

Neutral Citation Number: [2019] EWCA Crim 553
2018/04081/A1
IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
The Strand
London
WC2A 2LL

Wednesday 27 March 2019

B e f o r e:

LORD JUSTICE SIMON

MR JUSTICE TURNER

and

HER HONOUR JUDGE TAYTON QC

(Sitting as a Judge of the Court of Appeal Criminal Division)

R E G I N A

- v -

VARIEL AUGUSTUS DAVIDS

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Miss E Lewis appeared on behalf of the Applicant

J U D G M E N T
(Approved)

LORD JUSTICE SIMON:

1. On 13 September 2018, in the Crown Court at Woolwich, the applicant pleaded guilty to four counts on an indictment. On the same day he was sentenced by His Honour Judge Williams to a total of four years and six months' imprisonment on each of the four counts, to be served concurrently. Counts 1, 5 and 6 charged supplying a Class A controlled drug (crack cocaine) to another. Count 2 charged the same offence, where the controlled drug was heroin.

2. The applicant now renews his application for leave to appeal against sentence following refusal by the single judge.

3. The issue raised on the application is a short point. There is no need to set out the facts that give rise to the charges and sentences. The applicant was sentenced as a street dealer in drugs who had a previous conviction for the same offence.

4. The judge took a starting point of six years' custody and gave 25 per cent credit for the guilty plea, to reach the concurrent terms of four and a half years.

5. The argument for the applicant, which was advanced before the judge and today before us by Miss Emma Lewis, is that the applicant had given an indication of his plea of guilty at the earliest opportunity, namely, in the magistrates' court when the Better Case Management Form was filled in. This form provides a section headed "Pleas (either way) or indicated pleas (indictable only) or alternatives offered". This part of the applicant's form was filled in in manuscript "No indication". However, Miss Lewis points to the heading below "To be completed by the court" and beneath that "in so far as known, real issues in the case (concise details will be sufficient)". Under that heading, and again in manuscript, the applicant's form was filled in "Likely to be guilty pleas on a basis".

6. In our view, leaving aside that it was in the wrong place, that was not an indication of plea such as to entitle the applicant to full credit. It was keeping options open, both as to whether a guilty plea would be offered and the basis on which it would be offered. It invites the question: how likely is the plea to be offered – very likely, quite likely or, on balance, more likely than not?

7. Miss Lewis developed an argument that it left open an issue to be decided at a *Newton* hearing; but in our view that is not a point of merit, since that could be argued if an indication of a guilty plea had been given.

8. Quite apart from any issue as to the basis on which a guilty plea might be offered, the form has a place where a plea can be indicated. The entry under this heading was not an indication that the applicant was notifying the court that he would plead guilty. The statement in the form was correct: no indication of plea was given.

9. Miss Lewis raises a further point in relation to the form filled in on behalf of the applicant's brother, Ulando. The section headed "Pleas (either way) or indicated pleas (indictable only) or alternatives offered" in his form was filled in, "Likely to be guilty pleas on basis". In the event, Ulando Davids was given 33 per cent credit and this is said to give rise to objectionable disparity.

10. The judge was addressed on this point after he had passed sentence. He treated the words "likely to be guilty pleas on basis" on the part of the form designated for the indicated pleas as being sufficient to give rise to maximum credit. We have expressed our views about that. But in the event, the judge concluded that the point did not give rise to an argument on objectionable disparity. In our view, he was right in his conclusion. There is no sustainable argument based

on objectionable disparity. The credit was given on an entirely different basis in relation to the two brothers.

11. Accordingly, the renewed application is refused.