IN THE COURT OF APPEAL
CRIMINAL DIVISION

NCN [2023] EWCA Crim 935

CASE NO 202203359/A3

Royal Courts of Justice
Strand
London
WC2A 2LL

Thursday 13 July 2023

Before:

LORD JUSTICE WILLIAM DAVIS

MR JUSTICE JACOBS

RECORDER OF NEWCASTLE
(HIS HONOUR JUDGE SLOAN KC)
(Sitting as a Judge of the CACD)

REX

V

LUKE DANIEL TIMLIN

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MR J GOODE appeared on behalf of the Applicant.
MR N BERRY appeared on behalf of the Crown.

J U D G M E N T
Approved

MR JUSTICE JACOBS:

1. On 11 April 2022 in the Crown Court at Warwick, before HHJ Potter and a jury, the applicant was convicted of an offence of conspiracy to supply controlled drugs contrary to section 1(1) of the Criminal Law Act 1977. On 4 November 2022, before the same judge, the applicant, who was then aged 31, was sentenced to imprisonment for 15 years. Since the applicant had previously been convicted of two relevant drugs offences the judge was obliged to impose an appropriate custodial sentence of 7 years, unless there were particular circumstances that made this unjust. Not least because a significant custodial term was inevitable, the judge did not find it necessary to have the benefit of a pre-sentence report on the applicant and neither do we. Leave to appeal against sentence was refused by the single judge and the applicant now renews that application.

2. The applicant's conviction arose from a conspiracy to supply controlled drugs of Class A and Class B that were couriered from Liverpool and the Bickerstaffe area into and around Warwickshire, the West Midlands, Nottinghamshire and Northamptonshire by an organised crime group. There were a large number of defendants who either pleaded guilty or, like the applicant, were convicted after trial. They included three defendants whose sentences feature in the applicant's grounds of appeal on the bases of a disparity argument. Christopher Reeve, who was head of the organisation and who was orchestrating its supply to a number of distributors based in the Midlands, was one such defendant. He pleaded guilty to conspiracy and was also sentenced for firearms offences. The judge's sentence for Reeve would have been 20 years after a trial. That sentence reflected the firearms offences, and it was reduced by 15 per cent by reason of credit for plea. The evidence at trial showed that the applicant had very significant contact with Reeve. Secondly, Garvey Thompson was head of a strand of the organisation and he controlled a drugs supply line even though he was in prison. He had a significant criminal record but no previous drugs convictions. The judge's starting point for him, prior for credit for plea, was 16 years. The judge took into account various factors including that there had been a scaling up of the operation after Thompson's involvement had started to tail off. Thirdly, Tony Wilshire was described by the judge as the "eyes and ears of Thompson". He was supplying and supervising the Leamington operation that was run by Thompson. He had pleaded guilty at the first opportunity and, in the judge's view, had shown genuine remorse and there were other points of mitigation in his favour. Unlike Reeve and Thompson, he had not contested aspects of the prosecution case at a Newton hearing. He was a person of effectively good character. The judge's starting point for him, prior to credit for plea, was a sentence of 12 years at the top of the range for what was a category 1 significant role case under the Guideline.

3. By the time that the judge came to sentence the applicant, the judge had presided over two trials and a Newton hearing in relation to various defendants including Reeve and Thompson. The judge was occupied in sentencing during the week of 30 October 2022, giving his reasons on the Newton hearing on the Tuesday and Wednesday, sentencing various defendants on the Wednesday, sentencing Wilshire on the Thursday and then the applicant and five other defendants on the Friday. We have been provided with transcripts of his sentencing remarks on those various occasions and they are thorough, careful and very well expressed.

4. In relation to the applicant, the judge said that there was no doubt that this was a category 1 case under the Guideline. He had previously found that the quantities of drugs were well in excess of the indicative quantity in the Guideline for a category 1 offence. He also had no doubt that the applicant's role was a significant one. In that connection, he referred to the applicant performing a management function in respect of certainly an address at Tachbrook Road in Leamington. In fact, there was no dispute, and there is still no dispute, that the applicant fell within category 1 significant role under the Guideline, with a starting point of 10 years and a range of 9 to 12.

5. Earlier in his sentencing remarks the judge had said that he was quite satisfied from what he heard at trial, and the detailed consideration that he had been given to the call logs and the mobile phones at the trial, that the applicant was using and was supervising the Tachbrook Road address which was regularly supplying drug users in Leamington. The judge said that his was not simply an operation that the applicant was operating himself, selling drugs to other people, but he was also involved in a managerial aspect as well. That reflected the prosecution case in its sentencing note (for the purposes of the sentencing hearing), which had said that the applicant was running his own drugs line.

6. When it came to deciding on the appropriate sentence, the judge considered that a sentence in excess of the top of the range should be imposed. He referred to a number of factors. There was the length of time of the applicant's involvement: this was a period of 10 months, and the judge had previously noted that the applicant was involved right at the start of the conspiracy. It was not an isolated offence. There was consistent involvement over the course of almost a year, and the judge had previously noted there were some 900 recorded contacts between the applicant and Reeve, who was his friend, and that the applicant had been party to more than 100 supply trips carried out by runners in the course of the conspiracy. The judge had said that it was clear that there were multiple deliveries of drugs to the applicant. The judge also took into account the fact that the quantities were well in excess of 5 kilograms, being the indicative quantity under the Guideline, and he also referred to what he described as two previous highly relevant convictions for supplying cocaine in the past and the fact that the applicant was on licence for the very type of offence which he was choosing to commit. It was because of those matters that the judge arrived at a 15-year sentence. We can see no basis for an argument that the judge's analysis was in any way flawed or that the sentence imposed on the applicant was manifestly excessive. It seems to us to be entirely justified by the facts to which the judge referred.

7. On behalf of the applicant, three points were taken in the grounds of appeal, and they were addressed in detail by the single judge, with whose observations we agree. The grounds of appeal have been developed this morning, particularly the first point which was expanded in the Perfected Grounds, submitted by Mr Goode on behalf of the applicant.

8. We will deal with the points briefly. First, it is said that the judge was wrong to conclude on the evidence that the applicant had a management function in relation to Tachbrook Road. In our view, the judge, who heard the evidence at two trials and was then engaged in the sentencing exercise over the course of a week, was in the best possible position to decide this. However, even if the applicant was not engaged in a management function at that particular property, it makes no difference to the analysis. The Guideline refers to

operational or management function within a chain as being a feature of significant role. This was a matter therefore which went principally to whether or not the applicant had a significant role. It was, however, conceded below (rightly) and is again conceded today, that he did. There was ample basis for that conclusion in the light of the applicant's expectation of significant financial reward irrespective of management function. However, in view of the quantities involved, the frequency of the contact with Reeve, who was the head of operation, the number of deliveries, the applicant's visits to Tachbrook Road and of course the jury's rejection of the applicant's defence, there was ample material to enable the judge to conclude that the applicant had an operational or management function.

9. The second point concerns the applicant's health problems. There was no medical evidence before the judge as to these alleged problems. Moreover, health problems are not a passport to a lower sentence. The Guideline itself does refer to health issues in connection with this being a mitigating factor but says:

> "However, such a condition, even when it is difficult to treat in prison, will not automatically entitle the offender to a lesser sentence than would otherwise be appropriate.
>
> There will always be a need to balance issues personal to an offender against the gravity of the offending (including the harm done to victims), and the public interest in imposing appropriate punishment for serious offending."

10. There is nothing to suggest that the applicant's health issues cannot be treated in prison and any necessary operation can be performed whilst he is there. Even if that were wrong, however, there is in this case a strong public interest in imposing appropriate punishment in view of the gravity of the offending.

11. Thirdly, Mr Goode relies upon an argument based on disparity. It suffices to say that there is nothing in this point. The single judge said this:

> "Disparity is rarely a successful ground of appeal, and a high test has to be met. In this case there were a number of different defendants, who played various roles and for whom there were discrete considerations. Even if it could sustainably be suggested that other defendants were treated more leniently than the applicant that would not be a reason to reduce an otherwise appropriate sentence."

12. We agree. In fact, we do not consider that it could be sustainably suggested that other defendants were treated more leniently in a way that could give rise to a complaint. It is not necessary for us to go through the detail of the position in relation to each of the other defendants, but we are satisfied that there is nothing in the disparity point. Accordingly, the renewed application for leave to appeal is dismissed.

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

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