

Neutral Citation Number: [2014] EWCA Crim 2542

No: 201404095 A8

IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice

Strand

London, WC2A 2LL

Tuesday, 11 November 2014

B e f o r e:

MR JUSTICE COULSON

THE RECORDER OF LEEDS - HIS HONOUR JUDGE COLLIER QC
(SITTING AS A JUDGE OF THE COURT OF APPEAL CRIMINAL DIVISION)

R E G I N A

v

JEANNI BOWMAN

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Mr N Nathwani appeared on behalf of the **Appellant**

J U D G M E N T
(As approved by the Court)

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1. MR JUSTICE COULSON: The appellant is now 18. On 10 July 2014 at the Crown Court at Woolwich she pleaded guilty to possession of a Class A drug (heroin) with intent to supply. On 7 August 2014 she was sentenced to 3 years' detention under section 91 of the Powers of Criminal Courts (Sentencing) Act 2000. She appeals against that sentence with the leave of the single judge.
2. The facts are simply stated. Doubtless due to prior intelligence, the taxi in which the appellant was travelling was stopped by the police. She was discovered with a bag containing two packages that themselves contained a total of 956 grams of heroin. The heroin in one package was 64 per cent pure and in another it was 67 per cent pure. Those are very high figures. In addition to the high purity heroin that was found, there was also a package containing 255 grams of cutting agent. Based on the rough street value of £100 per gram, it meant that the heroin in the bag was worth around £100,000.
3. The appellant was arrested and made no comment in interview. She subsequently pleaded guilty at the plea and case management hearing. She accepted that she was a courier and the Crown never put their case against her in any other way.
4. When sentencing, the learned judge described this as "an incredibly serious offence". This was because of the value of the heroin. The judge arrived at his sentence by taking a starting point of 6 years. He then reduced that by a quarter to reflect the appellant's age, reducing the period to 54 months. He then gave the appellant full credit for her guilty plea, reducing the term to 36 months, or 3 years. As a matter of principle, the judge's approach followed the right course. The issue for us is whether the starting point, and therefore the resulting sentence, was manifestly excessive.
5. It is agreed that because of the quantity of heroin found in the appellant's possession this was, by reference to the Sentencing Guidelines Council's recommendations, a category 2 case. The recommended starting point for a lesser role pursuant to those guidelines is 5 years. The recommended starting point for a significant role is 8 years. The judge said that if the appellant played a significant role it would be at the bottom and if it was a lesser role it would be at the top. That conclusion is criticised, and it is said on behalf of the appellant that she was a courier acting under instruction and was therefore playing a lesser role.
6. It will not always follow that a courier will play a lesser role; it will depend on their knowledge of the wider operation, the trust placed in them by those up the chain and matters of detail of that sort. But it will usually be the case that a courier acting on instructions will play a lesser role. In our view, the appellant here plainly played a lesser role. She was young, gullible and there was indeed some evidence of intimidation. The fact that she was being paid £100 (or 0.1 per cent of the value of the drugs) did not in our view give her a financial stake in the operation. She was obeying the instructions she was given.
7. For those reasons, we are quite satisfied that the judge erred in placing the appellant at the bottom of the significant role category, and indeed at the top of the lesser role category. In our view, the appellant was plainly in the lesser role category. Moreover, she was towards the bottom of the range for the reasons we have given. The SGC

recommended range for a lesser role is between 3 1/2 and 7 years. We believe the correct starting point in this case was 4 years, or 48 months. It was not quite at the bottom of the range because of the high value and high purity of the drugs that were found. In our view, that demonstrates the trust that was placed in the appellant by those above her in the chain. Moreover, she was aware of the quantity of drugs she was carrying.

8. The next criticism that is made is that the judge's reduction of 25 per cent to reflect the appellant's youth was insufficient. If we were not otherwise modifying this sentence, we would have considered any adjustment for this to be tinkering. But since we are remaking this sentence, we agree that 25 per cent was insufficient. The range in the sentencing guidelines for youths suggests 25 per cent is the least reduction that can be made for youth and the recommended range extends to 50 per cent. That will depend on age, maturity and all the circumstances. We do not consider that 25 per cent fully reflects the appellant's character and the immaturity which was noted in some of the documents before the judge. In our view, the appropriate reduction was in the region of one third, and so we reduce our starting point to 33 months.
9. The judge properly gave the appellant full credit for her guilty plea. We do the same. That reduces the term that we are remaking to one of 22 months. We do not consider that there are any other mitigating factors in this case beyond youth and plea that would affect the sentence.
10. Because the appellant is now 18, the only appropriate sentence is detention. Thus, for the reasons we have given, we consider that the judge's sentence of 3 years' detention imposed on a 17-year-old girl for her first offence was manifestly excessive. That was principally because he took much too high a starting point. For the reasons we have given, we quash that sentence and, as we have explained, we replace it with a sentence of detention of 22 months.
11. Because we have modified the sentence originally imposed, we note that in this case a victim impact surcharge was appropriate but not made originally. In those circumstances, we therefore add to the sentence of 22 months a victim impact surcharge, which the papers indicate is to the value of £20.