Collier's helpful submissions, this renewed application is dismissed.

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

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