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IN THE COURT OF APPEAL

CRIMINAL DIVISION

ON APPEAL FROM THE CROWN COURT AT ISLEWORTH

MS RECORDER BEAUMONT CP No: 01MP337323

CASE NO 20240915/A5 [2024] EWCA Crim 1337

Royal Courts of Justice
Strand
London
WC2A 2LL

Friday, 11 October 2024

Before:

LORD JUSTICE JEREMY BAKER
MRS JUSTICE FARBEY DBE
THE RECORDER OF WINCHESTER
HER HONOUR JUDGE ANGELA MORRIS
(Sitting as a Judge of the CACD)

REX
V
MOHAMMED DERIE

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MS H BEER appeared on behalf of the Appellant

J U D G M E N T

MRS JUSTICE FARBEY

1. On 15 July 2024 in the Crown Court at Isleworth before Ms Recorder Beaumont the appellant pleaded guilty upon re-arraignment to two counts of being concerned in making an offer to supply a controlled drug of Class A to another, contrary to section 4(3)(c) of the Misuse of Drugs Act 1971. The Recorder proceeded to sentence him on each count to 27 months' detention in a Young Offender Institution with the sentences to run concurrently. He appeals against sentence by leave of the single judge.

Facts

2. The appellant's offences related to the supply of Class A drugs through the use of two drug lines. The "Richards line" was operational between July and August 2023. The "Flash line" was operational between October and December 2023. Bulk messages were sent from the lines advertising the availability of crack cocaine and heroin. The appellant was associated with the sending out of bulk messages through cell site analysis and call data. On occasion the appellant was also directed to deliver drugs to customers. The proceeds of those sales would then make their way up the supply chain.
3. The appellant was arrested at his home address on 25 January 2024. Three mobile telephones were seized along with betting slips with telephone numbers written on them. The IMEI numbers for the mobile telephones showed that each had housed the "Flash line".
4. The appellant was aged 17 at the start of the indictment period. He turned 18 during that period. He was 18 years old at the date he was sentenced. When arrested, he was found to be living in a small room with a makeshift bed made out of towels and blankets on the floor.

Sentencing remarks

5. In her sentencing remarks, the Recorder applied the sentencing guideline for the supply of Class A drugs. In relation to culpability, she stated that the offending had an element of a significant role, namely that the sending of bulk messages amounted to an "operational... function within the chain". She acknowledged, however, that there were elements of a lesser role as the appellant had acted under direction from others. On this basis, she concluded that the appellant's culpability fell between significant and lesser role. As for harm, she was willing to place the offences in Category 3 which reflected that the appellant was a street dealer.
6. The starting point for a Category 3 significant role offence is 4 years 6 months' custody, with a range of 3 years 6 months to 7 years. The starting point for a Category 3 lesser role offence is 3 years with a range of 2 years to 4 years 6 months. Consistent with her conclusion that the offences fell between the two kinds of role, the Recorder concluded that the sentence should be 3 years and 9 months before any reductions.
7. In considering mitigating factors, the Recorder gave weight to the appellant's young age. As we have noted, he was a child for part of the offending covered by the indictment period. She confirmed that she had in mind the Overarching Guideline on sentencing children and

young people ("the Children Guideline"). She noted that the appellant had no previous convictions and that there was evidence of pressure and coercion as described in a report by a modern slavery expert, Mr Colin Carswell. She accepted that the appellant had had a difficult and unpredictable childhood. Given these various factors, she reduced the sentence by 15 months. She made a further reduction of 10% to reflect the appellant's late pleas entered on the day of trial. By this route, she reached the total sentence of 27 months that we have described. In doing so, she observed that she would have reached the same conclusion irrespective of how the sentence was structured.

Grounds of Appeal

8. On behalf of the appellant, Ms Beer submits that the sentence was manifestly excessive for essentially the following reasons. First, the starting point was too high. Secondly, the Recorder had insufficient regard to the appellant's young age and the Children Guideline. Thirdly, the Recorder had insufficient regard to the principal aim of the youth justice system which is rehabilitation rather than punishment. Finally, Ms Beer submits that insufficient credit was given for the appellant's guilty plea.

Discussion

9. In our judgment, the Recorder was entitled to sentence the appellant on the basis that his culpability fell between lesser and significant role. As the grounds of appeal accept, the appellant had an operational function within a chain by sending bulk messages. While the Recorder accepted that the appellant had acted under direction, she was nevertheless entitled to reflect this function in her assessment of culpability under the offence guideline. The notional sentence of 3 years and 9 months before any reductions was at the lower end of the range for a Category 3 significant role offence. It was squarely within the range for a lesser role offence and was in our judgment, just and proportionate.
10. In any event, the Recorder recognised in her sentencing remarks that her task was to sentence the appellant on the basis of the overall seriousness of his offending. Even if she had sentenced the appellant on the basis of a lesser role, she would have been entitled to make an upward adjustment from the starting point for a lesser role offence to reflect what the appellant did operationally.
11. Having started at 3 years and 9 months, the Recorder reduced the sentence by one-third on account of the appellant's age and vulnerability. We recognise that the appellant was young and vulnerable and are prepared to accept that he was exploited by others in the supply chain. Nevertheless, the Recorder took these factors into account by means of a significant reduction to his sentence so as to reach 30 months. We do not accept that she should have made a greater reduction. Even taking into account the Children Guideline and the rehabilitative aims of the youth justice system, we are in no doubt that the Recorder was entitled to impose 30 months before discount for pleas.
12. We turn to the discount for the appellant's guilty pleas. Ms Beer relies on Mr Carswell's report in which it was made plain that the appellant accepted that he had been involved in the supply of Class A drugs during the indictment period. She submits that the report

demonstrated that the appellant wanted to raise a legal defence pursuant to section 45 of the Modern Slavery Act 2015 and that this was a defence upon which the appellant required further advice before pleading guilty. She contends that this was a case in which there were "particular circumstances which significantly reduced the defendant's ability to understand what was alleged or otherwise made it unreasonable to expect the defendant to indicate a guilty plea sooner than was done" (see section F1 of the Overarching Guideline on Reduction in sentence for a guilty plea).

13. We are not persuaded that the delay in entering the pleas was the result of delay in receiving advice on a section 45 defence. The appellant pleaded guilty when confronted by the disclosure of a phone download on 11 July 2024 which (according to the grounds of appeal) called into question the defence. The Recorder was entitled to conclude that the guilty pleas were entered on the basis of the strength of the evidence against the appellant and that he should have entered pleas earlier if he had wanted to preserve greater credit. She was entitled to limit the discount for pleas to 10% as they were entered only on the day of trial.
14. We note in this regard that the Home Office Single Competent Authority assessed the appellant's situation and found that there were no reasonable grounds to conclude that he was a victim of modern slavery.
15. For these reasons, the overall sentence was neither manifestly excessive nor wrong in principle. We have considered the content of the pre-sentence report before the Recorder and a prison report, ordered by the single judge when granting leave to appeal, that indicates that the appellant remains suitable for unpaid work and other community requirements. Given the length of the sentence, no question of a suspended sentence order can arise and the fresh report cannot advance the appeal which is dismissed.

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