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IN THE COURT OF APPEAL

CRIMINAL DIVISION

CASE NO 202302424/A4

Royal Courts of Justice
Strand
London
WC2A 2LL

Tuesday, 26 March 2024

Before:

LORD JUSTICE WILLIAM DAVIS
MR JUSTICE CALVER
THE RECORDER OF SHEFFIELD
(His Honour Judge Jeremy Richardson KC)

REX
V
HENRY HENDRON

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MR J TALBOT appeared on behalf of the Applicant
MR P STOTT appeared on behalf of the Crown

J U D G M E N T

THE RECORDER OF SHEFFIELD:

Introduction

1. The facts of this case are unique. It is to be hoped that remains the case.

2. The applications in this case have been referred to the full court by the Registrar.

3. First, there is before the court an application for an extension of time in which to seek leave to appeal against sentence. The period of extension sought is eight days. We have considered the matter and the reasons advanced for the modest extension of time. The appellant was experiencing certain difficulties at the outset of his period in custody. We consider those difficulties to be a reasonable justification for the slight delay. We grant the necessary extension of time.

4. Second, we have considered the Grounds of Appeal. We propose to grant leave to appeal against sentence on grounds 1 and 2, but refuse leave on the remaining grounds. The argument today has very properly concentrated on grounds 1 and 2. Accordingly, we have treated this hearing as the hearing of the appeal on grounds 1 and 2 and an application for leave on the remaining grounds.

5. We have been assisted this morning by Mr Jack Talbot on behalf of the appellant (as he now is) and Mr Phillip Stott on behalf of the Crown.

The Crown Court Hearing

6. The appellant is Henry Hendron. He is aged 42 years.

7. On 17 March 2023 in the Crown Court at Woolwich before His Honour Judge Gumpert KC, upon re-arraignment, the appellant pleaded guilty to three counts of Intentional Encouraging or Assisting the Commission of an Offence, contrary to section 44 of the Serious Crime Act 2007 (counts 2, 3 and 4) and a single count of Possession of a Class A Drug, contrary to section 5(2) of the Misuse of Drugs Act 1971 (count 5). A pre-sentence report was sought. Sentence was adjourned.

8. The appellant had pleaded not guilty to the indictment at the plea and trial preparation hearing. His pleas were changed before the date of trial.

9. On 13 June 2023 in the same Crown Court the appellant appeared for sentence before His Honour Judge Jonathan Mann KC. The judge permitted a one-fifth (20 per cent) reduction due to the guilty pleas and the stage at which they were entered. The appellant was sentenced to a total of 14 months' imprisonment. All other appropriate consequential

orders were made. The sentences on the individual counts were as follows: count 2, 14 months; count 3, 14 months concurrent; count 4, 14 months concurrent; count 5, two months concurrent. The learned judge was of the view a sentence of 14 months' imprisonment reflected overall criminality. The judge correctly considered whether to suspend the sentence. He decided the offending was too serious to warrant anything other than an immediate sentence of imprisonment.

Two Unusual Features of the Case

10. The two features of this case which are both unusual and very serious are these:

    (1) This criminality was perpetrated by a member of the Bar who had in the past been convicted of drug-related crimes but had not been disbarred for that conduct. Consequently he was permitted to continue in practice as a barrister.

    (2) The individuals from whom he was encouraging to supply drugs to him, were prisoners on remand, both of whom were being represented by the appellant in criminal proceedings.

11. The more detailed circumstances of the offending are as follows.

The Facts

12. The appellant was called to the Bar in November 2006. In 2005, 2007 and 2010 he was convicted of driving with excess alcohol and was fined as well as disqualified from driving on each of those three occasions. In 2016 he appeared at the Central Criminal Court and was made the subject of a community order embracing unpaid work and supervision in respect of his guilty pleas of possession of class B and class C drugs with intent to supply. It is right to observe the partner of the appellant died in circumstances referable to this criminality. The appellant was not disbarred in respect of any of those matters.

13. Counts 2 and 3 relate to one offender called Arno Smit who was on remand at His Majesty's Prison Belmarsh in London. Count 4 relates to another offender called "Ezra White" (his real name appears to be Ezra Levi Benson) who was also on remand at the same prison. The essence of the criminal conduct of the appellant in these counts is that he was representing them as a lawyer at the time, and he sent text messages to encourage each of them to supply him with drugs.

Counts 2 and 3: Encouraging the supply of crystal methamphetamine and gamma-butyrolactone

14. Counts 2 and 3 relate to a series of communications between a WhatsApp account for a number attributed to the appellant and another number ending in 0223 recovered from a

further mobile telephone. The person whose number ended in 0223 was attributed to Arno Smit.

15. The appellant had represented Smit as a lawyer on a number of occasions. Smit had requested the services of the appellant as his lawyer when Smit was arrested and detained at Charing Cross Police Station in London.

16. On 29 March 2022 the appellant appeared at Woolwich Crown Court to represent Smit in relation to a bail application. When the appellant was arrested he was at the Visitors Centre at His Majesty's Prison Belmarsh on his way to act as the legal representative for Smit in an interview.

17. The relevant messages of 25 September 2021 read as follows. Smit to the appellant:

> "Please transfer me £100 for the night."

18. The appellant replied:

> "You gave me 2 grams of T and 30ml G".

19. Further:

> "Your name is coming up 'John Smith' BTW. Every criminal calls themselves 'John Smith' I have a Romanian gangster built like a street fighter and indeed is a cage fighting national champ but was a genuine gangster into serious organised crimes across various jurisdictions. Anyway, he changed his name by deed poll to 'John Smith'. It's what they do, they think they obtain some sort of anonymity by safety in numbers name?"

20. Smit to the appellant:

> "£60 for T and £15 for water. Cavejet – £25."

21. The appellant replied:

> "Just transferred to you £100 sorry for the delay, which was initially caused by your delay. Just made transfer, yours HH."

22. Two days later at 2.50am the appellant sent a message to Smit saying:

> "Are you up? Can I swing around in 20 minutes to buy one T and some G?"

23. Smit's reply was:

"Yes give me eta".

24. A drug expert for the prosecution indicated that "T" in this context is short for "Tina", which is another name for methamphetamine (a class A drug) and that "G" and "Water" refers to gamma-butyrolactone (a class C drug).

Count 4: Encouraging the supply of crystal methamphetamine

25. The appellant had a contact saved on his phone as "Ezra White". This individual is in fact Ezra Levi Benson. The messages date from 2020. Benson was a lay client of the appellant as a lawyer.

26. On 12 August 2020 the appellant sent White a message saying:

"Oi oi, can I get a gram off you today please? I just sent you 50".

27. White replied:

"Hi, yes what time?"

28. The appellant then said:

"PS do you have any sleeping pills?"

29. White said:

"Yes I do. You must not send any cash at all to me Henry please allow me. Do you need anything else?"

30. Three minutes later, White said:

"You sent it! I will return in cash: when I see you. I have zopiclone and diazepam."

31. On 22 December 2020 at 11.30 pm the appellant sent to White:

"Can I swing by nowish? I'm outside could I also get half a GT?"

32. "G" is short for GBL and "T" is short for methamphetamine.

33. “Ezra White” was another client of the appellant. There were other text messages between them indicating a professional lawyer/client relationship.

34. On 17 June 2020 the appellant sent a text to Ezra White saying:

"Good news, I think I've got you off with a caution".

35. On the same day the appellant represented Ezra Levi Benson, in his real name, at an interview at Holborn Police Station where he was issued with a caution. The appellant also represented Ezra Levi Benson in an interview in November 2020 following his arrest whilst in possession of crack cocaine and crystal methamphetamine.

Count 5: Possession of crystal methamphetamine

36. The home of the appellant was searched on 3 May 2022. Police officers found traces of crystal methamphetamine. In a chest of drawers alongside other drug paraphernalia there was a plastic container containing 15 milligrams of crystal methamphetamine inside three colourless grip-seal bags. The fingerprints of the appellant were found on the outer surface of the container.

The Grounds of Appeal

37. The appellant settled his own grounds of appeal. However Mr Talbot has refined and perfected those grounds of appeal. We are grateful to him for doing so. These can be distilled as follows:

    1. The sentencing judge used the wrong sentencing guidelines.
    2. The sentence was manifestly excessive.
    3. Defence counsel failed to mention material matters.
    4. Undue weight was given to the plea of Smit.
    5. The judge should have recused himself, the appellant having lodged a formal complaint against him ahead of the sentencing hearing.
    6. The judge strayed into the role of the appellant's professional regulator.

38. Mr Talbot in both his written submissions within the grounds of appeal and in his oral submissions today has concentrated, rightly in our judgment, on grounds 1 and 2. He has relegated the other grounds of appeal. We can deal with the remaining grounds summarily.

Grounds 3, 4, 5 and 6 – Application for Leave to Appeal

39. In relation to ground 5 the Registrar has undertaken an investigation and has discovered that the appellant lodged a complaint about the judge with the JCIO on 14 December 2022. The JCIO summarily dismissed the complaint. The judge was not informed of the complaint. Consequently the judge was not aware that the complaint had been made at the time he passed sentence and it was not drawn to his attention. He was only made aware of this fact after the application for leave to appeal against sentence had been lodged. There is absolutely nothing in that ground of appeal.

40. Nor is there anything in grounds 4 and 6. The guilty plea of Smit had nothing to do with this case and the judge did not take it into account. There is not a shred of material to

demonstrate the judge was in any way acting in a manner akin to a professional regulator. He was however perfectly entitled to take into account the serious aggravating feature of the case that the appellant was a barrister and acting in a professional capacity when the crimes were perpetrated.

41. It is submitted in relation to ground 3 that defence counsel (who was not Mr Talbot) did not mention a specific point of mitigation which he had been instructed to place before the judge relating to aspects of the representation of Smit by the appellant. The appellant has waived privilege and we have read the statement and comments of counsel in the court below, between paragraphs 13 to 20 of his response. The conduct of counsel was wise and sensible in relation to this aspect of the case. Had the points of mitigation, which the appellant wanted to advance, been put before the judge, they would have further served to demonstrate and accentuate how the appellant was acting at the relevant time as the lawyer of Smit. Counsel was right not to pursue that line of mitigation. That ground of appeal is misconceived.

42. We refuse leave to appeal on grounds 3, 4, 5 and 6.

Submissions on Grounds 1 and 2 – The Appeal

43. We have granted leave on grounds 1 and 2. Mr Talbot has very properly conceded that the central issue in this case is whether the total sentence of 14 months' imprisonment was manifestly excessive.

44. At the outset he submitted the appellant was, in effect, singled out because of his professional status as a barrister. He contends that any other offender in a similar position to the appellant who was not a professional lawyer would not have been prosecuted for this offence and might have been prosecuted for a lesser drug-related crime.

45. We disagree. The decision to prosecute for a particular crime is not a matter for the court. That is the province of the Crown Prosecution Service and, subject to an application in respect of abuse of process on proper grounds, which was not advanced in this case and could not be, we reject this submission without hesitation for one moment. We can quite see why the evidential test was met and why the public interest test was also met in this case.

46. The much more sensible argument relates to the approach to sentencing of the judge and whether the judge utilised the Definitive Guideline of the Sentencing Council on Drug Offences properly. Mr Talbot has indicated there appears to be very limited assistance by way of reported authorities on how sentencing should be approached for an offender who is prosecuted under section 44, when he is a drug addict who seeks to purchase a small amount of an illegal drug for personal use from someone he knows or believes will supply him that drug.

47. The prosecution has submitted the judge should view the drug offences guideline on supply and then make appropriate adjustments.

48. The approach of the judge is exemplified by this passage in the sentencing remarks:

> "I have approached sentencing in this case by looking to the underlying offence because it seems to me that that is what Parliament must have intended. And, of course, the underlying offence in counts two, three and four is the supply of drugs to street users, and so it is plain to me that the facts of this case are that I should concern myself with the guidelines dealing with supplying drugs. But, of course, those guidelines and that finding need to be ameliorated by the particular facts in this case."

49. The judge went on to set out his view as to the aggravating features of the case and the mitigation as advanced before him, including reference to a psychological report. He continued:

> "I have decided that the most appropriate sentencing guideline for this case are the supply guidelines, lesser role Category 4. That has a starting point of 18 months with a range of community order to three years. It seems to me that that is the lowest supply guideline I can look to and, in my judgment, it is the most relevant for this case."

50. The judge then imposed the individual sentences we have set out and the overall sentence of 14 months. It is also right to say that he carefully and succinctly weighed whether he should suspend the sentence by reference to the guideline on the imposition of custodial sentences. He concluded that he could not as this was too serious for that course to be taken.

51. It is contended by Mr Talbot the appellant should not have been treated in a manner akin to a drug dealer or someone concerned in the supply of drugs when the offender has sought to procure the drugs for personal use.

52. This morning Mr Talbot has made a number of submissions to amplify and expand his written submissions. He has directly drawn attention to the division between the wider public importance of grounds 1 and 2 and the other grounds which are personal to the appellant. The main thrust of his argument today related to whether the total sentence was manifestly excessive, but he correctly accepted the fact that the appellant was a practising barrister is an aggravating feature. Mr Talbot additionally sought to draw a distinction between ordinary supply to a third party and encouraging another to supply drugs to the one doing the encouraging. In consequence, argues Mr Talbot, the judge fell into error and passed a manifestly excessive sentence.

53. Furthermore, we are grateful to Mr Stott for his written submissions. He has emphasised the factual difference in the case of Reeve and this case. He has also emphasised the breach of responsibility by a barrister is why this case is so serious.

Analysis

54. We now turn to our view of the matter, having reflected on the submissions of counsel. We approach the matter from first principles.

55. First, it is right to observe there are no guidelines of the Sentencing Council for an offence under section 44 of the Serious Crime Act 2007. The gravamen of that crime is the fact that an offender has committed an act which is capable of encouraging or assisting the commission of an offence and the offender intended so to do. By reference to section 58(3) of the 2007 Act, the offender is liable to the same maximum penalty of the "anticipated or referenced offence". In other words the maximum sentence of the crime which he encouraged another to commit. It would therefore be a difficult, if not impossible, exercise for the Sentencing Council to devise a crime-specific guideline given the variability of maximum sentences.

56. Second, the task of the sentencing judge is therefore to make appropriate reference to the guideline of the Sentencing Council for the crime which was encouraged by the offender and make suitable adjustments depending on the factual matrix before the court. Plainly, if there are no sentencing guidelines, appropriate decisions of this court will be the focus of attention.

57. Third, we emphasise that the precise factual matrix must govern the use of the relevant guideline and the applicability of it will always be a matter for the judgment of the court. It is a useful commencement of the voyage of discovery; it is not necessarily the destination.

58. Fourth, it is the criminal conduct which the offender encouraged or assisted which is the core of the crime and that must be, in our judgment, the driving force for sentence in a case of this kind, subject to aggravating and mitigating factors.

59. Fifth, the general guidelines of the Sentencing Council covering over-arching principles is of importance, where the court must view the culpability of the offender and the harm caused by him.

60. It is our judgment the judge was correct to view the supply guideline as the key to sentencing in this case. The appellant plainly encouraged the two men in prison, whom he knew to be drug peddlers, to supply him with drugs. He thus encouraged supply of drugs. The fact it was to himself was a factual matter of potential importance but not in relation to the guideline to be utilised to commence the search for the right sentence. The judge in this case placed the case in Category 4 for the lead offending and determined the role was analogous to a lesser role, giving a starting point of 18 months' imprisonment up to three years' imprisonment.

61. We have been referred to a number of authorities in written submissions in respect of section 44 and section 46 of the 2007 Act. We simply call attention to them without the need to refer to them in any detail: **Omar Sadique** [2013] EWCA Crim 1150, **Reeve** [2018] EWCA Crim 2015, **Rowlands** [2019] EWCA Crim 1464 and **Simpson** [2023] EWCA Crim 734. In all of the cases there was reference to the guideline for sentencing for the offence which was assisted or encouraged by the offender. The most relevant for present purposes might be thought to be **Reeve** which was a case where leave to appeal was refused in respect of an immediate sentence of imprisonment of 31 weeks upon a police officer who encouraged the supply of drugs from another police officer. We note the judgment in that case given by McGowan J sitting with Stuart-Smith J (as he then was) was upon an application for leave to appeal and not an appeal.

62. It is our judgment that the above regimen is the appropriate way in which to approach these cases (see paragraphs 54 to 59 supra).

The application of that approach to this appeal

63. There was a very thorough pre-sentence report before the sentencing judge and we have read it with great care. It is unnecessary to recite portions of it. Furthermore, there was a psychological report before the judge. We have considered that too. In that report the following passages appear. First, at paragraph 53.

> "Mr Hendron presented as a chaotic, excitable and agitated man. Whilst not unpleasant, he could be irritable and impatient at times and it was necessary to repeatedly encourage him to follow my direction and not go off topic.. Although extremely verbose, he managed to convey his opinion and was largely coherent and articulate. I was not of the opinion that he was trying to manage my impression of him."

64. At paragraph 56, the following is found:

> "Concerning personality functioning and structure, Mr Hendron's responses suggested he was a high-spirited, volatile individual, who can present as manic and uncontrolled. Anti-social conduct and an avoidance of warmth was apparent, although I wondered whether an underlying fear of independence and reliance on others the source of this was. Hostility, self-absorption, grandiosity and a lack of social conscience were also present. His profile indicated that he sought attention at a rather extreme level, most likely in an attempt to secure approval from others, and could be perceived as intrusive and impetuous by those around him."

65. The psychologist did not favour PTSD as a viable diagnosis. She recommended further

work to ascertain whether the appellant suffers from any form of bipolar disorder.

66. In our judgment the situation is clear:

(1) The appellant encouraged two criminals to supply him with drugs in two counts concerning class A drugs and in another count a class C drug. Plainly the lead offending related to the class A drugs. It was not a single occasion offence involving one type of drug.

(2) In consequence the court was required to consider the supply of drugs guideline.

(3) It was appropriate to place the appellant in the lesser role category because the supply which was being encouraged was just to one person in this case. In this regard it was right to adapt the guideline to meet the facts of this unusual case. The individual quantities of drugs were inevitably small.

(4) The crime the appellant was encouraging was a class A drug in category 4 where the offender was in a lesser role; at least that is what could be proved.

(5) The starting point is 18 months' imprisonment with a range from a high level community order to a three-year sentence.

(6) The offending took place three times, albeit one count related to a class C drug.

(7) The principle of totality coursed through the entirety of the sentencing exercise so that a just and proportionate total sentence was achieved which represented the overall criminality by reference to the Totality guideline of the Sentencing Council.

(8) The court was perfectly entitled to commence its search for the correct sentence at the level of 18 months' imprisonment. Given the circumstances it would have been permissible to have started higher.

(9) The fact the appellant had relevant previous convictions elevated the sentence.

(10) The fact the appellant was acting in his capacity as a professional lawyer representing the two criminals from whom he hoped to secure the drugs, thus he encouraged them to supply him, was a very serious aggravating factor.

(11) There was the mitigation of the psychological state of the appellant by way of back drop and the other personal mitigation. That served to reduce the sentence before consideration of the guilty plea which might be thought to be the most potent aspect of mitigation.

67. Complaint is made that the sentence on count 5 was excessive in any event. It was a concurrent sentence and was part and parcel of the drug addicted way of life of the appellant. Had it stood alone we have little doubt the appellant would have been sentenced differently. However, as it is, it did not stand in isolation, it was a concurrent sentence and had to be considered as part of the entire criminality calling for sentence.

68. In the result, we do not consider a sentence of 18 months' imprisonment to be in any way outside the range open to the judge in this case before consideration of the reduction in sentence because of the guilty plea. It seems to us that that was the very least sentence which could be imposed in this case following a trial, having regard to all the very serious aggravating factors which we have identified, as did the judge below. It is hard to conceive of a more serious situation in a crime of this kind for a lawyer to seek to procure illegal drugs for himself from a criminal whom he is representing. The judge was entirely right to allow a reduction of one-fifth (20 per cent) by reason of the plea and the stage at which it was entered. This produced a sentence which would have been a little over 14 months. The judge was right to round down that figure. It is self-evident the judge had appropriate regard to the principle of totality.

69. We also cannot fault the judge in his approach to the question whether the sentence should be immediately served or suspended. The judge plainly had regard to the principles in the guideline to which we referred earlier. This case involved a sequence of brazen serious criminal conduct involving a lawyer seeking to procure drugs for himself from a person he was representing in proceedings. A sentence of immediate imprisonment was demanded in this case and was appropriately imposed by the judge. No other sentence could possibly be justified.

70. We emphasise, this has nothing to do with professional regulation or discipline. The disbarment of the appellant is for the professional disciplinary body of the Bar, as it was before in 2016. We expressly make no observation about what should or should not be done to maintain the professional integrity of the profession and what professional sanction should be imposed for bringing the profession into disrepute. This court is solely concerned with the sentence imposed for the criminality of the appellant; nothing more and nothing less.

Conclusion

71. The sentence here is not excessive, still less manifestly excessive in all the circumstances.

72. In the result we extend time for the application to be made by eight days; we grant leave to appeal against sentence on grounds 1 and 2 only; but we refuse leave on the remaining grounds of appeal against sentence.

73. We have treated this hearing as the hearing of the appeal.

74. We dismiss the appeal.

MR TALBOT: My Lord, may I please put this on the record. After your Lordship started the judgment I received an email from the appellant. He said that he had only just seen the emails indicating the date of the hearing and the time of it. He asked me if it was not too late, and it plainly was, to seek an adjournment on the basis that he had been ill and secondly, and these are the words he used, "for an opportunity to put in further grounds of appeal in relation to conviction". I do not make any application in those terms. Obviously the judgment has been given. I will convey the court's decision to him.

LORD JUSTICE WILLIAM DAVIS: If he wants to appeal against his conviction, which would be a bold move, he of course is entitled to seek leave to do so, together with the relevant long extension of time.

MR TALBOT: I thought it prudent to put it on the record.

LORD JUSTICE WILLIAM DAVIS: Thank you very much indeed.

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