

Neutral Citation Number: [2019] EWCA Crim 1367

No: 201900347/A2

IN THE COURT OF APPEAL

CRIMINAL DIVISION

Royal Courts of Justice

Strand

London, WC2A 2LL

Thursday, 27 June 2019

B e f o r e:

LORD JUSTICE DAVIS

MR JUSTICE JAY

SIR JOHN SAUNDERS

R E G I N A

v

ELLIOT OMUR MORRIS

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Mr J Barry appeared on behalf of the **Applicant**

J U D G M E N T

(Approved)

1. SIR JOHN SAUNDERS: On 13 March 2018 at Cardiff Crown Court, this applicant was sentenced to a total of eight-and-a-half years' imprisonment for offences of conspiracy to supply a controlled drug of Class B, namely cannabis (count 1 on the indictment), an offence of possessing a controlled drug of Class A, namely MDMA (ecstasy) with intent to supply (count 5) and possession of a controlled drug of Class A, namely cocaine (count 8). The applicant had pleaded guilty to count 1 and was convicted of the other two counts after trial. The sentences passed by the judge were 27 months on count 1, eight-and-a-half years on count 5 and 1 month on count 8. All the sentences were made concurrent with one another. The result of that is that the sentence on count 5 represented the totality of the offending rather than simply the offending on count 5.

2. Leave was sought to extend time by 287 days to apply for leave to appeal against sentence and that application was refused by the single judge.

3. The applicant renews his application and he seeks an extension of time of five days to renew his application to the extension of time of 287 days for leave to appeal against sentence. There is no appeal against sentences passed on count 1 and count 8 and the submissions of counsel on behalf the applicant today, Mr Barry, have been focused on the sentence on count 5. We say at once that Mr Barry has said everything that could be said very eloquently on behalf of this applicant.

4. The applicant is 29 years of age and was of previous good character save for a minor theft matter committed when he was much younger. That matter was ignored by the judge for the purpose of sentencing.

5. Dealing with the facts briefly of count 1 and count 8. He was, together with his parents party to a conspiracy to supply cannabis (count 1). They grew cannabis in significant amounts and sold it on to drug wholesalers operating in South Wales. The wholesalers in their turn sold it onto street dealers.

6. The applicant was sentenced for this offence on the basis that he had a leading role in the supply and was sentenced in accordance with the guidelines. He was also given, it is accepted, the appropriate discount to reflect his plea of guilty. As we have said, that sentence is not the subject of any criticism, nor is the sentence on count 8 for the offence of simple possession of cocaine.

7. The brief facts of count 5 are as follows. The applicant was arrested as a result of the investigation into the supply of cannabis in South Wales. He was arrested by police at his premises which are situated in a rural location near Redditch in Worcestershire. At this site the police found cannabis plants and other paraphernalia connected to supply of cannabis. But in addition they found powder and tablets roughly equivalent to 360 Ecstasy tablets (MDMA), with a street value of between £2,500 and £3,500. He was charged with possessing that amount of MDMA with intent to supply. There was other evidence before the judge implicating the applicant in dealing in ecstasy. There were photographs taken from the phone of the applicant's mother, which showed significant quantities of ecstasy, one of which also showed the applicant's hand which was identified by fingerprint analysis.

8. The police also discovered that the applicant had a crypto currency account containing, at the time of his arrest, the equivalent of £19,000.

9. The judge, in sentencing, considered the Sentencing Guidelines and concluded on the basis of the quantity of ecstasy that this was a category 3 offence. There is no appeal against that conclusion. The judge also found that the applicant had a leading role and that is the central feature of this appeal. The applicant argues that there is no basis for that finding.

10. The guidelines specify a number of features of an offence which may lead to the conclusion that the offender has a leading role. The two which the judge considered applied to this applicant were directing or organising, buying and selling on a commercial scale and dealing in the expectation of substantial financial gain.

11. Mr Barry's argument on behalf of this applicant is that in relation to the first of those features what the Sentencing Council guidance is aimed at, judging by its content, is that something more than merely buying drugs and selling them is required. It is argued that inclusion as a leading actor on this ground would ordinarily require other participants in the criminal enterprise who are subordinate to a principal, given the ordinary construction of the term "leading".

12. In his written submissions Mr Barry also argues that dealing in the expectation of substantial financial gain must be read in the context of multi-million pound drug enterprises which are not uncommon. He did however accept in the course of argument that, in normal terms, £19,000 can be seen as a substantial amount of money.

13. Persuasively as these submissions have been argued, we are unable to accept them. First of all and most significantly, the judge had the benefit of hearing a trial. He was able to make his own assessment of the level of the applicant's involvement and was in a much better position than we are. That assessment having been made on the basis of the evidence heard at a trial, it would be rare for this court to interfere with those findings based on the facts as the judge found.

14. Firstly, while the charge was limited to the possession of 360 ecstasy tablets, the evidence connecting this applicant with quantities of ecstasy went beyond that, as we have already indicated. There was evidence to connect him with more that was represented in the charge and it was for the judge to decide the extent of that evidence and what conclusion could properly be drawn from it.

15. Secondly, we do not accept that a defendant cannot be sentenced on the basis of directing or organising, buying and selling on a commercial scale, unless he is a part of a group of people acting in concert. While that may be true of directing, it does not apply, in our judgment, to organising. Organising can consist of a single person buying or selling on a commercial scale and that does not mean that other people necessarily need to be involved.

16. Mr Barry has rightly pointed out that in normal circumstances a street dealer in relation to ecstasy would be regarded as having a significant role than a leading role. But the judge clearly took the view that this applicant's participation went beyond that of simply being a street dealer. Further, the expectation of substantial financial gain cannot only apply to very large amounts of money. It relates to dealing with category 3 offences which, in this case, related to about 300 tablets. Therefore the substantial financial gain has to be related to the amount of the dealing as well which put it within category 3.

17. In conclusion, we are unable to say that the judge erred in assessing that the applicant had a leading role in this offence. The judge took a starting point specified in the guidelines of eight-and-a-half years. It must be remembered as well that that is the starting point simply in relation to the possession of ecstasy with intent to supply.

18. The judge made an appropriate deduction, as we have indicated, to reflect totality by making all the sentences concurrent. This is in accordance with the Sentencing Council Guidance on Totality which he clearly took into account. It follows that we consider that an appeal against sentence has no prospect of success on the merits and we agree with the conclusions reached by the single judge. We will grant an extension of time of five days to renew the application for the extension of time for appealing the sentence but we refuse leave to extend the time to extend of 287 days. This renewed application is refused.

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

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