IN THE COURT OF APPEAL
CRIMINAL DIVISION

Case No: 2022/01475/A4

NCN: [2022] EWCA Crim 1628

Royal Courts of Justice
The Strand
London
WC2A 2LL

Thursday 1st Decmber 2022

B e f o r e:

THE LORD CHIEF JUSTICE OF ENGLAND AND WALES
(Lord Burnett of Maldon)

MRS JUSTICE McGOWAN DBE

MR JUSTICE JACOBS

R E X

- v –

DAVID WILLIAM RYAN

Computer Aided Transcript of Epiq Europe Ltd,
Lower Ground, 18-22 Furnival Street, London EC4A 1JS
Tel No: 020 7404 1400; Email: rcj@epiqglobal.co.uk (Official Shorthand Writers to the Court)

Mr R Vardon appeared on behalf of the Appellant

J U D G M E N T

Thursday 1st December 2022

THE LORD CHIEF JUSTICE: I shall ask Mr Justice Jacobs to give the judgment of the court.

MR JUSTICE JACOBS:

1. On 8th March 2022, in the Crown Court at Manchester, the appellant, David Ryan, pleaded guilty to three counts on an indictment: dangerous driving (count 1), assault on an emergency worker (count 2) and possession of a Class A drug (cocaine) with intent to supply (count 4). Another charge was ordered to lie on the file.

2. On 6th May 2022, in the Crown Court at Manchester, Ms Recorder Hudson sentenced the appellant to a total of 42 months' imprisonment. This comprised a sentence of 12 months for the offence of dangerous driving, which was ordered to run consecutively to a sentence of 30 months' imprisonment for the offence of possession of a Class A drug with intent to supply. For the assault on an emergency worker (count 2) the appellant was sentenced to a concurrent term of one month's imprisonment. He was also disqualified from driving for a period of 39 months.

3. The appellant now appeals against sentence with the leave of the single judge. The focus of the argument on the appeal is the sentence of 30 months' imprisonment for the possession of a Class A drug with intent to supply. We are grateful to Mr Vardon for his short, but clear submissions.

4. The circumstances of the offences were as follows. At about 8.30 am on Sunday 19th September 2021, a CCTV camera operator at the Manchester Fort retail park saw the appellant park his BMW car in the car park. The operator saw that the appellant appeared to

be smoking a pipe, using some white powder. The operator then thought he saw the appellant take a sawn- off shotgun from the rear of the car and put it down by the right hand side of the driver's seat. The operator called the police, but the appellant drove away. Armed police officers were deployed to try to locate the BMW car which the appellant was driving. The officers did not recover a firearm and the appellant was never charged with any firearm offence.

5. The first officers to see the BMW were in full uniform in a marked police Armed Response Unit vehicle. They saw the appellant's car parked in another car park. The officers parked their vehicle behind the BMW and approached the driver's side of the car. The appellant was the only person in the BMW. One of the officers shouted, "Armed police", drew his handgun and pointed it towards the appellant in the car. The appellant started to manoeuvre the BMW, so one of the officers broke the driver's window whilst the other continued to point his gun at the appellant and told him to stop. Both officers tried to take hold of the appellant by his shirt and upper body. The appellant pulled away from them and in so doing, pulled the officers' hands and arms inside the car through the broken glass of the window. One of the officers sustained cuts in the process, requiring five stitches to a cut to his hand. This was the subject matter of the assault charge. The appellant continued to manoeuvre the car and managed to get it into a position where he was able to drive towards the exit of the car park. He then drove straight into the police car before reversing and driving off at high speed.

6. Other officers were looking for him and they saw him. They tried to follow but, due to the speed and manner of the appellant's driving, they abandoned the chase in order to minimise the risk to other road users. A few minutes later, the car was seen to park up and the appellant set off on foot. He was followed by officers and arrested. He was found to be in possession of a crack cocaine smoking pipe, ten grams of crack cocaine and six grams of

heroin. An analysis of a blood sample taken from the appellant after his arrest showed that the level of cocaine in his blood was greater than twice the legal limit for driving.

7. The appellant's home address was then searched. Officers found just over 160 wraps of crack cocaine, as well as cannabis. The total street value of the cocaine was over £1,500. The weight of the cocaine was not, as has been suggested in some of the materials before us and the Recorder, 160 grams. The weight was in fact around 18 grams. In the appellant's car two mobile phones were found: they contained messages in which individuals were asking for drugs to be supplied to them.

8. In interview, the appellant made no comment, other than to say that he had not been in possession of a gun.

9. For the purposes of the sentencing hearing, the appellant lodged a written Basis of Plea, which was acceptable to the Crown. It stated that the cocaine had been bought in bulk by bank transfer, funded by a Universal Credit back payment; that the drugs were intended primarily for the appellant's own use (he had been a heavy drug user for many years); and that he would have supplied two friends, Lee and Charmaine, both of whom are drug users, who would also supply him.

10. The appellant, who was aged 41 at the time of sentence, had 24 previous convictions for 57 offences, spanning 2003 to 2022. These were mainly for theft and fraud, but also included one drug offence (the production of cannabis) in 2018, two offences against the person (affray and common assault in 2015), and convictions for driving whilst disqualified in 2004, and dangerous driving in 2008. At the time of the index offences, the appellant had been released under investigation for an offence of driving under the influence of drugs. He subsequently pleaded guilty to that offence and was sentenced to a conditional discharge and

disqualified from driving for 12 months.

11. The Recorder had the benefit of a pre-sentence report. The author's assessment was that a combination of substance misuse, impulsivity, poor decision making, and financial gain regarding the drugs offence, contributed towards the appellant's offending on this occasion. The appellant acknowledged to the author of the pre-sentence report that he had been using crack cocaine and heroin for the past 20 years. Whilst he had achieved short periods of abstinence, he always ended up relapsing, particularly when he was faced with stressful situations. He had previously been diagnosed with an emotionally unstable personality disorder, severe anxiety and depression, and at one point he had been sectioned under the Mental Health Act. He had self-medicated with drugs when he had been on long waiting lists for mental health services in the past. The author considered that the appellant posed a high risk of serious harm towards the public and acknowledged that the court could well impose a custodial sentence. In the event, the Recorder did impose such a sentence. There is no suggestion that she was wrong to do so. The only argument on appeal has been as to the length of the sentence.

12. In her sentencing remarks, the Recorder accepted that the appellant did not have a gun, albeit that the police believed that he may have had one. She accepted that the conduct of the officers may well have sent him into a panic. She referred to 160 wraps of cocaine, which she considered to be a huge quantity in the context of purchase for the appellant and his two friends. But she said that she would sentence him on the basis of plea which we have already described.

13. In relation to the offence of possession of Class A drug with intent to supply, which was the most serious offence, she said that it was a category 3 offence under the relevant guidelines and that the appellant had played a "significant role", but she accepted that it had

features of a "lesser role". She took into account "the very sad history" set out in the pre-sentence report, but noted the positive fact that the appellant had been abstinent during his eight months in custody. We have been told that that has remained the position since the time of sentence. The Recorder gave the appellant credit of 20 per cent for his guilty pleas, took into account totality, and, as we have said, imposed 30 months' imprisonment for the drug offence and a consecutive term of 12 months' imprisonment for the dangerous driving.

14. In his written submissions on behalf of the appellant, Mr Vardon submitted that the overall sentence of 42 months' imprisonment was too high. The focus of his oral submissions this morning has been on the offence of possession of a Class A drug with intent to supply. There is no suggestion that the Recorder's sentence in respect of the other matters could in any way be criticised.

15. The principal argument advanced was that, whilst this was a category 3 offence under the guideline, the appellant should – taking into account the basis of plea – have been sentenced on the basis that his was a "lesser role", rather than a "significant role". Mr Vardon also relied upon the mitigating factors, in particular the appellant's mental health, his lack of drug supply convictions, and his determined effort to remain abstinent whilst in prison.

16. We have considered those submissions. We take the view that Mr Vardon's submission that this was a category 3 "lesser role" is persuasive. Under the guidelines which were in effect at the time of sentence, category 3 included selling directly to users. This was what happened in the present case, albeit that in accordance with the basis of plea those sales were being made to the appellant's friends. The quantity of drugs involved (18 grams) would not qualify as category 3, which under the guideline is based upon 150 grams. Nevertheless, because this was an offence of supplying direct to users, as evidenced by various phone messages which were before the Recorder, it was indeed a category 3 offence.

17. The relevant starting point, and therefore the range for this category 3 offence, depends upon whether the appellant's role was "significant", as the Recorder considered to be the case, or "lesser". If it is a lesser role, then there is a starting point of three years' custody, and a range of two years to four years six months. The Recorder, as we have said, considered the appellant's role to be "significant", with elements of "lesser".

18. We consider that, viewing the matter in the round in the light of the basis of plea, this was a case which was within, or at least much closer to, a "lesser role" than a "significant role". We therefore approach the sentence on the basis that there should have been a starting point of three years' custody, prior to credit for the appellant's guilty plea.

19. In accordance with the guideline, the sentence should also have reflected the relatively low quantity of drugs which were found at the appellant's home. The quantity, as we have said, was 18 grams, well below the 150 grams which is the indicative quantity for category 3 under the guideline. A quantity of 18 grams cannot be regarded as huge, although we read the Recorder's sentencing remarks as making the fair point that it was huge in the context of personal use and supply to two friends.

20. Overall, since we consider that the categorisation here was lesser, or at least far closer to lesser than significant, we have concluded that the sentence on the drugs offence was manifestly excessive for a category 3 "lesser role" role. We propose, therefore, to reduce that sentence by six months. In making that reduction, we bear in mind that this offence is not to be considered in isolation, and that the dangerous driving offence was serious. Nevertheless, we consider that a reduction is warranted in this case.

21. It is then necessary to say something about two aspects of the disqualification from

driving. First, after a conviction for dangerous driving, a disqualification until an offender passes an extended driving test is obligatory, pursuant to section 36 of the Road Traffic Offenders Act 1988. That section does not apply if an order for such a test is already in force. That is not the case here. Accordingly, the appellant is disqualified until that extended test is passed.

22. Secondly, the decision in *R v Needham* [2016] EWCA Crim 455 requires sentencing judges (and now ourselves) to identify separately the constituent elements of an overall disqualification period in circumstances where the period is being extended as a result of a sentence of imprisonment being imposed, and where an extension is necessary in order to avoid defendants serving some or all of their disqualification in prison, rather than in the community after release.

23. The Recorder decided that an 18 month period of disqualification from driving was appropriate in relation to the offence of dangerous driving. There is no appeal against that decision.

24. In view of our decision to reduce the overall sentence on the drug supply offence, there needs to be a reduction in the disqualification period. Therefore, using the terminology in *Needham*, the constituent elements of the disqualification are as follows. There is a discretionary disqualification period of 18 months for the dangerous driving offence, a section 35A extension period of six months in relation to the dangerous driving offence, and a further section 35B uplift of 12 months because of the prison sentence for the drug supply offence. The total period of disqualification is, therefore, 36 months.

25. For those reasons, and to that extent, we allow the appeal.

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

Lower Ground, 18-22 Furnival Street, London EC4A 1JS

Tel No: 020 7404 1400

Email: rcj@epiqglobal.co.uk
