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THE COURT OF APPEAL

CRIMINAL DIVISION

Royal Courts of Justice

Strand

London, WC2A 2LL

Thursday 2nd May 2019

B e f o r e:

LADY JUSTICE NICOLA DAVIES DBE

MR JUSTICE SPENCER

MR JUSTICE MORRIS

R E G I N A

v

MARK BUCKLEY KINGSTON

Computer Aided Transcript of the Stenograph Notes of Epiq Europe Ltd Lower Ground, 18-22 Furnival Street, London EC4A 1JS Tel No: 020 7404 1400 Email: rcj@epiqglobal.co.uk (Official Shorthand Writers to the Court)

Mr David Burgess appeared on behalf of the **Appellant**

J U D G M E N T

(Approved)

LADY JUSTICE NICOLA DAVIES:

1. On 12 May 2018, having pleaded guilty before the West and Central Hertfordshire Magistrates' Court, the appellant was committed for sentence pursuant to section 3 of the Powers of Criminal Courts (Sentencing) Act 2000 in respect of the offence of possession of a controlled drug Class A (cocaine) with intent to supply contrary to section 5(3) of the Misuse of Drugs Act 1971. On 13 August 2018, in the Crown Court at St Albans, he was sentenced by His Honour Judge Arran, sitting as a Deputy Circuit Judge, to twelve years' imprisonment. He appeals against sentence by leave of the single judge.

2. On 11 May 2018, relying upon information received, police officers travelling on the M25 stopped a Ford Galaxy motor vehicle driven by the appellant. A search of the vehicle revealed a large number of grey bags. The appellant was arrested and made no reply. He was taken to the police station where in his presence one of the arresting officers was asked by the custody sergeant if she believed the packages

contained Class A drugs and she confirmed that she did. The appellant asked, “What’s Class A?” When told it was “Cocaine or heroin”, he replied, “Nay, it’s hash”. The bags were found to contain 35 blocks of cocaine: 28 blocks at 93% purity, one block at 95% purity, two blocks at 96% purity and three blocks at 98% purity. The total quantity of drugs had a wholesale value of £1,085,000 with a street value of £2.8 million. When interviewed the appellant made no comments to the questions asked.

3. At the sentencing hearing a basis of plea was before the court which was not accepted by the Crown. It was the appellant’s case that he believed the drugs which he was carrying were cannabis rather than cocaine. A *Newton* hearing was held at which the appellant gave evidence on oath to enable the Deputy Judge to determine the appellant’s knowledge of the type of drugs. The Deputy Judge found that he could not be satisfied that the appellant must have known that the packages contained cocaine.

4. At the date of sentence the appellant was aged 48. He had been a minicab driver for 26 years. At the time of arrest he was living in difficult circumstances following a recent separation from his wife. A number of written testimonials were before the court which spoke positively of his character and of the personal and financial difficulties in which he had found himself in the period immediately before the commission of the offence.

5. In sentencing the appellant, the judge noted that his previous convictions were of some age and thus irrelevant for the purpose of sentence. It was the Crown’s case - not disputed by the appellant - that his role in carrying the drugs was a significant one. The judge found that the high level of purity indicated that the drugs were of relatively recent import and that the person with whom the appellant had been dealing with was high up in the hierarchy of the organisation which was using the appellant as a driver. The Deputy Judge indicated that the appropriate starting point within the Sentencing Council Guidelines would be reduced to take account of two factors, namely the appellant’s plea of guilty at the earliest opportunity and the fact that the appellant may well have thought that the bags contained cannabis. It initially appeared that the Deputy Judge was taking a starting point of fifteen years, which would have been after trial and with full knowledge of the fact that the drugs were cocaine, which he then reduced to twelve years to reflect his factual finding in the earlier plea of guilty. When questioned by counsel as to his starting point the judge said it was in fact eighteen years because he regarded a starting point of fifteen years as “a little generous”.

6. The grounds of appeal are twofold, namely that the judge took too high a starting point of eighteen years and that the sentence made insufficient allowance for the mitigation of the appellant.

7. The concession made on behalf of the appellant both before the court below and in this Court, namely that his role fell into the significant category within the Sentencing Council Guidelines, accepted that he held an operational management function within a chain and was motivated by financial or other advantage. That said, Mr Burgess contends that any sentence should be at the lower end of the category because this is what he has described as a borderline case, containing some aspects of a lesser role.

8. Category 1 of the Guidelines identifies the greatest quantity of cocaine included within it as being 5 kilograms. The starting point for an offender holding a significant role in a Category 1 case is one of ten years, within a range of nine to twelve years. However, within the Guidelines it is noted that:

”Where the operation is on the most serious and commercial scale, involving a quantity of drugs significantly higher than Category 1, sentences of 20 years and above may be appropriate, depending on the role of the offender.”

9. The quantity of Class A drugs seized, together with its wholesale and street value, reflects the gravity of this offence. In our judgment no issue could have been taken with a starting point of at least 20 years following a trial had the appellant been found to have possessed knowledge of the fact that he was carrying cocaine. However the judge having made his findings as to the defendant’s knowledge, there has to be a reduction in sentence to reflect that finding of fact.

10. It is clear that the judge initially considered a starting point of fifteen years on the basis I have earlier identified, but it is equally clear that he raised that starting point to eighteen years. In our view that was an appropriate starting point had the appellant known that the drugs were cocaine following a trial. Also, in our view, that starting point could have been higher. We will take a starting point of eighteen years. That should be reduced to reflect knowledge as found by the judge on the part of the defendant. That reduction will be one of four-and-a-half years, bringing the sentence to one of thirteen-and-a-half years. To

that is a further reduction of one-third to reflect the guilty plea. That brings the final sentence to one of nine years' imprisonment. Accordingly, we quash the original sentence of twelve years' imprisonment and substitute for it a sentence of nine years' imprisonment. To that extent the appeal is allowed.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

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