Neutral Citation Number: [2018] EWCA 2636 (Crim)
2018/01866/A3
IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
The Strand
London
WC2A 2LL

Friday 2nd November 2018

B e f o r e:

LORD JUSTICE GROSS

MR JUSTICE MARTIN SPENCER

and

HIS HONOUR JUDGE KATZ QC
(Sitting as a Judge of the Court of Appeal Criminal Division)

R E G I N A

- v -

JOHN DAVID LEWIS DUNBAR

Computer Aided Transcript of Epiq Europe Ltd, 165 Fleet Street, London EC4A 2DY
Tel No: 020 7404 1400; Email: rcj@epiqglobal.co.uk (Official Shorthand Writers to the Court)

Mr P Dentith (Solicitor Advocate) appeared on behalf of the Appellant

---

J U D G M E N T
(Approved)

Friday 2nd November 2018

LORD JUSTICE GROSS: I shall ask Mr Justice Martin Spencer to give the judgment of the court.

MR JUSTICE MARTIN SPENCER:

1. With leave of the single judge the appellant appeals against the total sentence of five years' imprisonment imposed for various offences arising out of his arrest on 8th January 2018 and then, following his escape, his re-arrest on 17th January 2018.

2. The single ground of appeal, both in writing and through Mr Dentith, who has said all that can possibly be said for the appellant this morning, is that the consecutive sentences imposed on counts 1, 3 and 6 on the indictment had the effect that the total sentence was too long and offends against the principle of totality.

3. The facts of these matters are these. On 8th January 2018 the appellant was subject to a police drugs search whilst in Victoria Park, Paignton. He was found to have in his possession, with intent to supply, quantities of cannabis and cocaine. He also had on him the sum of £5,176.52 in cash and three knives. He was arrested and led towards a police vehicle. However, before he could be placed in the vehicle, he broke free and ran off. He escaped and the police were unable to re-apprehend him at that stage.

4. Nine days later, on 17th January 2018, the police attended an address at 19 Banner Court, Paignton. Whilst they were at that address the appellant arrived. He was immediately arrested. He was found to be in possession of 32 small bags of cannabis.

5. Examination of a mobile telephone seized from his showed that he had been engaged in the supply of cocaine and cannabis.

6. Subsequently, in an interview with a probation officer for the preparation of a pre-sentence report, the appellant revealed that he had been selling significant amounts of drugs, including several grams of cocaine and up to half a kilo of cannabis, a week, and that he had been engaged in the supply of drugs for approximately a year. He accepted that he carried knives for self-defence in case he was threatened by customers or rivals.

7. On 9th April 2018, in the Crown Court at Exeter before His Honour Judge Rose, the appellant pleaded guilty to all six counts on the indictment. Count 1 related to possession of a Class A controlled drug (cocaine) with intent to supply. Count 2 charged him with possession of a controlled drug of Class B (cannabis) also with intent to supply. These offences related to the drugs found on the appellant when he was arrested for the first time on 8th January 2018. For those offences he was sentenced to 40 months' imprisonment and eight months' imprisonment respectively, to run concurrently with each other.

8. Count 3 charged the appellant with having an article with a blade or point (the three knives in his possession on 8th January). For that offence he was sentenced to a consecutive term of eight months' imprisonment. That made a total of 48 months' imprisonment (four years) for those offences.

9. Count 4 charged possession of criminal property (the sum of just over £5,000 found on him). For that he was sentenced to a concurrent term of six month's imprisonment.

10. Count 5 charged escape, for which he was sentenced to a further consecutive term of four months' imprisonment.

11. Finally, count 6 charged possessing a controlled drug of Class B with intent to supply (the 32 bags of cannabis in his possession when he was arrested on 17th January 2018). For that offence the appellant was sentenced to a consecutive term of eight months' imprisonment. The total sentence was one of 60 months' imprisonment (five years).

12. The appellant was born on 17th July 1993 and is now aged 25. He has 24 previous appearances before the courts relating to 43 offences, committed between 2009 and 2014. The majority of those convictions were for theft and kindred offences. In 2014 he was sentenced to 28 months' detention in a young offender institution for dwelling-house burglary and fraud, and he was ordered to serve a consecutive sentence of twelve months' detention for a breach of a suspended sentence order.

13. A pre-sentence report indicated that the motivation for the offences was financial gain. The appellant told the probation officer that prior to his arrest he was consuming in the region of eight or nine grams of cannabis per day and that drug use was a significant factor linked to his offending. He had been in contact with mental health professionals since about the age of 12. He had difficulties with severe anxiety and depression. He has been diagnosed with a personality disorder and a mild learning disability. He was assessed by the Probation Service as posing a high risk of reconviction and a moderate risk of harm to the public.

14. Sentencing the appellant, His Honour Judge Rose started with count 1 (possession of a Class A drug), which he correctly considered to be the most serious offence. Applying the sentencing guidelines, he took a starting point of four and a half years and increased it to five years by reference to the aggravating factors, namely the size, scale and longevity of the appellant's dealing, his substantial list of previous convictions and his comparatively recent release from a sentence of custody.

15. It is to be noted that the aggravating factors relied on did not include the possession of the knives. For that reason the uplift for the aggravating factors, from four and a half years to five years, was a relatively modest one.

16. The sentence of five years' detention was then reduced by one-third so as to give credit for the appellant's guilty plea, which led to the sentence of 40 months' detention.

17. On count 2 (possession of the cannabis with intent to supply – a different drug and representing separate offending) a consecutive sentence could have been imposed. However, the learned sentencing judge stated that: "Taking into account totality, and the effects of some of the other sentences that I am going to impose" the sentence of eight months' detention would be ordered to run concurrently.

18. However, in relation to count 3 (possession of the three knives), the learned judge said that this had to attract a consecutive sentence. He referred, rightly, to the dangers had had been highlighted as to the risks and outcomes when people carry knives – especially those who carry them with a positive view that they may end up becoming involved in fights, which was the appellant's explanation for having the knives on him in a public place. The sentence of eight months' imprisonment, after giving credit for the guilty plea, was ordered to run consecutively.

19. On count 4 (possession of the money), a concurrent term of six months' detention was

imposed.
20. In relation to count 5 (escape), the learned judge said:

> "There must be a consecutive sentence as a matter of principle, bearing in mind your action is entirely outside any other consideration of your offending in this case".

He imposed a relatively short sentence of four months' detention, but ordered it to run consecutively.

21. Leave to appeal against this sentence was refused by the single judge and has not been renewed on this appeal.

22. Finally, count 6 related to the second offence of possession of cannabis with intent to supply. That arose out of the appellant's arrest on 17th January 2018. The learned judge commented that it was "breathtakingly arrogant behaviour" on the part of the appellant to carry on offending in circumstances where he had just escaped from the police and was unlawfully at large. In those circumstances, for an entirely separate incident, there had to be a consecutive sentence. He therefore ordered the sentence of eight months' detention on this count to be served consecutively to the other sentences.

23. The appellant appeals on the basis that the overall sentence of five years' detention was manifestly excessive. This is the equivalent of a sentence of seven and a half years, before discount for the guilty plea. It is submitted on behalf of the appellant that this is simply too long. It is argued that there has been insufficient regard to the principle of totality and that the sentences in relation to counts 3 and 6 should either have been ordered to be served concurrently, or, alternatively, should have been significantly reduced by reference to totality.

24. In our judgment the learned sentencing judge was right to regard count 3 as so serious an aggravating feature of the possession of drugs as to merit a separate and consecutive sentence. In *R v Povey and Others* [2008] EWCA Crim 1261, this court emphasised the serious view which is to be taken of those found to be in possession of knives or other offensive weapons in a public place without reasonable excuse. In relation to one of the appellants in that case, Clifton Pownall, where he had been sentenced to two and a half years' imprisonment for burglary and six months for two offences of possessing Class A controlled drugs, a consecutive sentence of nine months' imprisonment was imposed for being in possession of a knife. There, as here, it was submitted that the sentence of nine months' imprisonment for the offence of having a bladed article offence, which was imposed consecutively to the other sentences, produced a total term of imprisonment that offended against the totality principle. In that case, leave to appeal had been refused by the single judge, who had observed as follows:

> "It was not inconsistent with authority that the sentence for possessing a bladed instrument was made consecutive to the other sentences. The term imposed for that offence was not manifestly excessive. The question is whether the totality of your sentence is manifestly excessive for your overall offending. In my view, it is not. Your overall sentence is within the range of acceptable sentences for your offending."

The full court agreed with that observation and said that there was nothing either manifestly excessive or wrong in principle with the imposition of a consecutive sentence for the possession of a bladed article.

25. Similarly, in the instant case the learned judge's approach was, in our judgment, correct in principle in relation to count 3.

26. So far as count 6 is concerned, in our judgment the imposition of a consecutive sentence was appropriate for the reasons articulated by the learned judge. This was an entirely separate incident. If not committed on bail, it was committed in circumstances analogous to being on bail, where the appellant had escaped from lawful custody and was unlawfully at large. For the appellant to have compounded the offence of escape by committing further serious drugs offences could only properly be recognised by the imposition of a consecutive sentence.

27. Finally, we look at the sentence as a whole in relation to the offending as a whole and consider whether the overall sentence offends against the principle of totality. It is clear from his sentencing remarks that His Honour Judge Rose was fully alive to this principle. He referred to it no fewer than three times during his sentencing remarks. On the third of those occasions he said:

> "… five years' imprisonment, and that is the totality of the imposition in your case. In reaching that figure, I have already said it but I will say it again, I do take account of totality and the other matters that have been urged upon me by Mr Dentith on your behalf."

28. In our view, the learned judge's approach to the sentencing exercise in this case was wholly in accordance with principle. Nor can we say that he was wrong in his approach to the totality principle. On the contrary, we agree with that approach. We do not consider that the sentence was manifestly excessive for the offences to which the appellant pleaded guilty.

29. Accordingly, and for those reasons, this appeal against sentence is dismissed.
