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IN THE COURT OF APPEAL

CRIMINAL DIVISION

[2024] EWCA Crim 683



No. 202302417 A4
202302623 A4

Royal Courts of Justice

Tuesday, 14 May 2024

Before:

LORD JUSTICE POPPLEWELL

MR JUSTICE PEPPERALL

MR JUSTICE COTTER

REX

V

WILLIAM DOLBEAR
WILLIAM SAMUEL DOLBEAR

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Mr O. Soliman appeared on behalf of the Appellant William Dolbear.
Mr D. Gooden appeared on behalf of the Appellant William Samuel Dolbear.
The Crown were not represented.

J U D G M E N T

LORD JUSTICE POPPLEWELL:

- 1 The appellants in this case are father and son, both called William Dolbear. I will refer to them as Dolbear Snr and Dolbear Jnr in the interests of clarity. They appeal against sentence with leave of the single judge. They each pleaded guilty to two drugs offences: on count 3 conspiracy to produce cannabis, and on count 4 conspiracy to supply cannabis. Dolbear Snr was sentenced to five years' imprisonment on each count to run concurrently. Dolbear Jnr was sentenced to four and a-half years' imprisonment on each count to run concurrently.
- 2 Dolbear Snr also faced charges on a separate indictment with a number of charges of possession of indecent child images and the like. On those counts he was sentenced to 10 months' imprisonment to run consecutively to the drugs offence sentence. It is not necessary to go into the details of those offences.
- 3 A co-accused, Thomas Agnew, pleaded guilty to importation of cannabis and conspiracy to supply cannabis and was sentenced to a total of four years' imprisonment.

The Facts

- 4 Between 18 August 2018 and 2 February 2019 four packages from a United States address were sent to the co-defendant Thomas Agnew. They were intercepted by UK Border Forces. In total they contained almost 5.8 kilogrammes of cannabis. There were also commercial cannabis products of a similar type to those which were later found to be on sale in Agnew's shops. Following an investigation, two shops linked to Agnew were raided on 6 November 2019. One shop was in Commercial Street in Bridgend called Blueback Farms. It was beneficially owned 50-50 between Dolbear Snr and Agnew. During the search of the premises a large quantity of products containing THC were found, together with containers with street-supply quantities of cannabis. That was a shop at which Dolbear Jnr worked. The search of the second shop, owned by Agnew together with another individual who could not be located, yielded similar results.
- 5 Agnew was arrested on 6 November 2019 for importation and supply of cannabis. His laptop was recovered along with the Samsung Ping drive.
- 6 Officers raided Dolbear Snr's address at 65 Wauncil Avenue, Bridgend on that same day, 6 November. In the attic they found a cannabis factory capable of producing massive quantities of cannabis for commercial supply. The attic space measured 25 square metres and was fully operational with five separate growing areas, being illuminated by six high-powered 600-watt volt and 600-watt lamps. There were also three carbon filters, dehumidifiers and extraction fans to extract the smell of the cannabis. There was plastic sheeting laid down over the flooring and the cannabis plants were being fed manually from two water tanks. Throughout the attic space there were numerous bottles containing feed for the plants, and all plants were described as looking healthy in appearance.
- 7 In total, 166 cannabis plants were recovered. The yield of these plants was estimated to have been between 160 and 498 ounces with a value of between approximately £28,000 and £109,000. There were also 111 seedling cannabis plants and one mother plant recovered. The expected yield from the seedlings was between 111 and 333 ounces, with an estimated value of up to £73,000 odd. CCTV was recovered from the property. It showed the appellant Dolbear Snr and Dolbear Jnr working together on numerous occasions, bringing out cannabis products in large quantities in bags, loading them into bags, taking them away, and getting rid of all the excess from the cannabis plants. Inside the property various other items were located, including a guide book on the growing of cannabis and some bags of

harvested cannabis along with CBD products.

- 8 As a result, on the afternoon of the same day the appellants were stopped when driving together on the M4 and arrested. Mobile phones were seized from both. £335 in cash was seized from Dolbear Snr and £470 in cash was seized from Dolbear Jnr. When Dolbear Jnr's mobile phone was examined, it clearly demonstrated the scale of the operation. One of the messages from that phone dated 30 March 2019 said, "I'm all out now for seven weeks. I'll give you a bell when I'm done." Other messages demonstrated cannabis dust being supplied in ounce quantities. Other messages referred to money that was owed to them in relation to their supply, referring to a short delivery, and Dolbear Jnr referring to "the other few times I've come down there" referencing visits to the customer. These linked up to bits of paper that were seized from the property, one of which said, "five bags 5 November, £800. Owed £800 for next five bags, also owed £290 for previous miscounts".
- 9 The messages also showed Dolbear Jnr's involvement in the cultivation side as well as sale. For example, on one occasion he was talking with a customer, saying he had nothing available for seven weeks, to which I have referred, and that he would have nothing available until he was able to cut down the cannabis plants. He also said that for a different strain of the cannabis, he only currently had the seeds, and they would not be ready for three months, which is the growing cycle of cannabis plants.
- 10 In interview, Dolbear Snr answered "no comment" to all questions asked. Dolbear Jnr was interviewed several times. Throughout those interviews he denied being involved in the production of cannabis and denied being aware that there was a cannabis factory upstairs in the flat of the property. He denied being involved in any supply.

The History of Proceedings

- 11 The indictment period for the conspiracy in counts 3 and 4 of the drugs indictment, to which the Dolbears in due course pleaded guilty, was from 1 January 2014 to 7 November 2019. The importation period on the count of importation to which Agnew in due course pleaded guilty, which was a charge of sole offending, not a conspiracy charge, was from August 2018 to November 2019.
- 12 On 26 February 2021, at the first effective pre-trial preparation hearing, Dolbear Snr pleaded guilty to counts 3 and 4 on the drugs indictment, and no evidence was offered against him on the other offences on that indictment relating to importation. On 12 August 2021, he pleaded guilty to the offences on the indecent images indictment some three weeks before his trial was due to start for those offences.
- 13 Shortly before that, the trial of Dolbear Jnr and Agnew on the drugs offences had commenced on 2 August 2021. Dolbear Jnr had pleaded not guilty to all the offences against him. That trial ran for about a week but then collapsed. There was to be a retrial but it took some time. There were delays caused through no fault of the defendants and in due course the retrial was fixed to commence on 3 July 2023.
- 14 On 5 May 2023, some two months before the retrial, Dolbear Jnr entered pleas to the drugs offences. He did so on a basis of plea which was not challenged by the prosecution. It had been the result of some negotiation involving defence and prosecution counsel as to terms which would be acceptable to the Crown. The basis was in the following terms:

"Count 3

1. At the time of the offences I did not reside at 65 Wauncil Avenue Bridgend. This was my father's address. I ha[d] moved out o[f] this address months before the date of my arrest and first interview.

2. I would regularly visit my father and stay at this address from the mornings until the early afternoon. Sometimes I would stay overnight. The reason for this was because we were renovation (sic) his house and doing building work in 2017, 2018 and 2019.

3. I moved in with my girlfriend in the summer of 2019.

4. I knew that Agnew had begun staying and my dad's as some sort of lodger. I never went into his room at any time during my visits. I am not sure of the dates he started living with him.

5. I became aware that my dad and had begun growing cannabis at the address around 2017. I cannot be exactly sure of the date but it was sometime [i]n the October.

6. I did not help my father set up the cannabis initially. I was asked by my father who had sourced all the hydroponic equipment from various shops previously, to help source the cannabis, the soil, pots and lights, which needed replacing in 2019. This is what can be seen on the CCTV from the 22.10.19 he needed two people to perform the task.

7. The only reason I got involved was because my dad was a pensioner and I only moved back into the address to help him renovate the house and spend more time with him.

8. My parents divorced when I was aged 5 and I did not see him very much when I was growing up. I understand that the limited role I played in helping to set up the grow and clear out the rubbish from it aided in the cultivation.

Count 4

1. I have been a cannabis user for a number of years and I would buy cannabis from my dad which I would sell to support my own habit and for financial gain."

15 There were two sentencing hearings because a pre-sentence report for Dolbear Jnr was not available in time for the first hearing.

16 On 20 June 2023, His Honour Judge Jenkins, in the Crown Court at Cardiff, sentenced Dolbear Snr for both the drugs and the indecent images offences, and Agnew. Dolbear Snr had refused to attend by travelling from Eustacia in the Netherlands Caribbean where he lived, and he was sentenced in his absence although represented by counsel on that occasion. The judge applied the Sentencing Council Guideline on production of controlled drugs. He did not address separately the guideline on supply because the supply was part and parcel of the production of the cannabis on this scale. He identified Dolbear Snr as having played a leading role as one of two organisers, together with Dolbear Jnr, who were producing cannabis on a commercial scale with an expectation of substantial financial advantage. He identified it as harm category 2, saying that it was an operation capable of producing industrial quantities for commercial use. In fact, that language reflects the scale of operation which puts the offence in category 1, not category 2. Category 2 is for an operation capable of producing significant quantities for commercial use. This was, no

doubt, a slip of language, not a categorisation error, although the quantities capable of being produced would have pushed it up the range from the starting point within category 2. The judge identified that for a leading role in a category 2 offence the starting point is six years and the range between four and a half and eight years.

17 He then referred to the indecent images offences. He said:

"He pleaded guilty within weeks of the scheduled trial and, in my judgment, is entitled to 15 per cent reduction for his guilty pleas."

That was accurate in respect of the indecent images offences which were those that the judge had been considering immediately before that comment.

18 The judge then referred to the fact that Dolbear Snr was of good character, and was 75. He had no previous convictions. The judge referred to the fact that he had failed to return from St Eustacia. The judge then said that the appropriate sentence for the drugs offences after a trial would be one of six years. He applied a discount of 15 per cent to that, which would amount to a little under 11 months, and said that he would uplift that discount in the appellant's favour, meaning that he would round it up to a year, leading to his conclusion that the appropriate sentence for the drugs offences was one of five years.

Dolbear Snr's appeal

19 It is convenient here to deal with the appeal by Dolbear Snr which is limited to the complaint that the judge should have given him a 25 per cent discount for his plea to the drugs offences which had been entered at the pre-trial preparation hearing. It appears that the judge made that inadvertent error in treating the timing to the pleas to the indecent images offences as applicable also to the drugs offences. It is unfortunate that neither the Crown nor defence counsel drew this to the judge's attention at the hearing as they should have done. The result is that the matter needs to be corrected on appeal and a discount of 25 per cent applied to Dolbear Snr's notional sentence, after trial, of six years for the drugs offences. That results in a sentence of four and a half years rather than five years for those offences.

20 Accordingly, in his case we will quash the sentences on counts 3 and 4 of the drugs indictment and replace them with sentences of four and a half years' imprisonment on each count still to run concurrently with each other. To that extent his appeal is allowed.

21 For the avoidance of doubt, the consecutive sentence of 10 months' imprisonment for the indecent images offences remains unaffected so that the total sentence in his case is reduced from one of five years 10 months to one of five years four months.

Dolbear Jnr's appeal

22 We return to the chronology and to the second sentencing hearing at which Dolbear Jnr was sentenced, now with the benefit of a short-form pre-sentence report. In that report Dolbear Jnr sought to minimise his part in the offending to such an extent that it differed greatly even from the extent to which he accepted involvement in his basis of plea. The author recorded that he was minimising his part in the offending.

23 The judge approached the sentencing exercise on the basis that what the police found was not a first harvest. He described the CCTV as showing this appellant working in tandem with his father in harvesting, boxing-up and distributing the cannabis plants. He referred to the phone evidence from Dolbear Jnr's phone in relation to supplies and concluded that

- Dolbear Jnr was acting in tandem with his father in a leading role in the exercise, both organising and directing the operation on a commercial scale with each of them having an expectation of significantly high profits. He again recognised the harm was category 2 without, in this case, the verbal slip about industrial quantities, and referred to the sentence imposed on his father of five years. He treated that as an appropriate sentence for the son, subject to two adjustments to account for what he saw to be the difference between them.
- 24 The first difference he identified was that the father had absconded. The second he referred to was that Dolbear Jnr was "a man of hitherto clean character and positive clean character". He treated those as justifying a six-month difference in the sentences. He applied the 15 per cent discount for plea, first, to the notional six-year sentence after a trial which he had imposed on the father, which reduced it to 61 months. He then reduced it by a further 7 months for his "clean character" and everything that had been said in mitigation and the pre-sentence report, so as to reach a sentence of four and a half years.
- 25 On behalf of Dolbear Jnr, Mr Gooden submitted that the sentence was manifestly excessive. He put at the forefront of his submissions that the judge had failed to sentence in accordance with the basis of plea which indicated a much lower level of involvement and culpability on the part of Dolbear Jnr than in the case of his father. He submitted that Dolbear Jnr's offending had elements falling within the category of leading role but there were also elements falling within the category of significant role, and insufficient regard was paid to the cross-over between the categories. He argued that the sentencing in his case should have treated him as falling at the upper end of significant role or the lower end of leading role. There is, in fact, an overlap between the ranges in those categories.
- 26 Mr Gooden went on to submit that insufficient regard was had to the time which had elapsed since the offence had occurred and to the delay in the eventual sentencing. He relied on the fact that the pre-sentence report assessed Dolbear Jnr as presenting a low risk of re-offending and harm. He relied upon personal mitigation in the form of his clean record and positive good character in the form of letters from work colleagues. He submitted that in his case there was no expectation of significant financial gain and, overall, he submitted that compared with the sentence passed on his father, the sentence passed on him failed to give sufficient effect to the difference in their roles and circumstances. He went on to make a similar point in relation to the sentence passed on Agnew.
- 27 We are not persuaded by these submissions. The charges were both of cultivation and of supply and were conspiracy charges. On the cultivation side, Dolbear Jnr was not, according to his basis of plea, acting merely as a gardener, assisting his father in the mechanics of the growing operation. He helped to source the cannabis, the soil, the pots and later the lights when they needed replacing. Mr Gooden, who appeared before us on his behalf, accepted that the basis of plea was correctly to be read as his having performed this task over the almost two-year period between 2017 and 2019 when he accepts he was aware of the operation and aware of the scale of the operation. This aspect of the offending was a joint enterprise in which he played a full and active part in tandem, as the judge put it, with his father. The messages reinforced his leading role in the cultivation operation. The basis of plea does nothing to undermine this.
- 28 At one stage in his submissions Mr Gooden submitted that his involvement constituted an isolated event. This was, we have to say, a wholly unrealistic submission. On the supply side, his basis of plea accepted that he acted for financial gain as well as in order to support his own habit. The messages on his phone show that this involved substantial quantities which he was involved in supplying, and which would have produced significant financial gain. In the Proceeds of Crime proceedings he accepted that the benefit figure from his involvement in the criminal conduct had amounted to £139,000.

- 29 As to the disparity in roles, it is true that there was a difference between the extent role that he undertook and that of his father. His basis of plea accepts involvement for only two years of the indictment period, but in the circumstances of this case that is of little significance in terms of culpability in harm, culpability or harm.
- 30 As to personal mitigation, the judge said he had taken into account what he had read about him in the pre-sentence report which, in truth, included very little personal mitigation. And his personal mitigation was no greater than that available for his father which had informed the conclusion reached by the judge that in his case the appropriate sentence after trial was one of six years.
- 31 As to disparity with his father's sentence, the reasons which the judge gave for a seven month reduction from the sentence passed on his father did not, in fact, justify a reduction of that length or any significant length. His father, too, had a clean record and in his father's case he had been out of trouble for all the years until he had reached the age of 73. Dolbear Jnr's positive good character evidence was no more than three letters from those at the car dealership where he had worked for about 12 months as a salesman, saying that he was a valued member of the team showing dedication and commitment. That afforded no real weight in mitigation. The fact that his father had absconded would not of itself have justified a substantial increase in his father's sentence. He would have had to face sentencing for a very like offence as and when he returned to complete service of his sentence if he did so.
- 32 Dolbear Jnr also benefited from the fact that the judge should have applied the discount for plea after arriving at a notional sentence after trial of seven months less whereas he applied the discount to the six-year period and then further reduced it by seven months. That would have resulted in a difference of over 7 months between their sentences, which was amply sufficient to reflect the differences in their roles and culpability. Moreover, we would observe that the 15 per cent discount for plea which he received was itself generous in that there had already been a contested trial which had run for a week before it collapsed before his eventual guilty pleas.
- 33 As to a comparison with Agnew's sentence, Agnew's offending was very different. Agnew was not involved in cultivation, nor in the wholesale supply. His offending and sentence can afford no basis for any disparity argument.
- 34 Standing back, we are satisfied that the sentence which Dolbear Jnr received properly reflected his own role and culpability consistently with his basis of plea. We are also satisfied that the reduction he received in comparison with the sentence imposed on his father properly reflected the difference in their roles and culpability and the resulting difference also now reflects, of course, the different amounts of credit they received for pleas entered at different stages of the proceedings.
- 35 Accordingly, we conclude that the sentence passed on Dolbear Jnr was not manifestly excessive and accordingly his appeal will be dismissed.
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CERTIFICATE

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This transcript has been approved by the Judge.