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IN THE COURT OF APPEAL
CRIMINAL DIVISION



No. 202300424 B5

Neutral Citation Number: [2023] EWCA Crim 1096

Royal Courts of Justice

Friday, 1 September 2023

Before:

LORD JUSTICE POPPLEWELL
MRS JUSTICE CHEEMA-GRUBB
MRS JUSTICE TIPPLES

REX

- v -

FAISAL HUSSAIN

Transcript prepared from digital audio by
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MR B BATRA appeared on behalf of the Appellant.

THE RESPONDENT did not appear and was not represented.

J U D G M E N T

MRS JUSTICE CHEEMA-GRUBB:

- 1 This is an appeal against sentence with leave of the single judge. The appellant, Faisal Hussain, who is now aged 26, appeared before the Crown Court at Burnley on 16 January 2023 for sentence on two indictments, both concerning the supply of Class A drugs. On the earlier indictment, dating back to 2020, he pleaded guilty to two counts of possession with intent to supply Class A drugs. On the second indictment, concerning conspiracies to supply Class A drugs, he pleaded guilty to two counts, referring to cocaine and heroin respectively.
- 2 He was otherwise of good character. All the pleas were entered very late. He was sentenced to a total of 7 years' imprisonment. The 2020 offences were committed on 9 January that year, when the appellant was seen by plainclothes police officers supplying drugs to a user in Burnley. On that occasion, he was found in possession of £1,329 cash together with cocaine and heroin with a combined street value of £930. He was plainly engaged in street-level dealing.
- 3 The background to the conspiracy counts was that of a sophisticated, organised crime group operating out of Burnley in Lancashire. A number of drugs lines were involved, and each time these were closed down following police investigation, others sprung up, managed by the same group of offenders. At the sentencing hearing, the judge dealt with seven defendants and had to assess the role played by each of them individually and against the background of the overall offending.
- 4 To give a flavour of their activities, between January and May 2022, police identified 43 different days where drugs were being supplied through the familiar route of bulk messages being sent out from the various telephone numbers to large groups of drug users. Transactions took place on the streets of Burnley and surrounding areas, usually during daylight hours.

- 5 Those engaging in the street dealing were generally well below the position of the seven defendants in the drug dealing hierarchy before the judge. Premises at Todmorden Road were used by the group to stash drugs, and one of this appellant's co-defendants, Matthew Hefford, had a principal role in managing that property. The police calculated that a minimum of 6,000 messages were sent to mobile phones during this five-month period and, as a general estimate of the quantity of drugs that were supplied at street level, the case proceeded on the basis that between four and just less than five kilograms of Class A drugs, worth around £300,000, was involved over the period of the indicted conspiracies.
- 6 This placed the case generally in Category 2 of the Sentencing Council's Guideline for supplying Class A drugs, with a starting point of 8 years' custody within a range of 6½ years to 10 years for those playing a significant role in the course of supply. Of course, here, the court was dealing with conspiracies, which are generally considered more grave than the substantive offences.
- 7 The appellant's role, however, was limited in time and quantity of drugs involved. He controlled and operated one of the drugs lines on occasions between mid-March and early April 2022, under the direction of the principal figure within the conspiracy, a man called Adeel Khan. It is clear that the appellant had taken on a more significant role in the 2022 conspiracies than simply dealing drugs on the street, on his own, as he had been in 2020.
- 8 Against this background, the prosecution placed the appellant towards the bottom end of the order of seniority within the conspiracy, and described his role in a sentencing note prepared for the judge as follows:

“The January 2020 offences appear to be straightforward street dealing of Class A drugs. Whilst his role in the conspiracy is towards the lower end, on balance the court may feel that his role is properly categorised as significant.”

9 Offending while the earlier indictment was still being investigated was an aggravating feature, as well as those 2020 offences, justifying a consecutive sentence. At the hearing itself, the prosecution opened the case against the appellant as we have summarised above and, again consistent with the sentencing note, prosecution counsel submitted:

“It may be that, on balance, the court should take the view that Faisal Hussain, looking at the previous matter and his involvement in the conspiracy, albeit for a limited time, had played a significant role in the street dealing of Class A drugs.”

10 This categorisation for this appellant was, it appears, the agreed position of the prosecution and the defence. Category significant role has a starting point in the guideline of 4½ years’ custody within a range of 3½ to 7 years. In sentencing the appellant, the judge did not apply that categorisation, but placed the appellant in a Category 2 significant role, equivalent to the offender Hefford, who we have mentioned, and who had plainly played a more substantial role in the conspiracy.

11 Taking a starting point of 6 years’ imprisonment and allowing an unobjectionable one twelfth discount for the late admissions and adding 18 months for 2020 offences, the judge indicated he had allowed for totality. To illustrate further the context in which he dealt with this appellant: in respect of the conspirator at the head of this group, Adeel Khan, the judge took a starting point of 9 years’ imprisonment.

12 The grounds of appeal have merit. In respect of the conspiracy counts and the particular circumstances of this case, especially the decision that even those at the very top of the indicted conspiracy should be treated as playing a significant role rather than a leading one, the appropriate starting point for this offender was that for a significant role in Category 3 of the Class A drug supply guideline.

- 13 Category 3, as the guideline states, is the category into which street suppliers usually fall. To recognise the shorter period over which this appellant was involved, and the limited mitigation open to him from his age and personal circumstances, including the progress he has made in custody and the fact that he was acting under the influence of more sophisticated offenders, it is appropriate to reduce slightly within the category to 4 years' imprisonment.
- 14 After application of the limited discount for his guilty pleas and maintaining the 18 months' imprisonment imposed for each of the 2020 offences, we have concluded that the sentence of 7 years' imprisonment in total is manifestly excessive, and we reduce it to 5 years, 2 months, which is made up of 44 months on each of the two conspiracy counts and 18 months on each of the earlier possession with intent counts. All subsidiary orders will remain as before, and to that extent, this appeal succeeds.
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CERTIFICATE

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the Judgment or part thereof.

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This transcript is subject to the Judge's approval.