Neutral Citation Number: [2015] EWCA Crim 814

No: 201500989 A4

IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
Strand
London, WC2A 2LL

Tuesday 24th March 2015

B e f o r e:

VICE PRESIDENT OF THE COURT OF APPEAL CRIMINAL DIVISION
LADY JUSTICE HALLETT DBE

MR JUSTICE HADDON-CAVE

MRS JUSTICE PATTERSON DBE

R E G I N A

v

NOEL GEORGE EDWARDS

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(Official Shorthand Writers to the Court)

Mr G Henson appeared on behalf of the **Applicant**

J U D G M E N T
(Approved)

1. MR JUSTICE HADDON-CAVE: On 14th January 2015, at the Crown Court at Birmingham before His Honour Judge Mark Wall QC, the applicant pleaded guilty to one count of possession with intent to supply Class A drugs (cocaine) contrary to section 5(3) of the Misuse of Drugs Act 1971 and one count of possession with intent to supply Class B drugs (cannabis) contrary to the same section. On 23rd February 2015 the applicant was sentenced by Mr Recorder Hill to three years' imprisonment on the first count and six months' imprisonment on the second count, both sentences to run concurrently, making a total sentence of three years. The magistrates had previously dealt with the applicant's other offences of driving whilst disqualified and driving with no insurance.
2. The applicant's application for leave to appeal against sentence has been referred to the full court by the Registrar, who also granted a representation order.
3. The facts, very briefly, were these. In the early hours of Friday 25th July 2014 the applicant was stopped by officers in an unmarked vehicle on the A45 Coventry Road whilst driving a Mercedes Benz when disqualified and he was arrested. £415 was found in cash in his car. The applicant said he suffered from a condition called myasthenia gravis and needed to collect his medication from home. On arrival the officers noted a strong smell of cannabis and conducted a search. In a lean-to by the side of the house they found a plastic box containing five bin liners which contained skunk cannabis flowering tops with a total weight of 288 grams and a street value of £2,877. They also found a small amount of cocaine, 2.38 grams, with a street value of £95, and a significant quantity of cutting agent, benzocaine, and two sets of scales.
4. The applicant had two mobile phones in his possession on arrest which were seized and analysed. They contained messages consistent with him dealing in both cocaine and

cannabis, with at least one person building up a drugs debt to him.

5. During interview the applicant said that the cannabis helped him with his myasthenia gravis, which was similar to multiple sclerosis. He said he was a recreational user of cocaine. He said friends would phone him and ask for cannabis. He said that the money found in his car he had withdrawn from a number of banks, but he was not able to provide any receipts or account details.
6. The applicant has five previous court appearances for 12 offences between 2006 and 2014, but none for supplying drugs. He has one court appearance for possession of Class A and Class C drugs.
7. Prosecuting and defence counsel agreed that this was a category 3 case. The applicant had a significant role and was dealing for financial gain. It was agreed that the starting point was in those circumstances four years six months under the sentencing guidelines.
8. Defence counsel urged the judge to depart from the guidelines to take into account the applicant's medical condition. After referring to the applicant's medical condition, the judge said this:

    i. "I bear that fully in mind and the points made with force but moderation by your counsel. In my assessment, it is not sufficient to enable me to depart from the guidelines such as to result in a suspended sentence, as has been urged upon me. Nonetheless, it is a factor which I bear in mind in imposing upon you the shortest possible sentence consistent with my public duty and accepting that you made full admissions to these matters when interviewed and entered your plea of guilty at the earliest possible opportunity.

    ii. In relation therefore to Count 1, dealing with possession of cocaine, the sentence will be one of three years' imprisonment. In relation to Count 2 it will be one of six months, and that will be concurrent with the penalty imposed on the first count."

9. Mr Henson, who appears today for the applicant, submits, in essence, that the learned

recorder failed to give sufficient weight to the applicant's medical condition. Mr Henson submits that the case was wholly exceptional and should have fallen outside the guidelines. At the very least, he submits, the judge failed to give sufficient weight to the question of the applicant's medical condition when considering mitigation. He urged the court to impose a suspended sentence in relation to this applicant in view of his medical condition.

10. In our view, this case involves an orthodox application of the principles in Qazi [2010] EWCA Crim 2579 and Hall [2013] EWCA Crim 82. Mr Henson submitted that the applicant's condition was causing difficulties in prison. However, Lord Hughes (as he now is) said in Hall as follows:

    i. "The medical needs of prisoners are a well understood factor in the administration of prisons. Sophisticated arrangements exist under which these needs are ordinarily met by the Primary Care Trust in close collaboration with the prison authorities. Medical care is ordinarily provided in prison, either to prisoners housed in cells in the usual way, or to those who are housed in a hospital wing. If the condition of a prisoner requires hospital treatment, he will be transferred to a civilian hospital for as long as necessary. In exceptional or extreme circumstances, the Lord Chancellor may advise the exercise of the royal power of release under the Prerogative. A court which is passing sentence ought not to concern itself with the adequacy of these arrangements in an individual case, except in one circumstance. The sole circumstance in which this is necessary is if the mere fact of imprisonment will inevitably expose the prisoner to inhuman or degrading treatment contrary to Article 3; in other words, that there cannot be made any arrangements in prison or out of it for his care which will avoid that consequence. The court in Qazi expressed itself doubtful, given the detailed protocols for the treatment of prisoners, that this would ever arise."

11. At one stage, Mr Henson came close to suggesting that the applicant's medical condition was such that the mere fact of imprisonment was inhumane and degrading. This was a

hopeless submission. He reverted to his essential submission revolved around the question of mitigation.

12. The applicant suffers from the muscle wasting disease, myasthenia gravis, for the past nine years. This requires him to take daily medication, including pills, and attending outpatient facilities every five weeks. We have examined the medical evidence, to which we now turn.

13. The appellant's GP, Dr Chopra, submitted two letters dated 29th July 2014 and 20th February 2015 which explained the applicant's condition and need to attend regularly for intravenous immunoglobulin every six weeks, together with steroids and chemotherapy. Dr Chopra's letter of 20th February 2015 contained the assertion:

    i. "In my opinion a custodial sentence will immensely deteriorate both his mental and physical health."

14. But he added little by way of detail.

15. Dr Winer, a consultant neurologist at the University Hospital in Birmingham, submitted three letters, dated 28th July 2014, 16th February 2015 and a further letter dated 19th March 2015. In those letters he explained how the applicant's condition could suddenly become very severe and produce respiratory embarrassment necessitating artificial ventilation and that he had been kept out of hospital due to a complex regime of regular infusions of intravenous immunoglobulin, as well as immunosuppressant agents, without which he would suffer a marked detrimental effect on his life span and quality of life. A close reading of Dr Winer's letter of 16th February 2015, however, suggested that the appellant is not in danger so long as he gets his medication:

    i. "Without this combination of tablets and intravenous therapy, I think it very likely that his breathing would become quickly

impaired ..."

16. In a further letter today, Dr Winer has expressed his continuing concern about the effect on the applicant of his imprisonment.
17. The prison offenders supervisor's report dated 18th March 2015 which we have seen, has explained that, save for a delay on the first night in obtaining his medication, there had been no reported problems regarding the applicant's condition and he is receiving the correct medication each evening and attending hospital regularly. There are, the report says, currently no acute concerns.
18. We reiterate the principles in Qazi and Hall, namely, that given the sophisticated arrangements for medical care which exist in HM Prisons, sentencing courts are not concerned to enquire as to the adequacy of arrangements in individual cases. In the present case, however, there is positive evidence to suggest, that the arrangements to deal with the applicant's medical condition are indeed working satisfactorily. We do not for a moment think that the mere fact of prison would breach the applicant's Article 3 rights.
19. We turn, however, to the question of mitigation. Mr Henson submitted that the learned judge failed to give any, or any adequate, regard to the applicant's medical condition when arriving at his net sentence of three years. It was agreed that the starting point in this case under the guidelines was four years six months. Mr Henson said that the judge merely gave a full, or very full, third off when reaching his net sentence of three years. Mr Henson pointed to the fact that a serious medical condition is one of the factors in the guidelines which sentencing judges are expressly enjoined to take into account.
20. This was, to our mind, a difficult sentencing exercise. The judge had two counts to take into account in relation to Class A and Class B. In the light of Mr Henson's submissions,

we are just persuaded that slightly greater allowance should have been given by the learned judge to take account of the applicant's serious medical condition. We have concluded that the appropriate sentence in this case, taking all the relevant factors into account, would have been two years three months. For the reasons which we have outlined, we therefore quash the sentence of three years and replace it with a sentence of two years three months.

21. We therefore grant leave, quash the three years, replace it with two years three months and grant a representation order.