

Neutral Citation Number: [2016] EWCA Crim 1489

No: 201601482 A3

IN THE COURT OF APPEAL

CRIMINAL DIVISION

Royal Courts of Justice

Strand

London, WC2A 2LL

Friday, 9 September 2016

B e f o r e:

LORD JUSTICE BURNETT

MRS JUSTICE ELISABETH LAING DBE

MRS JUSTICE MAY DBE

R E G I N A

v

JOHN MARK SPRUCE

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(Official Shorthand Writers to the Court)

Mr C Evans appeared on behalf of the **Appellant**
The Crown did not attend and was not represented

J U D G M E N T

(Approved)

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1. MRS JUSTICE ELISABETH LAING: This is an appeal against sentence with the leave of the single judge. The appellant has been represented by Mr Evans this morning. We are grateful to him for his very helpful written argument and for his short and succinct participation in the hearing this morning.
2. On 16 February 2016 in the Crown Court at Preston the appellant pleaded guilty to two counts of conspiracy to supply drugs of Class A, in one case crack cocaine and in the other case diamorphine. On 4 March 2016 His Honour Judge Adkin sentenced him to two concurrent sentences of 40 months' imprisonment and imposed a victim surcharge order of £120. An order was made for the forfeiture and destruction or disposal of the drugs. His co-accused, Adam Lee Proctor, pleaded guilty to counts 1 and 2 and was sentenced to the same sentence, ie 40 months' imprisonment on each count concurrent.
3. On 11 August 2015 the police searched the appellant's home. There were four men there, including the appellant and the co-accused Proctor. Proctor had a golf ball-sized wrap. In it there were further wraps of drugs: 12 wraps of heroin weighing 1.3 grams and 16 wraps of crack cocaine weighing a total of 1.16 grams. The total street value was about £280. Proctor also had £810 in cash. His fingerprint was found on some scales in the house which had traces of drugs on them. A telephone belonging to the appellant was found in the house. When it was examined the phone showed various conversations in relation to drugs between 2 May 2015 and August 2015. There were discussions and offers in relation to both types of drugs.
4. Proctor said in interview that he was in the area supplying heroin and crack cocaine and the money that he had was from the supply of drugs. He had conspired with others but did not give their names. He said that the appellant had received "a couple of bags of heroin" in order to allow Proctor and other conspirators to supply drugs from the appellant's home. The appellant admitted having a £20-a-day habit of heroin and cocaine, a £10 bag of each per day. He said that he funded his habit from shoplifting and from benefits.
5. The appellant is 48. He was born on 1 June 1968. He had been before the courts on 45 previous occasions for 87 offences between 1985 and 2016. Most of the offences were offences of shoplifting and breach of court orders, for which he received non-custodial sentences. In 2012, 2002, 1999 and 1990 he had received short non-custodial or short custodial sentences for possessing Class A and Class B drugs. In 1993 he had been sentenced to 12 months' imprisonment for supplying and possessing a controlled drug. His longest custodial sentence was in 1994 when he was sentenced to 18 months' imprisonment for an offence of wounding with intent contrary to section 18 of the Offences Against the Person Act 1861.
6. Proctor, who was 28 at the time of sentence, had appeared before the courts on 11 previous occasions of 21 offences between 2007 and 2013. In 2012 he had been sentenced to 4 weeks' imprisonment suspended for 18 months for simple possession of Class B drugs. His other convictions were for burglary, criminal damage, fraud, driving offences and failing to comply with court orders. Most of his sentences were non-custodial or short custodial sentences. His longest custodial sentence, in 2011, was

a sentence of 16 weeks' imprisonment for two offences of theft from the dwelling and two offences of making false representations.

7. When sentencing the appellant, the judge first of all described the facts as we have just set them out. He described the drugs that had been found on Proctor and referred to the fact that his fingerprints were on the scales containing traces of the drugs. He referred to what had been found on the appellant's mobile phone.
8. The judge then referred to the guidelines for drugs offences. He said that the offence fell in category 3, significant role, with a starting point of 4 1/2 years (or 54 months) had the appellant and his co-defendant been convicted after a trial. That starting point referred to a single type of drug and to individuals with no previous convictions, neither of which applied in the circumstances of this case. The judge then referred to Proctor's previous convictions and to the appellant's. The judge described the appellant's and his co-defendant's mitigation and in particular that it had been said that they had done well in prison. The judge said that this sort of offending was so serious that only a custodial sentence could be justified. Taking into account all that had been said about them, the fact that there were two types of drugs and giving them full credit for their pleas, the appropriate sentence for each was 40 months' imprisonment concurrent on both counts.
9. The point that is made in written argument on behalf of the appellant is that the prosecution in opening the case before the sentencing judge put forward a 'case theory', as it was described, which was borne out by the admissions which had been made by Mr Proctor. The 'business model', as it was described, was that the appellant had been a drug user targeted by other suppliers in order to supply drugs from the appellant's premises. Proctor had said in interview that he was in the area supplying drugs and that the money that was found was his money from supplying the drugs. He had said in interview that the appellant got a couple of bags of heroin to allow the conspirators to sit at the address and supply drugs from there. The appellant had said that he had a £20-a-day habit of heroin and cocaine.
10. We agree with the single judge granting leave that this sentence passed on the appellant was inconsistent with what the prosecution had said about the business model for supplying these drugs. It was inconsistent with Proctor's admissions in interview which had been referred to by the prosecution in opening the case to the judge. It seems to us that the sentence passed on the appellant for these reasons was manifestly excessive. He was given the same sentence as Proctor but it was apparent from the way that the prosecution put the case that his role was not as serious as that of Proctor. It seems to us that his role was properly classified as a significant role, but only just as a significant role, as there are features of a lesser role as well, as those are defined in the guidelines. Proctor, on the other hand, had a more significant role. He knew who the other conspirators in the chain were but was not prepared to give the police any information about them. He had the money. He was the person who was making up the deals. His fingerprints had been found on the scales.
11. It seems to us that the appropriate sentence in this case would have been at the bottom of category 3, significant role. That is a sentence of 3 years 6 months' before a plea. When appropriate credit is given for the appellant's plea of guilty, that sentence is

reduced to a sentence of 28 months'. We therefore quash the two concurrent sentences of 40 months' imprisonment which were passed on this appellant and we substitute for them two concurrent sentences of 28 months'. The appeal succeeds to that extent.