

Neutral Citation Number: [2019] EWCA Crim 1450

No: 201900513/A3

IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice

Strand

London, WC2A 2LL

Wednesday 31 July 2019

B e f o r e:

LORD JUSTICE LEGGATT

MR JUSTICE WILLIAM DAVIS

HIS HONOUR JUDGE MICHAEL CHAMBERS QC

(Sitting as a Judge of the CACD)

R E G I N A

v

NEILTON CAMPBELL

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Mr S Eckersley appeared on behalf of the **Appellant**

Mr M Hall appeared on behalf of the **Crown**

J U D G M E N T

(As approved)

1. JUDGE CHAMBERS: The appellant Neilton Campbell, now aged 34, appeals against sentence with leave of the single judge. Following pleas of guilty entered on 4 June 2018, the appellant was sentenced on 21 December 2018 by His Honour Judge Nicholas Cartwright sitting in the Crown Court at Worcester as follows: count 1, conspiracy to supply a controlled drug of class A (diamorphine) six years and three months' imprisonment; count 2, conspiracy to supply a controlled drug of class A (cocaine), six years and three months' imprisonment concurrent, and for a summary offence pursuant to section 51 of the Crime and Disorder Act 1998, namely driving a motor vehicle otherwise than in accordance with a licence on 2 May 2018, when the appellant was arrested, the sentence was licence endorsed with three penalty points.
2. As part of the sentencing exercise, the appellant was also disqualified for a period of 18 months which was expressed to commence on his release from custody so was extended by three years.
3. Although the single judge, Sir Roderick Evans, did not expressly limit the granting of leave, he stated that "the sentence on the drugs conspiracy counts of six years and three months was not manifestly excessive and I would not grant leave to appeal this sentence." But that "the disqualification and imposition of penalty points appear to be unlawful and furthermore it is arguable that the disqualification may have been assessed on a wrongful factual basis."
4. Counsel for the appellant has confirmed before us that the appeal is not pursued in relation to the sentence that was imposed for the drugs offences and so, therefore, we treat this appeal as addressing the issue as to the disqualification solely.
5. When passing sentence, the judge said:

"In relation to driving otherwise [than] in accordance with the licence, your licence will be endorsed with... three penalty points ... Because you were using a motorcar for travelling backwards and forwards to Worcester as part of the involvement in this 'county line' business, it is appropriate to disqualify you from driving for a period of 18 months from when you are released from custody and so the disqualification is 18 months extended by three years. It is designed to take effect at the time you are released in due course."
6. As part of the court's sentencing powers, when sentencing for offences of conspiracy to supply drugs, in certain circumstances the court has a discretion to impose a period of disqualification from driving in addition to immediate imprisonment, pursuant to section 147(3) of the Powers of Criminal Court (Sentencing) Act 2000. However, the only type of conspiracy which engages section 147(3) is one where a vehicle was used directly in the formation of the conspiracy itself. It is not sufficient that it was used in acts of furtherance of it: see R v Riley [1984] 5 Cr.App.R (S) 35, and R v Gorry [2018] EWCA Crim. 1867.

7. On the facts in the present case, the respondent concedes that there is not a proper evidential basis to support the conclusion that the appellant drove any vehicle in the formation of the conspiracy. The only evidence of the hire of vehicles to travel to Worcester relates to March and April into May, whereas the conspiracy was accepted to have begun by the previous 1st January.
8. When sentencing for the summary road traffic offence, the court was required to order that the appellant's licence be endorsed with up to six points, unless it was imposing a discretionary period of disqualification which it was empowered to do, pursuant to section 34 of the Road Traffic Offenders Act 1988. Where the court was imposing a custodial sentence for another offence, as was the position here in respect of the drugs conspiracy counts on the indictment, the court was also required to consider what increase/uplift in the period of disqualification was required to comply with section 35B(2) and (3) of the Road Traffic Offenders Act 1988: see R v Needham [2016] 2 Cr.App.R (S) 26 (219). Under the latter provision the court is required to consider the diminished effect of disqualification as a distinct punishment if the person who is disqualified is also detained as part of a custodial sentence.
9. In his grounds of appeal (see paragraphs 35 and 36) it is submitted that:
 - (a) The disqualification of 18 months was too long; it was manifestly excessive; it failed to reflect or sufficiently reflect (i) the length of the custodial sentence, (ii) the effect on the appellant and his family of that period of disqualification, and (iii) the factual basis of the driving offence on the section 51 schedule.
 - (b) Further, that the disqualification is wrong in law in that there was an insufficient factual basis for the judge to conclude that the criteria for disqualification were met.
10. Therefore, given the common ground that there is no evidential basis to meet the criteria on the authorities for disqualification under section 147(3) of the 2000 Act, we respectfully agree that such a sentence was wrong in principle in the present case. We have gone on to consider whether we should substitute a period of discretionary disqualification in respect of the summary driving offence, pursuant to section 35 of the 1988 Act. We remind ourselves that the gravamen of the overall case was a serious conspiracy to supply drugs, not bad driving against a previous history of such. Further, we are mindful of the need for the appellant's prospect of rehabilitation not to be impaired on his release by a disqualification from driving which may affect his employment prospects.
11. Accordingly, we consider that in all the circumstances a period of disqualification is not necessary. We quash the period of disqualification. For the avoidance of doubt on the driving offence the endorsement of his licence with three penalty points will stand. To that extent this 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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