

Neutral Citation Number: [2014] EWCA Crim 581

No: 2013/6480/A6

IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
Strand
London, WC2A 2LL

Friday, 14 March 2014

B e f o r e:

LADY JUSTICE SHARP DBE

MR JUSTICE HOLROYDE

HIS HONOUR JUDGE LAKIN
(Sitting as a Judge of the CACD)

R E G I N A

v

DENNIS OBASI

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Mr A Hurst appeared on behalf of the **Applicant**

Mr E Renvoize appeared on behalf of the **Crown**

J U D G M E N T
(Approved)

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1. JUDGE LAKIN: This application for leave to appeal against sentence has been referred to the full court by the Registrar.
2. On 4th December 2013 this applicant, whose date of birth is 22nd August 1995, was sentenced at the Crown Court in Peterborough for two separate sets of offences by His Honour Judge Madge. The details are:

S2013023 The Peterborough matters

3. On 19th August 2013, having pleaded guilty before magistrates, the applicant was committed for sentence pursuant to section 3 of the Powers of Criminal Courts (Sentencing) Act 2000 in respect of an offence of possession of crack cocaine, a controlled drug of class A, with intent to supply, contrary to section 5(3) of the Misuse of Drugs Act 1971 and a similar offence in relation to diamorphine. He was also committed for sentence pursuant to section 6 of the 2000 Act in respect of an offence of possession of cannabis, a controlled drug of class B, contrary to section 5(2) of the Misuse of Drugs Act 1971 and an offence of obstruction of a police officer contrary to section 89(2) of the Police Act 1996.

S20130291 The Norwich matters

4. On 4th November 2013, having pleaded guilty before magistrates, the applicant was committed for sentence pursuant to section 3 of the 2000 Act in respect of an offence of possession of diamorphine, a controlled drug of class A, with intent to supply, contrary to section 5(3) of the Misuse of Drugs Act 1971 and a similar offence in relation to cocaine.
5. So far as the Peterborough matters are concerned, the applicant was sentenced to two years' detention concurrently for the two offences of possession of crack cocaine and diamorphine with intent to supply, with no separate penalty for the possession of cannabis and one month's detention consecutively for obstruction of a police officer. So far as the Norwich matters are concerned, the applicant was sentenced to one year's detention concurrently for the two offences of possession of diamorphine and of cocaine with intent to supply, those sentences to run consecutively to those passed in respect of the Peterborough matters. The total was therefore three years and one month's detention.
6. The Registrar has drawn the following points to the attention of the court:

"The applicant's 18th birthday was on 22nd August 2013 therefore he was aged 17 at the date of the commission of the offences and was also aged 17 at the date of conviction in respect of the Peterborough offences.

An offender who has passed from one relevant age group to another between committal and his appearance before the Crown Court should be sentenced as a member of the appropriate age group; and it is his age at the date of conviction that matters for this purpose (R v Robson [2007] 1 Cr.App.R (S) 54.)

In these circumstances the applicant should have been sentenced on the Peterborough matters to a detention and training order and not to detention in a young offender institution. Whilst the judge did not impose a sentence which exceeded the permitted maximum for a detention and training order (24 months) this Court will need to correct the error as a matter of record.

The judge correctly imposed detention in a young offender institution for the Norwich matters as the applicant pleaded guilty after turning 18.

The Court may also wish to note that with respect to an offender who has crossed a relevant age threshold between the date of the offence and the date of conviction culpability is generally to be judged by reference to the offender's age at the time of committing the offence..."

7. Taking the cases chronologically, the facts are as follows.

The Norwich matters

8. A few days before 26th May 2013, a male known only as JJ asked Keith Davison if the applicant could stay with him at his address. He agreed. The applicant arrived and he allowed him to stay in his spare room. Davison stated that he got the impression that there was dealing in drugs going on. So on 25th May he called the police and indicated that he believed the applicant was dealing drugs in his house.
9. PC Jessop responded to the call and attended Davison's address. He searched the bedroom where the applicant was in and found four plastic wraps of heroin and cocaine in a jacket pocket valued at between £30 and £60. There was also a small £10 street wrap of heroin.
10. Mobile telephones were also seized during that search and there were a number of text messages consistent with street dealing. Officers also found pieces of paper which had mobile telephones numbers and names on, suggested to be dealer names. The applicant was interviewed and indicated via a prepared statement that he had come from London on 23rd May in order to see his girlfriend. He said the mobile telephones which were taken were his, but he had nothing to do with drug dealing. He then went on to give a no comment interview.

The Peterborough matters

11. At about 11.30 am on 15th August 2013, PC Watson was on duty when his attention was drawn towards the applicant who was attempting to gain access to the communal door of a block of flats. He became very suspicious, as it was an area well-known to be frequented by drug dealers. The applicant got into the rear of a black cab and PC Watson followed in a marked police vehicle. He stopped the applicant and indicated that he was going to carry out a section 23 Misuse of Drugs Act search. The applicant volunteered that he had a small amount of cannabis on him. However, PC Watson believed that there were further drugs on his person. He was arrested and taken to the police station. At the police station a strip search was carried out and a plastic wrap

with a number of wraps of class A drugs were found near his anus. Given the location, the officer believed that there would be further drugs secreted and at about 8 pm 27 wraps of crack cocaine were passed by the applicant. The total amount of drugs recovered from the applicant was 18 wraps of heroin, 48 wraps of crack cocaine and a very small amount of cannabis. The drugs had a total street value estimated to be in the region of £662.

12. In interview, he gave a prepared statement suggesting that he was a heroin user who had recently found all the drugs. He said he kept them for his own personal use and had secreted them where he had because he was concerned about being caught with them. He said that he was not thinking and that he had panicked. He then made no comment to all questions asked of him.
13. When passing sentence, the judge said that he was giving the applicant maximum credit for his guilty plea at the earliest opportunity. He remarked that the applicant was aged 18 at sentence but was 17 at the time of the offences. He had no previous convictions, but had a caution for possession of cannabis. The judge indicated that the court must follow the Sentencing Council's Definitive Guideline and was satisfied that this was category 3 offending because it was street dealing and the applicant had a significant role. He operated for financial gain and was aware and had an understanding of the scale of the operation. The starting point after trial for one offence was accordingly four-and-a-half years with a range from three-and-a-half to seven years. There were a number of aggravating factors: The applicant travelled from London to East Anglia to sell drugs, the swallowing of the drugs demonstrated a degree of professionalism; the Peterborough offences were committed whilst the Norwich offences were pending. The judge concluded that the only real mitigation was the applicant's age and his guilty pleas. A suspended sentence would not reflect the gravity of his offending. His culpability and the harm caused were so serious that there was no option but to impose a custodial sentence. The total sentence was three years and one month's detention in a young offender institution.
14. The very helpful grounds of appeal against sentence, presented both in written form and orally this morning by Mr Hurst, can be summarised as follows:
 1. The incorrect role was ascribed to the applicant, thus placing his starting point too high at the outset. This morning Mr Hurst argues that the applicant's role should have been placed as a lesser one because he was simply dealing at the dirty end.
 2. Insufficient account was taken of the applicant's age and the age at offending.
 3. The consecutive term adding up to three years and one month's detention in a young offender institution is manifestly excessive for a young man of hitherto good character.
15. The respondents have submitted grounds in opposition to this application. For present purposes there is no need to rehearse the detail. In short the respondent contends that the judge properly imposed the sentence that he did.

16. Offences involving the supply of class A drugs must be taken very seriously. As the judge so rightly remarked when passing sentence, class A drugs wreck lives and are a major generator of crime. Courts generally impose custodial sentences of some length for such offences.
17. In our judgment, it is highly relevant that the applicant travelled from London to East Anglia to sell drugs. This illustrates a degree of sophistication on his part. The Peterborough offences were committed whilst the Norwich offences were pending. This, coupled with the large quantity of drugs recovered from the applicant, clearly demonstrate that he was very actively involved in street dealing. The secretion and swallowing of the drugs in Peterborough indicates a degree of professionalism. In the circumstances, the judge was entitled to conclude, and rightly concluded, that the applicant had played a significant role. He was motivated by financial gain and was aware and understood the scale of the operation in which he was involved. The starting point in the guideline for a single category 3 offence involving a significant role is four-and-a-half years' custody. The judge substantially reduced this in relation to both sets of offences because of the applicant's age. In reaching his decision, although he did not expressly say so, it is quite clear that the judge had well in mind the Sentencing Council's Guide on the Over-arching Principles of Sentencing Youths and in particular paragraph 11.16 of that guide. The judge was entirely right to impose consecutive sentences for the Norwich offences. They occurred on a separate and distinct occasion.
18. The applicant's only real mitigation, as the sentencing judge observed, apart from his age, was his plea of guilty. The judge gave a full one-third discount. The total sentence of three years and one month custody was not manifestly excessive. On the contrary, although severe, it was entirely justified and took proper account of age, lack of previous offending and totality. This application must fail on that basis.
19. However, the judge wrongly passed a sentence of detention for the Peterborough matters and so this application for leave to appeal against sentence is granted in order that the error may be rectified. In relation to the Peterborough matters, we quash the concurrent sentences of two years' detention for possession of crack cocaine and of diamorphine with intent to supply and we substitute concurrent sentences of a two years detention and training order. We also quash the sentence of one month's detention for the offence of obstructing a police officer and impose no separate penalty. This is only because it is not permissible to pass a detention and training order of one month's duration. In relation to the Norwich matters, the sentence is unaltered and will run consecutively as ordered by the judge. The total sentence is therefore one of three years' custody, expressed as we have indicated. This appeal against sentence is granted to that limited extent.

Later:

20. MR HURST: My Lady, I am sorry to take the court's time. I am grateful to my learned friend. Outside we had a short concern and we would ask for the court's indulgence.
21. LADY JUSTICE SHARP: Yes, please do.

22. MR HURST: It is this. In relation to the Peterborough matters, which have now been made subject to a detention and training order for 24 months, of course that is in fact a maximum allowed under the statutory provisions for a detention and training order and ordinarily therefore the principle would be that that maximum would be discounted down to reflect credit for guilty plea. With that in mind therefore, although I appreciate that it is set out helpfully in Archbold at Chapter 5-607, there can be, I have to accept there can be proper grounds for withholding the discount, but in fairness to the appellant, of course I am sure the court would agree it would be appropriate if that is to be the case then that should be identified for him so he understands.
23. JUDGE LAKIN: The judge dealt with the matter globally, did he not? The offences of possession of a controlled drug of class A with intent carry a maximum sentence of life imprisonment. That being so, had the judge directed his mind to this in the way that he should, he could have considered detention under section 91.
24. MR HURST: I accept that entirely my Lord. Of course I appreciated that there were potentially many options open to the learned judge on that occasion.
25. JUDGE LAKIN: It is quite permissible, is it not, when a judge looks at section 91 to decide that the sentence can be properly discounted for a plea and in those circumstances to impose the maximum term of a detention and training order rather than a term under section 91.
26. MR HURST: My Lord, I do not dispute that at all.
27. JUDGE LAKIN: In those circumstances is there anything wrong with the way in which this court has reflected the intention of the judge? The appellant has been given, has he not, the appropriate credit?
28. MR HURST: My Lord, he had been given appropriate credit as the judge approached the sentence not imposing a detention and training order. I accept that entirely as he imposed a sentence of detention in a young offender institution, but now it seems to us at the Bar, as I say I am grateful to my learned friend Mr Renvoize as well, that if the sentence is to be corrected to provide the lawful sentence of 24 months the appellant certainly should understand why in those circumstances he has not received the credit for one-third from there. That is simply the point.
29. LADY JUSTICE SHARP: Thank you very much. We will rise.

(Short adjournment)
30. LADY JUSTICE SHARP: Thank you for raising the matter. My Lord, Judge Lakin will explain in a few sentences the view of the court.
31. JUDGE LAKIN: The sentence imposed by this court reflects the sentencing judge's decision. The decision of the sentencing judge allowed, correctly, not only for the applicant's age but also for his guilty plea. It therefore follows that the sentence as imposed by this court exactly reflects those same points. There is therefore no proper reason to alter the decision which this court announced a short while ago.

32. LADY JUSTICE SHARP: In short terms it is the reformulation which reflects the appropriate credit for plea.
33. MR HURST: I am grateful.