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IN THE COURT OF APPEAL
CRIMINAL DIVISION



CASE NO 202102033/A3

Neutral citation number:2021] EWCA Crim 1265

Royal Courts of Justice
Strand
London
WC2A 2LL

Tuesday 3 August 2021

LADY JUSTICE CARR DBE
MR JUSTICE GOSS
MR JUSTICE KNOWLES

REGINA
V
ADAM GREEN

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MR E TIWANA appeared on behalf of the Appellant

J U D G M E N T

1. MR JUSTICE GOSS: On 21 June 2021 in the Crown Court at Leicester, having entered guilty pleas to offences of producing cannabis, possessing cocaine with intent to supply and possessing cannabis with intent to supply, the appellant was sentenced to a term of 15 months' imprisonment for the offence of possessing cocaine with intent. No separate penalty was passed for the other offences. He now appeals by leave of the single judge.
2. The appellant was 36 years of age when sentenced. He had three previous convictions as a young offender the last of which was in 2005. All, all were of a different nature from the index offences,
3. On 27 January 2018 the police were called to a burglary in progress at an address in Loughborough. When they arrived the appellant told them that the intruders had gone. The officers could smell cannabis and, in a search of the premises, found five or six cannabis plants at various stages of growth upstairs. None had flowered or produced any crop but were estimated to have a potential yield of between £2,000 and £3,000 worth of cannabis. The appellant admitted he was producing cannabis. When arrested he was found to have around 14 grams of cocaine in his pocket, worth around £900. Other smaller amounts of cocaine and some Benzocaine were found as well. A total of 96 grams of cannabis flowering tops with a value of between £600 and £900 were also found. When interviewed he said that he had purchased the cocaine for his own use.
4. The appellant entered his guilty pleas to the production of cannabis at the Plea and Trial Preparation Hearing on 3 February 2020. He also indicated that he would plead guilty to possessing cannabis with intent on the basis that the drug was to be shared with his girlfriend and he was not a conventional dealer and that this would be substantiated by an investigation of his mobile phone. That investigative process took a long time, but, in due course, his claim was accepted and his guilty plea on that basis was entered and accepted at the Pre-trial Review hearing on 3 June 2021. His guilty pleas to the offence of possessing cannabis with intent was entered on 21 June 2021 on the same basis.
5. When sentencing, the Recorder took the offence of possessing cocaine with intent as the lead offence. He had determined that the appellant's culpability was a lesser role and the harm fell within Category 4 of the definitive guideline. He took into account the appellant's mitigation, which included his relocating to Liverpool, ridding himself of his drug habit, his part-time employment and the character references that had been submitted on his behalf. However, he stated that the offence had been "an extremely serious one as it had involved the trafficking of class A drugs" and that the only justifiable sentence could be one of immediate imprisonment. He gave a 15 per cent reduction for the appellant's guilty plea, which reduced the 18-month starting point to 15 months' imprisonment, and confirmed that he had considered whether the sentence could have been suspended, but said that this had been class A drug trafficking and was so serious that only an immediate custodial sentence would be appropriate.
6. Mr Tiwana on the appellant's behalf, in commendably focused and succinct submissions, submits that the sentence was excessive in all the circumstances on the grounds that the Recorder did not allow sufficient credit for the appellant's guilty plea, the fact that this was drugs that were to be shared with his girlfriend and were not for general supply, insufficient account was taken of the considerable lapse of time between the commission of the offences and the sentencing date, and the fact that the appellant had remained out of trouble over that period, rehabilitated himself in the community and gained employment.

7. We consider that the Recorder fell into error in sentencing on the basis that this was an extremely serious offence by reason of the trafficking of class A drugs. The plea was entered and accepted specifically on the basis that the supply was only to be to the appellant's girlfriend, a basis that was indicated at a relatively early stage in the proceedings. It was a lesser role Category 4 offence under the guideline, for which the starting point is 18 months' custody and the range is a high level community order to three years' custody. None of the aggravating factors identified in the guideline were present. He had no relevant or recent convictions. Through no fault of the appellant there was a very long and unexplained delay between his arrest and the commencement of the proceedings. During that period of almost three-and-a-half years between arrest and sentence, the appellant had rehabilitated himself, had acquired employment and his supervisor spoke of him in glowing terms. Insufficient weight was attached to these significant mitigating factors by the Recorder when he arrived at a notional sentence of 18 months after a trial. In our judgment, and reflecting appropriate credit for the guilty pleas, the custodial term should have been one of nine months.
8. Having regard to the factors to be weighed in considering whether it was possible to suspend the sentence, this was not a case in which the appellant presented a risk or danger to the public or had a history of poor compliance with court orders, nor was it a case in which, in our judgment, appropriate punishment could only be achieved by immediate custody. The appellant has already rehabilitated himself and had strong personal mitigation, which included the significant delay in the processing of this prosecution.
9. Accordingly, we allow the appeal. We quash the sentence of 15 months' imprisonment and substitute a sentence of nine months' imprisonment which will be suspended for a period of 18 months.
10. Mr Green, your appeal has been allowed and you have been sentenced to a period of nine months' imprisonment. The operation of that sentence is suspended for a period of 18 months. That means you will be released from custody, but you will be subject to that sentence for a period of 18 months, which means that if you re-offend during the period of 18 months you are liable to have to serve some or all of that sentence. Do you understand?
11. THE APPELLANT: Yes, I do.

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