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IN THE COURT OF APPEAL
CRIMINAL DIVISION
[2023] EWCA Crim 217



No. 202202469 A2

Royal Courts of Justice

Tuesday, 7 February 2023

Before:

LORD JUSTICE POPPLEWELL
MR JUSTICE FRASER
HIS HONOUR JUDGE ALTHAM

REX
V
ZACKERY GRIFFITHS

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J U D G M E N T

MR JUSTICE FRASER:

- 1 This is a renewed application for leave to appeal against sentence following a refusal by the single judge. The applicant also requires an extension of time of 45 days for that renewed application, a point to which we shall return.
- 2 On 29 July 2022, in the Crown Court at Swansea and having pleaded guilty on re-arraignment, the applicant, who was 30 years of age at the time, was sentenced by Mr Recorder Owen-Casey on the following counts. He was also sentenced on another count to which he had previously pleaded guilty on 10 May 2022 before the Magistrates' Court at Merthyr Tydfil. The magistrates had committed him to the Crown Court for sentence, pursuant to Section 14 of the Sentencing Act 2020.
- 3 The offences and sentences were as follows. On Count 1, possessing a controlled drug of class B (MDMB-4en-PINACA) with intent to supply, contrary to Section 5 (3) of the Misuse of Drugs Act 1971, the applicant was sentenced to 20 months' imprisonment. Count 2 on the same indictment was an alternative count to Count 1 and so did not arise given his guilty plea to Count 1. Count 3 was possessing a controlled drug of class A, namely diamorphine (sometimes called heroin), contrary to Section 5 (2) of the Misuse of Drugs Act 1971, and the sentence on this was four months' imprisonment to run concurrently to the sentence on Count 1. The count in respect of which the applicant had been committed for sentence by the magistrates was possession of a controlled drug of class B, cannabis, contrary to Section 5 (2) of the Misuse of Drugs Act 1971. This attracted a sentence of 14 weeks' imprisonment, again to run concurrently. The overall sentence was, therefore, one of 20 months' imprisonment. There was also a statutory surcharge order made and other orders for forfeiture, destruction and disposal of the drugs and a mobile telephone.
- 4 The facts can be stated briefly. On 14 October 2020, police attended the address where the applicant was staying, the occupant of that property having allowed him to stay there at the request of a friend. When the police arrived they saw the applicant trying to climb out of a back window, and detained him. Their suspicions were raised by a spoon with some burn marks on it in the living room, a well-known item of drugs paraphernalia, and so the police carried out a search for drugs. In the living room they found a container with just under 0.3 grams of heroin worth up to £40 inside. This formed the subject matter of Count 3, and the applicant immediately admitted that this was his.
- 5 However, an officer noticed that the applicant appeared to be trying to conceal something by kicking it under the sofa. This was found to be a box containing 117 gold packages, each weighing just under 0.1 grams and containing a synthetic cannabinoid. This formed the subject matter of Count 1. These packages were individually worth up to £20, which would give a total worth of £2,340 (given the value and 117 different packages). The applicant accepted at the time that he had bought a lot of this type of drug, saying that it was all for his personal use. His fingerprints were found on the outside of one of the packages.
- 6 When he was taken into custody the applicant was found to be in possession of 0.5 grams of herbal cannabis. This is the subject matter of the third charge in respect of which he pleaded guilty before the magistrates and for which they had committed him to the Crown Court for sentence, as we have explained.
- 7 The telephone seized from the applicant was found to contain numerous messages between him and five other individuals with whom, in one way or another, the applicant was involved in supplying synthetic cannabinoids. The messages generally showed that the applicant had supplied this before. Some messages referred to him having a kilo of

"marshmallow". The messages also showed that others were working for the applicant, the applicant telling them that he was expecting to make £2,500 from an unnamed commodity being delivered to Wales and that he wanted, as he put it, to "drop 100 packages" to that contact, saying "I need these packs on the street and cash in" and also "I need you to work hard this week and slam these packs out". Another of the contacts appeared to be a driver working on behalf of the applicant delivering an unknown commodity. The applicant also referred to bagging up 350 packets, leading to the conclusion that the 117 located at the property were the remainder of this quantity after some had been sold.

- 8 In police interview, the applicant denied that the telephone was his, but, as we have observed, he changed his plea to guilty on re-arraignment. He had said previously that the phone belonged to someone else called Adam Connelly. This name was a known alias of his.
- 9 The applicant's antecedents make for unattractive reading. He has 48 convictions for 104 offences between November 2005 and July 2021. These include 14 drug offences, the majority of which are for simple possession, but also included the following: (1) supplying a controlled drug of class B and possession of a controlled drug of class B with intent to supply for which he received a sentence of nine weeks' imprisonment, suspended for two years in January 2011; (2) possession with intent to supply a controlled drug of class B for which he was sentenced to eight months' imprisonment in July 2013; (3) conspiracy to supply class A drugs for which he was sentenced to 52 months' imprisonment in April 2017, the applicant having been recalled on licence in respect of that matter; and (4) offering to supply a controlled drug of class B for which he was sentenced to 20 weeks' imprisonment in July 2021, which was varied on appeal to 14 weeks.
- 10 The learned recorder, in sentencing, observed that for the most serious count both the prosecution and defence appeared broadly to agree the categorisation of role and harm. In terms of harm, the parties suggested to the court that this was within Category 3. That covered cases, as the learned recorder explained, where one sells drugs directly to users. He was quite satisfied on what he had read that that was the correct categorisation of the offending, and he concluded the appropriate categorisation of the case was Category 3 with a significant role. In respect of the class B offence, the starting point for such an offence is one year's custody with a range of 26 weeks to three years' custody. The recorder noted the aggravating factor of the previous convictions. He said that after a trial he would have moved up from the starting point to two years and one month, and he gave the applicant a discount of 20 per cent for his guilty pleas which resulted in the sentence of 20 months. The other two lesser offences were given shorter sentences commensurate with where they occurred in their respective guidelines. These were ordered to run concurrently in any event.
- 11 The grounds of appeal were settled by the applicant in person; there are six of them. They are as follows:
 - (1) it is said that in respect of count 1 there was no evidence of an expectation of substantial financial gain, and there were factors of lesser role;
 - (2) it is said the total custodial sentence the applicant received was not justified according to the principles of totality for the offending behaviour between July and October 2020, including other sentences he had imposed in July 2021;
 - (3) the concurrent sentence for possession of half a gram of herbal cannabis is said to be excessive and, as he put it, inconsistent with previous action by the justice system;

- (4) the sentence for possession of heroin was also said to be disproportionate and inconsistent;
- (5) criticism was made of the applicant's barrister below, who it is said was unprepared and failed to present facts on the applicant's behalf and, therefore, significant mitigation was said not to have been presented to the court, and the applicant's mental disorder of ADHD was not considered; and
- (6) it is said that the sentence was vastly excessive, inconsistent and demonstrated that it had been arrived at as the result of unequal treatment.

12 As carefully noted and considered by the single judge in refusing leave, there is no basis for any of these grounds. In particular, we have considered the transcript of the plea in mitigation by counsel acting for the applicant. It simply cannot be said that the mitigation, such that it was, was not presented to the court. It plainly was, and fully explained to the court in submissions. This is also reflected in the sentencing remarks. The plain fact of the matter is that the offending was repeat offending. The applicant did have considerable relevant antecedents, as we have observed, and his counsel could only do a limited amount with the material available. The suggestion that the sentence demonstrated what is said by the applicant to have been unequal treatment is wholly without any foundation.

13 There is no error in principle, even arguably so in the sentencing exercise or its result. Nor, in our judgment, is it reasonably arguable that the result of his sentence is manifestly excessive. We fully adopt and endorse the careful explanation given to the applicant by the single judge in refusing leave.

14 This finally brings us to the issue of the extension of time. Given that in all the circumstances we are unpersuaded that it is reasonably arguable the resulting sentence is manifestly excessive, this application would fail in any event even if it had been brought within the statutory time limit. The issue of an extension of time does not arise, although the delay in renewing the application has made no difference to the outcome, because we have considered it on its merits, such as they are, in any event.

15 We, therefore, refuse to renew the application and we refuse the application to extend time, and these applications fail.

CERTIFICATE

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This transcript has been approved by the Judge