[2025] EWCA Crim 431

IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
London
WC2A 2LL

ON APPEAL FROM THE CROWN COURT AT SWINDON
(HIS HONOUR JUDGE TOWNSEND) [54DD0111624]

Case No 2025/00362/A5

Wednesday 26 March 2025

B e f o r e:

LORD JUSTICE WARBY

MR JUSTICE GOOSE

HIS HONOUR JUDGE FIELD KC
(Sitting as a Judge of the Court of Appeal Criminal Division)

R EX

- v -

LEO MORRIS

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Miss E Thacker appeared on behalf of the Applicant

Mr A Williams appeared on behalf of the Crown

J U D G M E N T

Wednesday 26 March 2025

LORD JUSTICE WARBY: I shall ask Mr Justice Goose to give the judgment of the court.

MR JUSTICE GOOSE:

Introduction

1. This is an application for leave to appeal against sentence by Leo Morris, who is aged 19.

2. On 26 April 2024, in the Crown Court at Swindon before His Honour Judge Townsend, the applicant (who was then aged 18) pleaded guilty to two offences of being concerned in the supply of a controlled drug of Class A to another, contrary to section 4(3)(b) of the Misuse of Drugs Act 1971.

3. On 21 November 2024, the applicant was sentenced to concurrent terms of 30 months' detention in a young offender institution on each of the offences. The applicant was already the subject of a Suspended Sentence Order imposed in the Magistrates' Court on 2 April 2024, for 28 weeks' custody, suspended for two years, for offences of dangerous driving, possession of a controlled drug of Class A, and possession of a bladed article. That sentence was not activated, but the judge removed the Rehabilitation Activity Requirement Condition, whilst leaving in place a Mental Health Treatment Condition. The applicant had served 236 days under Qualifying Curfew, which permitted him credit for 118 days in respect of his Crown Court sentence.

4. Subsequently, on 8 January 2025, the prosecution notified the court and those who represented the applicant that an error had been made in the sentencing process. Prosecution counsel discovered that the representations made to the court upon the quantity of drugs involved in the offending had overstated the position. An application was made to the court

under section 385 of the Sentencing Act 2020 and CPR 28.4 of the rules to have the error corrected. The hearing was required to be listed by 16 January 2025, but unfortunately the sentencing judge was outside the jurisdiction. In the circumstances it was not possible to reconstitute the sentencing court in order to correct the error made within the time specified under section 385 of the 2020 Act.

5. The applicant's application for leave to appeal against sentence has been referred to the full court by the Registrar. It was made out of time by 40 days. In the above circumstances we extend time and grant leave.

The Offences

6. The appellant turned 18 at the start of the indictment period. On 14 February 2024, as part of a police investigation into the supply of Class A drugs within Wiltshire, the police stopped a motor vehicle being driven by a man. A mobile phone was seized, the contents of which, when downloaded, revealed a continuing process of drug dealing between the arrested man and others, including with the appellant. Whilst he was not involved in the dealing of drugs directly, nor was he engaged in any duties higher up in the hierarchy of criminal activity, it was clear that the appellant was involved in weighing and preparing drug deals, referred to as "bagging up". The drugs involved were crack cocaine and heroin. The messages referred to almost 1,000 street deals of crack cocaine and heroin being prepared by the appellant. Further, whilst the indictment covered a two month period, from 14 December 2024 to 15 February 2025, towards the end and shortly before his arrest, the appellant was asking for 3,000 Rizla papers in order to continue his activity.

7. After his arrest, in police interviews the appellant refused to answer questions asked of him.

8. The appellant has five convictions for 10 offences, which include two for possession of Class A drugs (in 2022 and 2024). During the time in which he committed these offences, the appellant was on bail for the offences which led to the suspended sentence of imprisonment on 2 April 2024.

The Sentence

9. The court was invited to find that the appellant fell within the "lesser role" and category 2 of the Drugs Guideline. The judge found that there were some aspects of the appellant's activity which indicated a "significant role", but it was concluded that a "lesser role" was more appropriate to the evidence.

10. In relation to harm, the prosecution submitted that the drugs involved were equivalent to one kilo and therefore fell within Category 2. This led to a Starting Point for sentence of five years' custody, with a range of three-and-a-half years to seven years. The judge took into account the fact that the appellant was on bail when he committed these offences.

11. In mitigation, the judge took into account the appellant's age and that he had some mental health difficulties, as mentioned in the pre-sentence report. The judge reduced the sentence to three-and-a-half years' custody, after taking into account the mitigating and aggravating factors, before discounting the sentence for the guilty plea. A sentence of 30 months' detention was imposed – slightly higher than the arithmetical calculation.

The Ground of Appeal

12. After the appellant was alerted to the error in which the quantity of drugs had been asserted to be equivalent to one kilo, the route to correction was under section 385 of the Sentencing Act 2020. For the reasons that we have mentioned, that hearing was unable to take place and made this appeal necessary.

13. On behalf of the appellant, in focused grounds of appeal it is submitted that the appellant should be sentenced on the basis of performing a "lesser role" but within Category 3 harm, given the necessary adjustment to the quantity of drugs. A simple recalculation of the 100 wraps reduced the quantity to 99.69 grams. This would have reduced the harm involved in the offences to Category 3 harm, with a Starting Point of three years' custody, and a sentence range of two to four-and-a-half years.

14. It is submitted by Miss Thacker, for whose submissions we are grateful, that this will significantly reduce the sentence that should be imposed upon the appellant. She submits that the starting point should be increased to a sentence of four years' custody, with a reduction for mitigation down to three years, and then the discount for the guilty plea.

The Respondent's Submissions

15. On behalf of the respondent, Mr Williams, for whose submission we are also grateful, frankly accepts the error that was made and has set out the efforts that he made to correct it. We are satisfied that Mr Williams did all that he could to bring matters before the court once the mistake was realised. Mr Williams submits that the harm caused by these drugs offences is not confined simply to the calculation leading to approximately 100 grams of Class A drugs. As part of the evidence, the prosecution had served an expert's report from Mr Ian Tilley, dated 6 March 2024, which explained the messages between the appellant and others during the indictment period. The conclusion of Mr Tilley's work has been summarised within the respondent's note for this appeal.

16. In the first set of exchanges between 8 January 2024 and 11 January 2024, the appellant was discussing different quantities of cocaine and heroin, amounting to 241.4 grams. In a second set of exchanges on 13 February 2024, different quantities of the same drugs were

discussed, the total of which appeared to equate to 593 grams. Taking these discussions in total amounts to drugs in the order of 750 grams, observed over four days during the indictment period.

17. On the basis of this evidence, which was not challenged on behalf of the appellant whether in argument before the court or within the appellant's basis of plea, Mr Williams submitted that sentencing should be based upon harm in relation to Class A drugs of at least 750 grams. In the course of oral submissions, Miss Thacker agreed with that calculation.

Discussion and Conclusion

18. Given that the sentence was based on an error in the assessment of harm caused, measured by the quantity of Class A drugs involved, it is appropriate that we quash the sentence of 30 months' detention in a young offender institution for these offences.

19. We must then arrive at the appropriate sentence. We are satisfied that the prosecution's evidence proved the quantity of drugs with which the appellant was engaged in these offences, which was within the region of 750 grams. The mistake was in the calculation of wraps and their weight, not as to the entirety of the evidence served by the prosecution and undisputed by the appellant. This meant that the assessment of harm fell within category 3, but towards its top end. Culpability was "lesser role". Accordingly, the offences required a starting point for sentence of three years' custody, with a range of two years to four-an-a-half years.

20. The aggravating factor identified by the judge was that the appellant was the subject of bail at the time he committed these offences. To that might have been added that there were two different Class A drugs and that the appellant's offending was over a two month period.

21. In mitigation, the appellant was just 18 at the beginning of the indictment period, and there

was some evidence of mental health difficulties which required a mental health treatment condition identified within the pre-sentence report.

22. Accordingly, the aggravating factors, including the amount of drugs, required an uplift from the starting point to four years. There was then a reduction for the mitigating factors, back to three years. That sentence requires further reduction to reflect the guilty plea at the first hearing before the Crown Court. The resulting sentence is, therefore, 27 months' custody, upon each count, to be served concurrently.

23. The appellant's Suspended Sentence Order of 2 April 2024 was not activated. The Rehabilitation Activity Requirement was, as we have mentioned, removed. We leave that order undisturbed.

24. Accordingly, the appellant's sentence, which commenced on 21 November 2024, is 27 months' detention in a young offender institution, less the Qualifying Curfew of 236 days, to which 118 days will count towards the appellant's custodial term. That is the sentence on each of the offences.

25. To that extent, therefore, the appeal against sentence is allowed.

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

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