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Neutral Citation No [2022] EWCA Crim 1687

IN THE COURT OF APPEAL  
CRIMINAL DIVISION



CASE NO 202202630/A3

Royal Courts of Justice  
Strand  
London  
WC2A 2LL

Wednesday 14 December 2022

Before:

LORD JUSTICE DINGEMANS  
MR JUSTICE SWEENEY  
HIS HONOUR JUDGE PICTON  
(Sitting as a Judge of the CACD)

REX  
V  
ALBJON AXHAMI

Computer Aided Transcript of Epiq Europe Ltd,  
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MISS V FOWLER appeared on behalf of the Appellant

J U D G M E N T

LORD JUSTICE DINGEMANS:

1. This is an appeal against sentence. The appellant is a 19-year-old man having been born on 12 February 2003. He is an Albanian national and was of previous good character.
2. On 9 August 2022 he appeared before the Crown Court at Aylesbury and was sentenced to two years eight months' imprisonment for the production of a class B drug. The appeal raises the issue of whether the judge gave sufficient discount for the appellant's youth and immaturity, and issues about how he was categorised for the purposes of the sentencing guidelines.
3. It is necessary to record that the appellant should have been sentenced to detention in a young offender institution and not to imprisonment and we alter the record for those purposes.
4. On 24 February 2022, so just after his 19th birthday, the appellant was arrested in a warehouse unit which had been vacated by a previous tenant in 2019, which had been converted (without the knowledge of the owner) to grow cannabis plants. There were approximately 900 well-established cannabis plants and the electricity supply had been bypassed. There were hydroponics and quite a sophisticated system for maintaining the plants. The appellant was found in the kitchen and had keys to the warehouse and was able to come and go. About two hours after his arrest his brother arrived. He had a car and had cash upon him. The position in relation to the brother's prosecution is not known.
5. At police interview the appellant made a prepared statement suggesting that he had been present only for one week but knew that he was growing cannabis.
6. The appellant was charged with the production of a class B drug on 26 February 2022, so four days after his arrest. He pleaded guilty at the Magistrates' Court and was committed

for sentence. On 9 August 2022 he then appeared and was sentenced as already indicated.

7. During the prosecution opening of facts the judge asked whether it was still being contended on behalf of the appellant that he had only been in the premises for one week in the light of the fact that the plants were well-established and in the light of the fact that the appellant had the keys. Defence counsel took instructions and clarified that the appellant was not contending that he had a role limited to that of a gardener and that there was a factor of significant role. It was also contended that there were factors of lesser role present.
8. When sentencing the judge identified that this was a Category 2 case based on the yield and that the appellant had a significant role. That gave a starting point of four years with a range of two years six months to five years. The judge identified that there were aggravating factors being the expected profit, the unlawful access to electricity and the expensive and specialised equipment. The judge said that there were mitigating factors being a lack of previous convictions and the fact that the appellant was 19 years old. The judge said that there was no evidence that the appellant lacked maturity and that there was no evidence that the appellant had been exploited. The judge said it was a well-organised enterprise and the appellant had the significant role already identified.
9. The judge then said that he had taken account of aggravating and mitigating factors and came up with a sentence of the four year starting point which was then discounted by one-third for guilty plea, giving a sentence of 32 months (which is two years eight months).
10. Miss Fowler, to whom we are grateful for her written and oral submissions this morning, pursues three grounds of appeal. The first is in relation to personal mitigation. It is said

that the appellant made admissions in interview and pleaded guilty, that he was of previous good character and that some weight should have been given to the fact that he said he had been brought into this country illegally and that he owed a debt. The second ground of appeal was that insufficient reduction was made on account of his age. The third ground of appeal was that in fact properly analysed he was on the borderline of a significant and lesser role and somewhere between the two and therefore the starting point taken by the judge was too high.

11. So far as the first ground of appeal is concerned, we agree that there was mitigation in the appellant's previous good character and that his age was relevant. It is well-established that the age of 18 is not a cliff edge and that the youth and maturity of an offender will be factors that inform any sentencing decision, even after an 18th birthday. It is common ground in all the authorities that a reduction for age and maturity does not cease simply on the cliff edge, as it was described, of the 18th birthday.
12. The judge did not express the effect of this, but the judge had identified, and was right to identify, aggravating factors. These were the expected profit, unlawful access to electricity and expensive and specialised equipment. The judge must therefore have taken a starting point of four years and gone up to reflect those aggravating factors before reducing that increased sentence to take account of the mitigating factors, in particular of age and previous good character. That means that the judge then ended up with the sentence which he had, before he then gave the full and appropriate discount for the plea of guilty and the fact that admissions were made in interview. In those circumstances we do not consider that grounds 1 and 2 take the matter any further or forward. It is right, as Miss Fowler pointed out in her submissions, that that was not made clear in the sentencing remarks, but it was certainly implicit from the judge's sentencing.

13. That leaves the question of whether the judge was entitled to find that the appellant had a significant role and Miss Fowler points out that there was exploitation and lack of maturity in this case. In this case the judge expressly addressed the issue of maturity and said that there was no evidence of a lack of maturity and he also considered the issue of exploitation. The judge was entitled to find that there were no indications of exploitation. This appellant had the keys to the property, it was his brother who turned up two hours later who had cash and a car, and we note, and Miss Fowler has confirmed it today, that there has been no reference to the Single Competent Authority. A reference can be made to the Single Competent Authority regardless of whether the circumstances would amount to a defence under the Modern Slavery Act (and it was common ground in this case that the circumstances were not such that there would have been a defence under the Modern Slavery Act).
14. In all these circumstances we are unable to say that the sentence was either wrong in principle or manifestly excessive. We will therefore dismiss the appeal.

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