Neutral Citation Number: [2015] EWCA Crim 1045
No: 201500756 A1
IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
Strand
London, WC2A 2LL

Thursday, 30 April 2015

B e f o r e:

LADY JUSTICE MACUR DBE

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

NEDEME JAMIE LEIGH

Computer Aided Transcript of the Stenograph Notes of
WordWave International Limited
A Merrill Communications Company
165 Fleet Street London EC4A 2DY
Tel No: 020 7404 1400 Fax No: 020 7404 1424
(Official Shorthand Writers to the Court)

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

J U D G M E N T
(Approved)

1. THE RECORDER OF LEEDS: Having admitted an offence of possession of Class A drugs before the magistrates on 23 September 2014, the appellant was committed for sentence pursuant to section 6 of the Powers of Criminal Courts (Sentencing) Act 2000. On 24 November 2014 in the Crown Court at Reading, he pleaded guilty to two counts of possession of Class A drugs with intent.

2. On 16 January 2015 he was sentenced as follows: for two offences of possession with intent, 26 months' imprisonment concurrently; for the simple possession of cocaine, 2 weeks consecutive; and having committed an offence during the operational period of a suspended sentence of 9 months' imprisonment imposed on 3 May 2013, the suspended sentence was activated with a reduced term of 24 weeks consecutive. The total sentence was therefore 26 months and 26 weeks' imprisonment, which is best understood and expressed as 2 years 8 months' imprisonment. In addition, a statutory surcharge of £120 was imposed.

3. The Registrar has drawn to the court's attention that the offence for which the suspended sentence was imposed was committed on 30 March 2012, before the commencement date of 1 October 2012, which made the statutory surcharge applicable to sentences that did not include a fine. As the sentence imposed on this occasion was in part in relation to that offence, it was an unlawful imposition of that surcharge: see R v Hemsworth [2013] EWCA Crim 916 and R v Bailey, Kirk & Tote [2013] EWCA Crim 1551.

4. The appellant was represented at the Crown Court in Reading by Mr Dunham, who has represented him before us today. Today he appeals against sentence by leave of the single judge.

5. The facts can be quite briefly stated. In relation to the committal for sentence, on 23 September 2014 the appellant was stopped by police officers riding his bicycle in Reading and was found to have one wrap of cocaine in his mouth. He was released on police bail and that offence had put him in breach of that suspended sentence. The offences on the indictment were committed on 25 October 2014, just a month later, when the appellant was again stopped by police officers as he rode his bike in Reading. At the police station he was strip-searched. He was initially uncooperative, but it was clear to officers he had secreted something in his anus. He was eventually found to have secreted 142 wraps of heroin and cocaine totalling 14.97 grams in a Kinder Egg therein. He pleaded guilty on the basis that he had been couriering the drugs across town for dealers.

6. The appellant was born on 27 March 1990. He had eight previous court appearances for 12 offences between 2010 and 2013. They included burglary and theft in a dwelling; theft; failing to comply with a community order; handling stolen goods; and a

previous conviction for possessing Class A drugs with intent. The judge had the benefit of a pre-sentence report that described how the appellant said he had been supporting his own drug habit by acting as a drug mule. He took full responsibility for his behaviour but blamed his substance misuse. The seriousness and frequency of his offending was increasing and he had been using Class A drugs since he was 18. At the time of this offence he was using £100-worth of drugs per day. Due to his drug use he had not been in employment for some years, and there was no alternative in the view of the author of the report to a custodial sentence.

7. In passing sentence, the judge, after recounting the facts of the case, said that the appellant had pleaded guilty on the basis that he had been couriering the drugs across town, and there had not been any immediate street dealing on the trip. He was sentenced on that basis. The matter fell within category 4 of the guidelines. The court concluded the appellant had been performing a lesser role. However, this was not his first conviction for possession with intent to supply. He was a drug addict and may well have been paid in kind rather than financially. His record indicated offences of dishonesty to fund his drug addiction. The contents of the pre-sentence report were noted. One-third credit was given for the pleas. The court bore in mind that the appellant had made efforts while in custody to tackle his problems, but this was the second time he had been convicted of possession with intent. There had to be an immediate custodial sentence. The judge then passed the sentences we have described above.

8. The ground of appeal is that the sentence imposed on the two counts of possession with intent was manifestly excessive, as the judge's starting point of 3 years and 3 months was too high for a category 4 lesser role case. In granting leave, the single judge said:

> "The learned judge accepted the offence fell within category 4 and that you played a lesser role. The amount concerned was about 15 grams. In those circumstances it is arguable the judge took a starting point that was too high."

That is the argument advanced today by Mr Dunham.

9. The task of this court is to review the sentence. The basis of plea was simply that he was a courier. There was then an argument in court as to what that meant in terms of the guidelines.

10. The difficulty Mr Dunham has faced today is that this court does not agree that this was a category 4 case. The guidelines provide a number of categories. They are mostly based on the amounts of the drugs that are involved. However, the phrase that is used about the amount is that they are "indicative" quantities, not "threshold" or "steps". In relation to what is described as "street dealing", the guideline says that that is to be treated as category 3. That is set out in the introductory paragraphs under the

heading "Step One" at page 10 of the guidelines, where it says:

> "In assessing harm, quantity is determined by the weight of the product. Purity is not taken into account at step 1 but is dealt with at step 2. Where the offence is street dealing or supply of drugs in prison by a prison employee, the quantity of the product is less indicative of the harm caused and therefore the starting point is not based on quantity."

What was said here is that because the secreting of the drugs meant there was no possibility of a street deal taking place in the course of the journey, this was not to be treated as a street dealing case.

11. In the light of what has been referred to in argument, and in the light of what is said there at page 10 of the definitive guidelines, we have to regard that argument as a nonsense. The drugs involved were clearly intended in due course to be dealt on the street. There were 147 separate wraps. The appellant's reward was to be given some of the drugs. The whole course of events in relation to these drugs is concerned with street dealing. In relation to street dealing, a number of people can play different roles. There is the organiser, often distanced from sight and direct involvement; there might be someone else running a phone line; there will then be runners who take the ordered drugs out to the point of supply, some of whom will have a small stash; others will supply deals one at a time from a central store; then there may be people like this appellant who courier the drugs from place to place. All of them, however, are, in our judgment, involved in street dealing. They can and will assert that they have different roles; some will argue against their being in a leading role; some will claim only to have a significant role; and some will, as this appellant, say that they have a lesser role.

12. In our judgment, the proper description of this appellant's role is a category 3 lesser role. For that, the starting point for someone of good character after a trial would be 3 years with a range of 2 to 4 1/2 years. In this case, there were aggravating factors, namely that he was on bail for the simple possession of cocaine, and he had also had a previous conviction for possessing Class A drugs with intent to supply. Both of those factors would increase the starting point probably beyond the 3 years and 3 months that the judge took before allowing credit for a guilty plea.

13. In those circumstances, of course, it is our task simply to review the sentence to see if it can be described as manifestly excessive or wrong in principle. In our judgment, neither of those complaints can be made about this sentence.

14. For the reasons that we have stated earlier, we quash the statutory surcharge of £120. To that extent but to that extent alone, this appeal succeeds.