

**Regina**  
**v**  
**Jamie Lee Fitzgerald**

**Court**

Court of Appeal (Criminal Division)

**Judgment Date**

20 August 2019

Before: Lady Justice Rafferty DBE Mr Justice Jeremy Baker Mrs Justice McGowan DBE

Tuesday 20 August 2019

**Representation**

Miss E Shaw appeared on behalf of the Appellant.

**Judgment**

Mrs Justice McGowan:

1. Jamie Lee Fitzgerald, who is now aged 32, pleaded guilty in the Crown Court sitting in Bolton on 8 May 2019 to three offences of conveying list A articles into prison, contrary to the Prison Act. The first of those articles was an amount of cannabis resin, the second was an amount of bush cannabis and the third 20 steroid tablets.
  
2. The appellant had gone to visit his cousin at HMP Hindley on 2 September 2018 and was observed by security staff, who were supervising the visitors part of the prison through CCTV, to be acting suspiciously. Prison officers were notified and approached him. They seized a package wrapped in clingfilm. The police were called and when the package was opened the drugs were found. It transpires that he had been asked by his cousin to bring the drugs in and had agreed. He had obtained the drugs and taken them in. It is right that he pleaded guilty at the first available opportunity and was entitled to a full one-third credit on his sentence.
  
3. In passing sentence, the learned judge observed that anyone involved in smuggling items of this sort into a prison commits an offence that passes the custody threshold by a significant degree. He also relied upon the previous authorities of this court and said that it had been made abundantly clear that the smuggling of drugs into prison undermines the order of our custodial institutions and causes problems for those who are responsible for supervising prisons and looking after the welfare of inmates. That is a view with which this court agrees and re-endorses that expression.
  
4. The appellant has a significant record of previous offending, albeit no previous convictions for either the supply of drugs or any Prison Act offence. There are simple possession offences recorded on his record but in the main they are offences of dishonesty. He had only been released from custody about two months before he committed this offence. He had been recalled three times on his last period of licence. On each occasion apparently it was his abuse of alcohol and drug misuse which had caused him to be recalled. The author of the

pre-sentence report assessed him as presenting a high risk of re-offending and a medium risk of serious harm.

5. Miss Shaw, who represented him in the court below and who appears before us today, has presented her argument very attractively. She submits quite simply that the starting point which the judge took for these offences was too high. She draws an analogy to the drug supply guideline and identifies in her submission that this falls into the significant role Category 4 part of the guideline and therefore the starting point should have been a high level community order.

6. The drugs guidelines are of course helpful in sentencing offences of this sort, but the reality here is that the mischief is bringing the drugs into prison. That is a very significant aggravating feature and whilst we rely upon the guidelines for some assistance, they cannot determine the final prison sentence to be imposed.

7. In the view of this court, this falls way outside the range which Miss Shaw has identified to us today. The taking into prison of drugs is pernicious. It causes discipline problems within any custodial institution, it endangers the safety of the inmates and staff and adds greatly to the burden of trying to impose discipline. In the view of this court, having been given full credit for the plea, which he had entered at the earliest opportunity, the total sentence of 18 months cannot be said either to be wrong in principle or manifestly excessive, reflecting as it does a total sentence for three separate offences of bringing different items into prison on this occasion. Accordingly, despite the charm with which the arguments were presented, this appeal must be dismissed.

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