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Neutral Citation Number: [2023] EWCA Crim 1111
IN THE COURT OF APPEAL
CRIMINAL DIVISION

Case No: 2023/01716/A1

Royal Courts of Justice
The Strand
London
WC2A 2LL

Tuesday 19th September 2023

**B e f o r e:**

**LORD JUSTICE SINGH**

**MRS JUSTICE COCKERILL DBE**

**MR JUSTICE HILLIARD**

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**R E X**

**- v -**

**ANTHONY GRIFFIN**

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**Mr J Allman** appeared on behalf of the Appellant

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**A P P R O V E D J U D G M E N T**

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Tuesday 19th September 2023

**LORD JUSTICE SINGH:** I shall ask Mrs Justice Cockerill to give the judgment of the court.

**MRS JUSTICE COCKERILL:**

1. On 13th January 2023, in the Crown Court at Preston, the appellant pleaded guilty to four counts of conspiracy to supply Class A drugs (cocaine and heroin).

2. On 28th April 2023, in the same Crown Court, the appellant was sentenced by Mr Recorder Boyle to 22 months' imprisonment.

3. He now appeals against sentence by leave of the single judge on the sole issue of whether that sentence should have been suspended.

4. The facts of the offending may be summarised shortly. The index offending arose out of a police stop of a BMW vehicle containing the appellant and two acquaintances: Sean Burton and Tracie Barnes, on 25th July 2022 on the A590 road to Witherslack in Cumbria. The appellant was the driver of the vehicle. There were a number of wraps of heroin throughout the car and a smaller number of wraps of cocaine. The total amount of drugs seized was 54.24 grams, with a street value of between £3,000 and £6,000.

5. The appellant and his co-accused were arrested by the police and interviewed on 26th July 2022. During his interview the appellant gave a prepared statement in which he denied all knowledge of the drugs in the vehicle and suggested that Sean Burton and Tracie Barnes had been paying him to drive them to Barrow for petrol money, plus £50. Mobile phone analysis subsequently showed that such a journey had not been a one-off for the

group and that there had been six such journeys from the Bolton area to the Barrow area, all six of which had included the appellant.

6. The Crown's case was that this had been a drugs line being run by Sean Burton, who required transport to the Barrow area to sell his drugs there.

7. The appellant pleaded guilty. His basis of plea was that;

    a. He was never alone in the car, being simply the driver;
    b. That at first he did not realise that anything was wrong, although the journey to Merseyside seemed odd and he then changed his opinion;
    c. That he continued to drive after that, making four journeys to Barrow for which he was paid £50 to £100 per journey and;
    d. That he never saw, nor was asked to hold any drugs.

8. It was common ground that this was street dealing: less culpability, category 3 harm.

9. The appellant's position was unusual. He had one fairly stale, completely unrelated conviction, but he had unusually strong mitigation. Born with cerebral palsy, he had proceeded to huge achievements in the form of no less than 38 paralympic medals, creating many sporting records, some of which still stand after 25 years. He had a long and responsible career with Her Majesty's Revenue and Customs. He has been an inspiration to many, in particular to school children and those with disabilities. He has received an honorary doctorate and a British Empire medal. The mitigation bundle overflows with positive references. In more recent years he suffered a stroke and he has limited hearing. He is also partial carer for his 16 year old son who lived with him at the time of the offence.

10. In addition, there were features of how he came to be involved in this offending which were of note. He was, it seems, infatuated with Miss Barnes, who was some years his junior. He had tried to assist her financially and in doing so had then got himself into financial difficulties.

11. Taking all of the mitigation into account, the Recorder concluded that the appropriate sentence was 30 months' imprisonment, reduced to 22 months for the guilty plea.

12. In terms of its length, the sentence is not said to be excessive. The appeal is all about the following passage in the sentencing remarks:

> “The only question really in your case is whether … I can, as urged by your counsel, suspend that sentence. I have not found that an easy question to resolve. I have been referred to the imposition of custodial and community sentences guideline … There is strong personal mitigation in your case. There is a realistic prospect of rehabilitation. If I impose an immediate custodial sentence, I have no doubt that that would be damaging to your 16 year old son, but he is 16 and he does have his mother to go to … There is no history of poor compliance with court orders and I am not convinced that you present a risk or danger to the public. The crunch question, therefore, is whether appropriate punishment can only be achieved by immediate custody.
>
> I am afraid I have concluded, given that you signed up to an involvement in this conspiracy, which included the supply of heroin, that appropriate punishment can only be achieved by an immediate custodial sentence. So, I am going to impose a sentence of 22 months’ custody in your case, of which you will serve half…”

13. For the appellant it is contended that the sentence of imprisonment should and could have been suspended in the light of the appellant's many mitigating features and his guilty plea. It is pointed out that each of the factors indicating that it may be appropriate to suspend a sentence were present and that the only factor indicating that it would not be appropriate

to suspend the sentence was that "*appropriate punishment can only be achieved by immediate custody*". That was based on the fact that the appellant had willingly entered into an agreement to supply Class A drugs which, it is said, is a factor generic to all offences of the type in question.

14. The single judge granted leave in this case on the basis that it might be said that insufficient weight had been given to the question of vulnerability and how this might have impaired the appellant's ability to exercise appropriate judgment. The single judge also picked up on the suggestions in the pre-sentence report of anxiety and depression and therefore ordered a psychiatric report. That report, however, found no basis for interference. It concluded that there was no mental illness and that the appellant's mental state could not have impaired his ability to exercise appropriate judgment, make rational choices and/or understand the nature and consequences of his actions.

15. Before us this morning Mr Allman, who appeared below (and for whose clear submissions we are most grateful), has emphasised the findings as to vulnerability to manipulation on the part of the appellant and the limited weight which he would say was given to them. He submitted that the court would be entitled to conclude that the appellant was a man with significant emotional vulnerabilities, which are reflected in the pre-sentence report. Mr Allman has again emphasised the huge range of strong mitigating material available in this case. He argues that, bearing that in mind, the Recorder's approach "*throws the net too wide*", in that effectively it says that there can never be a suspended sentence in an offence of this type and as such, he says, the Recorder was in error.

16. Although we bear well in mind that an argument of this sort faces a high bar, we have ultimately been persuaded by Mr Allman's arguments before us. The question of whether

or not to suspend a sentence in a case of this sort involves a balancing exercise. While it is clear to us that the Recorder thought carefully about this, and also alluded to all of the various inputs for that exercise, we are persuaded in the end that the conclusion to which he came was wrong. We quite accept that in many, and possibly most cases, the simple fact of such offending might well, regardless of other impacts, justify the conclusion that a sentence cannot be suspended. However, we are persuaded that in this case there was exceptionally a very unusual weight of mitigating factors to put against that very serious single factor. That taken together with the engagement of literally all the other factors in favour of suspension, produces such a heavy weight in favour of suspension that we are persuaded that the decision that the sentence could not be suspended was one which resulted in a sentence which was manifestly excessive and contrary to principle.

17. In the circumstances, we allow this appeal. We quash the sentence imposed and substitute for it a sentence of 22 months' imprisonment, suspended for two years.

18. In the usual way, if in that period of time the appellant were to commit any offence, he will be brought back to court and it is likely that the custodial sentence would be brought into operation.

19. So far as concerns other orders, in the light of the fact that the appellant has already spent a considerable period in custody (roughly the equivalent of a sentence of ten months' imprisonment), we have come to the conclusion that it is unnecessary to impose any other orders by way of supervision or community orders.

20. Accordingly, the sentence which we impose is simply 22 months' imprisonment, suspended for two years.

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