

Neutral Citation Number: [2016] EWCA Crim 1520
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IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
The Strand
London
WC2A 2LL

Tuesday 20th September 2016

Before:

LORD JUSTICE BURNETT

MRS JUSTICE SIMLER DBE

and

MR JUSTICE WILLIAM DAVIS

REGINA

v

DYRELL STANISLAS
BEN NGAMAN

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Mr R James appeared on behalf of the Appellant Dyrell Stanislas

Mr S Cooke appeared on behalf of the Applicant Ben Ngaman

JUDGMENT

(Approved)
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LORD JUSTICE BURNETT:

1. The appellant, Stanislas, appeals with the leave of the single judge against concurrent sentences of three years' imprisonment imposed by His Honour Judge Shorrocks on 29th February 2016 in respect of two counts of conspiracy to supply controlled Class A drugs, namely cocaine and heroin. The appellant was born on 16th December 1996 and so was aged 19 when he was sentenced. The sentence is correctly recorded in the antecedents before us as being one of detention in a young offender institution. It is clear that everybody referred to "imprisonment" incorrectly in the course of the sentencing hearing.

2. The applicant, Ngaman, renews his application for leave to appeal against concurrent sentences of six years and eight months' imprisonment imposed on the same occasion by the judge for like offences.

3. Both the appellant and the applicant were involved in a conspiracy to supply substantial quantities of Class A drugs to Southampton over a period of more than two months between December 2014 and 24 February 2015 when a number of the conspirators were arrested. There were others involved in the conspiracy beyond these two.

4. Stanislas' involvement was limited to driving drugs from London to Southampton on two occasions and, inferentially, returning with the money. Ngaman was at the centre of the conspiracy. He ran a telephone line controlled primarily from London. He would make arrangements for the supply of the drugs to Southampton where two addresses were used as distribution centres. The conspiracy was broken as a result of a police operation designed to tackle substantial drugs supply between Southampton and London. When one of the couriers

was stopped he had inside him more than 200 wraps of heroin and cocaine. The quantity of drugs on that occasion was about 30 grams. Over the course of part of the conspiracy police officers acting under cover were engaged in buying drugs at the Southampton end.

5. Although most of those within the conspiracy pleaded guilty, as did Stanislas and Ngaman, there was a trial presided over by the sentencing judge. It was apparent that during the period of the conspiracy, which extended between eight and eleven weeks, there were deliveries made to Southampton either daily or every other day. The judge sentenced on the basis that, roughly, a similar amount of drugs was likely to have been transported on each occasion, as was found on the arrest of one of the co-accused.

6. We turn to Stanislas' appeal. One ground of appeal is advanced on his behalf. It is that the judge failed to have proper regard to the principle of totality when he imposed the three year sentence, to reflect the fact that the appellant had been sentenced at the Central Criminal Court shortly before in connection with an offence of attempted wounding with intent to cause grievous bodily harm. That offence occurred on 24 March 2015 – that is to say, after the conspiracy offences with which this appeal is concerned. The appellant was sentenced at the Central Criminal Court to an extended sentence of twelve years, comprising a nine year custodial element and a three year licence extension. The three year sentence imposed by the judge in this case was consecutive to the other sentence. The appellant had been prosecuted for attempted murder arising from the use of a firearm, but was convicted of the lesser offence. Mr James, who appears on behalf of the appellant this morning, has explained that the appellant did not himself fire the weapon, but was prosecuted on a joint enterprise basis. Happily, the bullet merely grazed the intended victim. It follows that the jury was not satisfied that, in firing the weapon, the assailant intended to kill the prospective victim, but was satisfied as to causing serious harm.

7. Mr James submits that the sentence of three years' detention properly reflected the offending in respect of the drugs conspiracy. His submission is that, to take account of the principle of totality, the sentence should have been significantly reduced. He does not seek to suggest that consecutive sentences were wrong in principle. He prays in aid in particular the appellant's age, his relative lack of previous offending, and the absence of any evidence that he was due to receive substantial financial benefit in return for the two delivery trips he made.

8. We agree that ordinary principles should result in the appellant's youth being taken into account in arriving at the sentence. We are not impressed by the other two discrete points. The appellant has a poor history of previous offending. Ignoring the serious matter for which he was sentenced at the Central Criminal Court, his offending began when he was 12 years old and continued through to 2013. He was sentenced on a number of different occasions to detention and training orders. His offending was serious and included possession of both Class A and Class B drugs. There were two offences of possessing a knife or bladed article in a public place. He was convicted during that period of both robbery and burglary on different occasions. There were offences of violence, although at the lower end of the spectrum. Furthermore, the judge did not accept the argument relating to money. He concluded that substantial financial gain was indeed the motivation for the appellant's involvement. In our judgment it is not open to the appellant to disturb the judge's conclusion.

9. At the heart of the sentencing remarks relating to the appellant the judge said:

"... you are serving an extended sentence of nine years' imprisonment. It was passed last Friday and you will not be eligible for release until you have served six years of it. Your role in this conspiracy was very limited. You acted as a delivery man on two occasions, taking drugs from London to

Southampton and no doubt returning with some of the proceeds of sale of other drugs. You were only 18 at the time. Taking all those matters into account and giving you a 20 per cent reduction for your guilty plea, I am of the view that a sentence of three years' imprisonment is appropriate in your case. These were separate offences and I can see no reason why ordinary sentencing principles should not be applied and therefore the sentence will be three years on each count to run concurrently but consecutively to the sentence you are currently serving ..."

10. It is clear from the use of the words "taking all those matters into account" that the judge was very much alive to the principle of totality and the fact that he was imposing a consecutive sentence for the drug offences. There is no criticism of the 20 per cent reduction for the late plea. It follows that, before that reduction, the judge had taken a starting point of 45 months' detention (that is, three years and nine months).

11. The definitive guideline for drugs offences applies to offences charged as conspiracies: see *R v Khan* [2013] EWCA Crim 800. In the course of giving the judgment of the court, Treacy LJ said this in respect of an individual whose role was limited within the conspiracy:

"34. However, a particular individual within a conspiracy may be shown only to have been involved for a particular period during the conspiracy, or to have been involved only in certain transactions within the conspiracy, or otherwise to have had an identifiably smaller part in the whole conspiracy. In such circumstances the judge should have regard to those factors which limit an individual's part relative to the whole conspiracy. It will be appropriate for the judge to reflect that in sentence, perhaps by adjusting the category to one better reflecting the reality.

35. As a balancing factor, however, the court is entitled to reflect the fact that the offender has been part of a wider course of criminal activity. The fact of involvement in a conspiracy is an aggravating feature since each conspirator playing his part gives comfort and assistance to others knowing that he is doing so, and the greater his or her awareness of the scale of the enterprise in which he is assisting, the greater his culpability."

The reference in [35] is to a seriously aggravating feature when conspiracies are involved. This appeal provides an example. The appellant joined what he must have known was an existing operation founded on a conspiracy to take drugs from London to Southampton. Indeed, he travelled on one occasion with one of the regular couriers to and from Southampton.

12. Were the drug offences with which this appeal is concerned being sentenced in isolation, in our judgment they would fall to be dealt with in category 3, given the quantities of drugs being transported, with the appellant having a significant role. Mr James makes a submission to that effect. The starting point within category 3 "significant" is four and a half years' custody, with a range of three and a half years to seven years. Whilst the appellant's age would act to keep the sentence down, his previous convictions and the fact that he played a part in a much wider conspiracy would tend to increase the sentence within the range. In our judgment it would take the appropriate sentence beyond the starting point and, if not to the top of the range, then relatively close to it.

13. It follows that had this matter been dealt with separately, the resulting sentence would very likely have been four and a half years or a little more. By reference to that conclusion, it is apparent that the judge significantly discounted the sentence to take account of the fact that the appellant was already subject to the sentence imposed at the Central Criminal Court very shortly before. We do not consider that the resulting overall sentence, namely of 12 years' detention (subject to a licence extension on account of the finding of dangerousness in the other matter) is manifestly excessive.

14. For these reasons Stanislas' appeal against sentence will be dismissed.

15. Ngaman renews his application for leave to appeal against sentence following refusal by the single judge. The applicant pleaded guilty at an early opportunity and so attracted a full discount for his plea. It follows that the starting point before that discount was one of ten years' imprisonment. The applicant had been involved centrally in organising the drug runs to Southampton over the course of the period we have described. Importantly, he was on licence at the time of this offending, having been sentenced to a term of six years' imprisonment on 13th June 2011 for possession of a handgun. He was, in fact, recalled to serve the balance of that sentence.

16. The applicant was born on 10th August 1989. He had a number of previous convictions, including for assault and robbery. In sentencing him the judge said:

"On any view you ... were deeply involved. Indeed, as I have already observed, without your specific involvement, this conspiracy could not have been put into effect so easily or so extensively. Given that you were on licence at the time for a very serious offence and the quantity of drugs involved, the starting point in your case is one of ten years' imprisonment."

The judge had earlier indicated that he accepted that the applicant was not at the top of the tree so far as the conspiracy was concerned. He sentenced him by reference to category 2, with a significant role. That has a starting point of eight years' custody and a category range of six and a half to ten years. The judge accepted that, despite the substantial quantity of drugs involved, the offending did not stretch into category 1.

17. Mr Cooke, who appears this morning on behalf of the applicant, does not dispute that the judge alighted upon the right category. His submission is that the judge should not have gone to the top of that category, despite the quantities involved, the period during which the conspiracy

operated, and the serious aggravating feature of committing an offence on licence. Mr Cooke reminds us that the applicant was recalled and that there was inevitable delay between his arrest and eventual sentence as a result of the ordinary disposal of the surrounding proceedings against co-accused. Ordinary delay of that sort is not such as would provide a basis for reducing what otherwise would be an appropriate sentence.

18. In our judgment the single judge was entirely right to refuse leave in this case. The applicant cannot complain that the sentencing judge took a starting point at the top of the range, given all the circumstances to which we have referred.

19. Accordingly, this renewed application is refused.