

No: 2019 03142/03143 A4
IN THE COURT OF APPEAL
CRIMINAL DIVISION1
[2019] EWCA Crim 1698

Royal Courts of Justice
Strand
London, WC2A 2LL

Thursday 3 October 2019

B e f o r e:

LORD JUSTICE DAVIS

MR JUSTICE EDIS

MR JUSTICE ANDREW BAKER

**REFERENCE BY THE ATTORNEY GENERAL UNDER S.36 CRIMINAL JUSTICE
ACT 1988**

R E G I N A

v

TARA HASTINGS
JERMAINE DAROUX

Computer Aided Transcript of the Stenograph Notes of Epiq Europe Ltd Lower Ground, 18-22
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(Official Shorthand Writers to the Court)

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MR PHILIP STOTT appeared on behalf of the **Attorney-General**
MS MICHAELA BONSU appeared on behalf of the **Offender Hastings**
MS REBECCA UPTON appeared on behalf of the **Offender Daroux**

J U D G M E N T
(As approved by the court)

1. **LORD JUSTICE DAVIS:** The Solicitor General seeks to refer sentences on the grounds that they are unduly lenient.
2. There are two offenders concerned. The first offender is a man called Jermaine Daroux. He is now 28 years old. The second offender is a woman called Tara Hastings. She is now 25 years old.
3. On 13 June 2009, in the Crown Court sitting at Lewes, the first offender pleaded guilty to a count of conspiracy to supply cocaine and to a further count of conspiracy to supply heroin. On 12th February 2019, at the same court, the second offender had pleaded guilty to a count of possessing cannabis and on 13th June 2019 she also pleaded guilty to the same counts 1 and 2. The offending in question related to a relatively short period, being stated on the indictment to be the period between 2nd and 14th January 2019.
4. In due course, on 26th July 2019, the offenders were sentenced. So far as the first offender was concerned, he was sentenced to 57 months' imprisonment on counts 1 and 2, to run concurrently. The second offender was sentenced to a term of 24 months' imprisonment on counts 1 and 2, suspended for 2 years, with certain requirements attached to the suspension, including completing 200 hours of unpaid work and 15 days' rehabilitation activity. A short concurrent sentence was imposed with respect to count 3.
5. The background facts can conveniently be taken from the Reference itself. In December 2018 the first and second offenders moved together to Brighton and lived in a flat on Grand Parade. The flat was then used by them as a basis for supplying Class A drugs directly to users. Customers would call the first offender to place orders for drugs.
6. A co-accused called Coleman (who had also been sentenced by the judge for his involvement in the conspiracy, he receiving a sentence of 12 months' immediate custody) was in effect used as a runner to complete the exchanges required. The second offender's role was essentially to assist in packaging and wrapping the drugs and to keep track of the money.
7. On 2 January 2019 the co-accused Coleman had been seen by police officers to exchange small items with known drug users and he was covertly followed by the officers to the flat in question.
8. On 14 January 2019, the co-accused was again seen by police officers engaging in what

appeared to be drug supply activity. When he was arrested, he was found to be in possession of seventeen wraps of crack cocaine, ten wraps of heroin, a knife, two mobile phones, some cash and a set of keys to the first and second offenders' flat. The police, using those keys, eventually gained access to the flat, although the doorway had been blocked. The first and second offenders were inside.

9. When the flat was searched, more drugs were found: 1.2 gms of crack cocaine and 1.4 gms of heroin, ready to be divided for further distribution. In addition, scales were found. Also found were a lock knife, a flick knife, a knuckle-duster, clingfilm, a notebook containing details of drug trades, several mobile phones and over £2,800 in cash. One of the wraps seized from the co-accused Coleman was in fact found to have the thumbprint of the second offender upon it.
10. Analysis of the mobile phones seized showed over 1,000 contacts between the three conspirators over the two-week period.
11. Cell site analysis also showed that the first offender had taken a number of trips between London and Brighton. It was shown that instructions had been given, in effect from the first offender to the co-accused Coleman. In addition, there were relevant messages passing between the first and second offender demonstrating that she was involved in preparing the drugs and carrying on the conspiracy when the first offender was away. The contents of the messages indicated that some hundreds of wraps of drugs were being sold per week, leading to a conservative estimate of approximately £5,000 worth of drugs being sold over the course of the relatively short-lived conspiracy.
12. When arrested and interviewed, the first offender provided a prepared statement in effect denying involvement in the sale of drugs. He then answered no comment to questions. The second offender stated that she had moved to Brighton with the first offender and that he was a friend of her boyfriend. She said some of the cash was hers, but denied ownership or knowledge of the rest; and she denied being involved in the sale of drugs. The co-accused made full admissions at an early stage.
13. The first offender has some convictions, none of which have resulted in a custodial sentence and none of which involved the supply of drugs, although one conviction is for possession of cannabis.
14. The second offender has no relevant convictions of any kind, being only convicted for motor vehicle offences, albeit also having cautions for shoplifting.
15. A pre-sentence report had been obtained in respect of the second offender. That was

relatively sympathetic to the second offender and her position. It set out her difficult background and difficult circumstances in some detail. It assessed her as showing a low risk of reoffending, albeit the risk was increased if she continued to associate with drug dealers. The probation officer recommended a suspended sentence if the court were minded not to impose immediate custody.

16. The pleas of guilt by these two offenders came at a relatively late stage. However, the judge generously was prepared to accord them 20% credit for the late pleas; and no challenge is made as to that particular aspect of the sentencing process.
17. The judge was fully addressed by counsel on behalf of the offenders; and the judge's sentencing remarks were clearly carefully prepared and considered.
18. In this context the judge had, of course, to bear in mind the relevant guideline relating to drugs offences issued by the Sentencing Council. For the purposes of the matter before him it was common ground between counsel that this was to be treated as category 3 offending in terms of harm. Category 3 includes cases "where the offence is selling directly to users (street dealing). The starting point is not based on quantity." In other cases, where heroin or cocaine is involved, the stated relevant amount is 150 gms as being the indicative quantity of drugs concerned for the purposes of the starting point.
19. So far as role was concerned, the judge had to consider whether there was a leading role or significant role or lesser role. Aspects of leading role, as set out in the guideline, include directly organising, buying and selling on a commercial scale and substantial links to and influence on others in a chain.
20. The judge, having considered matters, took the view that the role of the first offender was such that this was to be styled as category 3 offending, he having a leading role. So far as the second offender is concerned, the judge took the view that this was category 3 offending, she being adjudged to have a significant role.
21. The judge duly noted the provisions of the guideline in the case of category 3. The starting point indicated by the guideline is where there is a leading role 8 years 6 months' custody, with a category range of 6 years and 6 months to 10 years' custody; and with regard to category 3 where there is a significant role, the starting point is 4 years and 6 months' custody, with a category range of 3 years and 6 months to 7 years' custody. We would note that for a lesser role the starting point is 3 years' custody, with a category range of 2 to 4-and-a-half years' custody.
22. The judge fully reviewed the background facts and made the findings as to role as we

have indicated. Having indicated the range available to the judge under the guideline, the judge indicated with regard to the first offender that he moved down in the range, in particular to reflect the short duration of the conspiracy and the fact that the quantities of drugs supplied were not as great as in other cases. The judge then moved the starting point down from 8-and-a-half years to 7 years to reflect those matters, before turning to the various aspects of mitigation that were available. Having regard to that mitigation that was available, the judge reduced further to 6 years and then gave credit for the plea of guilt, resulting in a sentence of 57 months' imprisonment overall.

23. So far as the second offender was concerned, the judge, as we have said, found that she had a significant role and took the starting point under the guideline accordingly. However, he gave a particular emphasis to the mitigation available to her. Amongst other things, he said:

- i. "... I suspect that you, too, are a victim of the drugs trade, being drawn in by a need to feed your own addiction and through attachment to your partner, Mr Daroux."

24. The judge accepted that she had received little in the way of financial benefit and also had regard to her personal background, which we need not set out in detail here but to which the judge clearly attached considerable weight. The judge also noted the strong references from a previous employer and others, and gave considerable weight to the fact that she had never been in significant trouble before. Indeed, the judge took the view that there was no real prospect of her reoffending. The judge indicated that the mitigation justified in reducing the starting point from 4-and-a-half years down to 3 years. He then gave credit for the plea, as we have indicated, and then gave further effect to the personal mitigation -- as he put it, to bring the resulting figure down to 24 months' imprisonment -- and then decided to suspend that sentence, repeating that he saw little prospect of her offending again and taking the view that society would greatly benefit if she had the assistance of the Probation Service. In her case the judge concluded by saying:

- i. "You made a big mistake, Miss Hastings, getting involved in all of this. Lots of people [who] have done what you have done -- less of it -- will be going straight to prison, but it's your first mistake against a background of leading a fairly law-abiding life. So this is your chance."

25. The judge courteously acknowledged to Miss Bonsu of counsel (appearing then, as now, before us) that it was her mitigation that had caused the judge to change his mind from imposing an immediate custodial sentence in her case.

26. On behalf of the Solicitor General, Mr Stott submits that the judge unwarrantedly departed from the guideline in the case of each offender and, in consequence, imposed sentences that were unduly lenient. Mr Stott acknowledged that there were indeed

considerable aspects of personal mitigation available to each offender as identified by the judge. For example, there were positive character references with regard to the first offender: he had been recruited into the operation as a result of financial pressure; he seemed to have made good progress of his time in custody; he had no convictions for comparable offending and, indeed, no convictions for some time; the conspiracy had been relatively short lived; he had not been in prison before; importantly, perhaps, he was the carer for his dependent partner and children; and further, he had of course pleaded guilty, albeit relatively late in the day.

27. So far as the second offender is concerned, the judge had noted that she was still relatively young, in some respects had been the victim of the drugs trade and not herself received much in the way of financial benefit, and had a very difficult and troubled background. Furthermore, she too had a number of strong character references showing that she is capable of performing good work. Further, she had not herself engaged in any significant criminal offending and had pleaded guilty herself, albeit relatively late in the day.
28. Mr Stott acknowledged that these factors were present. But he pressed the point that this was the deliberate supply of drugs directly to users, and, moreover, by those from an outside metropolitan area. In short this was, as the judge accepted, a county lines operation, which is a factor sentencing courts must always bear in mind. Furthermore, this was a conspiracy which, even if it only lasted over a period of around two weeks, had involved a considerable number of supplies to street users and, moreover, both cocaine and heroin had been involved. Furthermore, this had been charged as a conspiracy, connoting the knowing involvement of a number of others in what was going on. Moreover, it was pointed out that a flick knife and a lock knife (amongst other things) had been found in the premises.
29. Mr Stott's, in effect, principal point is that the aggravating features in this case, at the very least matched -- and, as he would say, outweighed -- the mitigating features and, consequently, the judge simply was not justified in going below the starting point as he did and, indeed, going below the bottom of the range in the applicable part of the guideline.
30. On behalf of the two offenders it was submitted by Miss Upton, whilst not strongly challenging the judge's categorisation so far as the first offender is concerned that he had a leading role, that nevertheless there were elements of what happened here to indicate a significant role and that this perhaps could be regarded as being towards the cusp for the purposes of the guideline. Furthermore, she pointed out that this was scarcely selling on a commercial scale and certainly less than 150 gms of heroin or cocaine were involved; although she had to accept that category 3 says that where the offence is selling directly to users the starting point is not based on quantity.

31. She further pressed the points in mitigation available to the first offender, as we have summarised above, and also stressed the family position he found himself in and his responsibility to others. When pressed, she was prepared to accept that this was indeed, so far as the first offender was concerned, a lenient sentence; but what she disputed was that this was an unduly lenient sentence.
32. Miss Bonsu, on behalf of the co-accused Hastings, frankly accepted -- as perhaps she inevitably had to -- that this was on any view a lenient sentence in her case. But she stressed the care which the judge had evidently undertaken. She said that he was entitled to find that there was very significant mitigation here, as he had outlined, and was fully entitled to go significantly below the starting point as he did. Furthermore, she also took the point, as she advanced it, that, even if this was properly categorised as a significant role, there were also elements of a lesser role. She too suggested *that* this case might properly be regarded as on the cusp -- in this case, the cusp between a category 3 *significant role* and category 3 *lesser role*. She said that, in cases of this kind, there is every room for leniency; and what the judge was demonstrably trying to do was to impose a constructive sentence whereby this offender would never appear before the courts again and can get on with leading a useful life, it being pointed out that she now has the active support of an employer who wishes to retain her employment and also has the active support of her parents and other family. She indicated that her client accepts that she has been given a last chance, and her client, she says, proposes to take it. In short, she says the mitigating features were properly assessed as greatly outweighing the aggravating features and the judge was entitled to take the undoubtedly merciful course that he took.
33. As we see it, there can be no doubt at all that both sentences here are very lenient. The question is whether they are unduly lenient such that this court should interfere. We are not persuaded that they are. The judge gave reasons explaining why he did what he did. To the extent that he departed from the guideline, he explained why he had done so. We entirely accept that judges are required to follow the guidelines and should not depart from them unless the interests of justice so require -- that meaning there has to be good reason for so doing. Here the judge gave his reasons for so doing. Moreover, on any view, the first offender (Daroux) has not previously been in custody before; and on any view he now has received a significant custodial sentence. In the case of the co-accused Hastings, the departure from what is recommended in the guideline is very marked indeed, and we have to say that in many ways it is very close to the line. The judge certainly might have been expected to impose a somewhat longer sentence, and indeed a sentence of immediate custody, given the facts of the offending, quite aside from the personal mitigation available. But bearing in mind all the circumstances, we are not disposed to style this sentence in her case as unduly lenient such that this court should interfere. We think that, taking all the circumstances into account, the judge had a basis for doing what he did. In the circumstances of this case, which stands as no kind of precedent, we refuse both applications.

34. For the avoidance of doubt, Mr Stott, because I know you keep records of these things, we have not granted leave but then dismissed the appeals, we have refused the applications and refused leave.

35. MR STOTT: I understand.

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

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