

Neutral Citation Number: *[2019] EWCA Crim 1431*

No: 201900904/A1

**IN THE COURT OF APPEAL**

**CRIMINAL DIVISION**

Royal Courts of Justice

Strand

London, WC2A 2LL

Wednesday 17 July 2019

**B e f o r e:**

**LORD JUSTICE LEGGATT**

**MR JUSTICE POPPLEWELL**

**HIS HONOUR JUDGE MARSON QC**

(Sitting as a Judge of the CACD)

**R E G I N A**

**v**

**JERELLE DIXON**

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**Miss G Silvio** appeared on behalf of the **Appellant**

## **J U D G M E N T**

(As approved)

1. JUDGE MARSON QC: On 31 January 2019 the appellant, now aged 28, pleaded guilty before the South London Magistrates' Court to possessing MDMA (ecstasy) a class A controlled drug with intent to supply it to another, contrary to section 5(3) of the Misuse of Drugs Act 1971. He was committed for sentence pursuant to section 3 of the Powers of Criminal Courts (Sentencing) Act 2000. On 21 February 2019, before Mr Recorder Dawson, sitting in the Crown Court at Inner London, the appellant was sentenced to three years imprisonment. He now appeals against that sentence, leave having been granted by the single judge.

2. The facts can be shortly stated. On 25 August 2018 the appellant attended the SW4 music festival on Clapham Common. Before entering he was searched by security staff and was found to be in possession of two Kinder eggs, one in his waistband and the other in his rucksack. They were found to contain a total of 86 MDMA pills with a street value of £860. It was enough for between 43 and 86 deals.

3. The appellant was in possession of an i-Phone. He refused to give the PIN number but whilst he was being documented messages appeared over a five hour period. Five messages related to requests for drugs.

4. The prosecution submitted that this was a Category 3 offence involving street dealing. They also submitted that the appellant played a significant role because the offending was motivated by financial advantage. This gives a starting point of four-and-a-half years custody with a range of three-and-a-half to seven years custody.

5. We are grateful for the written and oral submissions made by Miss Silvio and on behalf of the appellant she submits that the Recorder should have concluded that the appellant played a lesser role with a starting point of three years custody and a range of two to four-and-a-half years custody. She submits that the bottom end of that range was the appropriate starting point.

6. The appellant was sentenced without a pre-sentence report. It is submitted that the Recorder did not initially, in his very brief sentencing remarks, identify the role which he found the appellant had played. Also, he did not identify the starting point before credit or the credit for the guilty plea. When asked by Miss Silvio, the Recorder indicated that he had taken a starting point of three-and-a-half years custody and reduced it to three years for his guilty plea. It is submitted that the Recorder did not indicate that he was giving full credit and that the reduction of only six months custody did not properly reflect the one-third credit to which the appellant was entitled.

7. Miss Silvio also submits that the Recorder failed to pay sufficient regard to the appellant's age, his limited previous convictions and other matters of mitigation. We have also read a letter from the appellant, which we have taken into account and in which he expresses remorse. We have also read a letter from his mother.

8. As an immediate custodial sentence was inevitable it was unnecessary to obtain a pre-sentence report. Having regard to the quantity involved, this was clearly a Category 3 offence involving as it did street dealing and we are satisfied that the appellant played a significant role, the overwhelming inference being that he was motivated by financial advantage. The messages to the phone and the appellant's refusal to disclose the PIN number to the police confirmed that. These drugs were to be supplied at a music festival. Having considered all matters of mitigation, the Recorder took a starting point at the very bottom of the range.

9. This was a serious offence and notwithstanding all the mitigation, that was an appropriate starting point in our judgment. That having been said, however, having pleaded guilty at the first available opportunity, notwithstanding his no comment interview, the appellant was entitled to full credit. It is unclear why the Recorder only reduced the sentence by six months to reflect credit. As the appropriate starting point was three-and-a-half years custody, giving full credit for the guilty plea, the sentence of three-and-a-half years imprisonment is quashed and a sentence of 28 months imprisonment is substituted. 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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