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No: 201801348 A2

IN THE COURT OF APPEAL

CRIMINAL DIVISION

Royal Courts of Justice

Strand

London, WC2A 2LL

Wednesday, 23 May 2018

B e f o r e :

LADY JUSTICE THIRLWALL DBE

MR JUSTICE HADDON-CAVE

THE RECORDER OF LIVERPOOL
HIS HONOUR JUDGE GOLDSTONE QC

R E G I N A

v

SAMUEL DEAN HAWORTH

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MR ROBERT WYN JONES appeared on behalf of the **Appellant**

J U D G M E N T

(Approved)

1. THE RECORDER OF LIVERPOOL: On 2nd March 2018, following his earlier plea at the plea and trial preparation hearing of guilty to an offence of possession of cocaine with intent to supply, Samuel Dean Haworth, now aged 25 years, was sentenced at the Chester Crown Court to eighteen months' imprisonment. No separate penalty was imposed for offences of simple possession of two ecstasy tablets and a small quantity of cannabis. A forfeiture and destruction order was made in respect of all the drugs. He appeals to this court by leave of the single judge.
2. The facts can be stated shortly. On Bank Holiday Sunday 27th August 2017, the appellant attended the Creamfields Music Festival in Cheshire. He did so with a Kinder Egg concealed within his anus, in which there were seven wraps of cocaine and the smaller quantities of Class A and B drugs referred to above. Whilst queuing for admission, he was challenged by a police officer after attempting to avoid contact with a drugs detection dog. He then admitted that he was in possession of drugs. The cocaine was later found to be 85% purity and weighed 6.71 gms. It had a street value of approximately £700.
3. When interviewed by the police, the appellant said that he had purchased the cocaine for £300 and believed it to be of poor quality. It had been his intention to share the cocaine with his friends throughout the day. That was the basis upon which, having indicated a not guilty plea before the magistrates, he pleaded guilty at the plea and trial preparation hearing. The basis of plea is as follows:

"I plead guilty upon the basis that my intention was only to supply cocaine to my friends. I would make no financial profit or any advantage at all."
4. It was agreed that this offence fell into category 4 by virtue of the quantity and lesser role of the definitive guidelines because of the purpose for which the cocaine had been purchased and the absence of any profit by virtue of its supply. Thus, there was a sentencing range of a high level community order to three years imprisonment, with a starting point of eighteen months.
5. During the course of opening, the judge was helpfully referred to a detailed and evidence-based community impact statement from which it is clear that the police invest heavily, both with financial and human resources, to ensure the preservation of order for, as well as enjoyment by, the large number of law-abiding festival goers. The Creamfields Festival is the last festival in the season. It has more robust entry conditions than many other similar festivals in order to prevent people gaining admission in possession of drugs. It is a festival which has seen an increase in its duration, as well as its attendances, and also an increase in drug seizures and arrests. The dangers inherent in, and risks associated with, the use of drugs are obvious and magnified many times when large numbers of people are present in an environment where drug use and drug supply is prevalent.
6. It was also apparent that, before even reaching the queue to enter the festival, people attending walked past numerous signs, photographs and advertisements inviting them to deposit any drugs in one of the many bins there for that purpose - in effect an

amnesty - and warning them clearly of the consequences of supplying drugs within the festival even on a small scale.

7. In passing sentence, the judge had the benefit of a helpful and positive report on a young man with no previous convictions, who was a suitable candidate for the imposition of a drug rehabilitation requirement attached to a suspended sentence order. However, he regarded even social supply at a music festival to be an aggravating feature and even more so given the opportunities which the appellant had and chosen to ignore to give up the drugs without fear of criminal repercussions. Thus, after balancing those aggravating features with the mitigation of the appellant's previous good character and other personal mitigation, he alighted upon a starting point of two years, which he then reduced by 25% to eighteen months to reflect the timing of the appellant's plea. The circumstances in which the offence was committed precluded him from suspending the sentence.
8. By his grounds of appeal, it is submitted by Mr Jones, who appeared in the court below as he has done before us: first, that insufficient regard was paid to the basis of plea; and second, that insufficient regard was paid to the content of the pre-sentence report.
9. As far as the basis of plea is concerned, we have no doubt that the judge had that basis of plea very much in mind. Indeed, it led to the categorisation of the offence within category 4 - lesser role - with the range and starting point identified above. Were it not for the absence of any profit motive, this would have been a case which fell to be dealt with within category 3 - significant role - with a starting point of four-and-a-half years, and a range of three-and-a-half to seven years.
10. As far as the second complaint is concerned, we note, as no doubt the judge noted, that the consequences of imprisonment for this appellant would be very severe. We assume that he will lose his job as a metal engineer. He is a young man prone to bouts of anxiety and depression. He takes cocaine to boost his confidence and is more frequent cannabis user. We do not, however, accept that the appellant was unaware that if there was not a profit motive involved it would not be classed as supplying. As a regular drug user of whatever class he would know, and in any event the advertisements on site draw no distinction between 'for profit' and 'not for profit' activity.
11. We note that the single judge gave leave not only because of the starting point of two years, but also because of the suggested failure of the judge to consider properly the imposition of the custodial sentence guideline and in particular the circumstances in which it might be proper to suspend such a sentence, notably, in this case, the realistic prospect of rehabilitation and the appellant's strong personal mitigation. That, understandably and perfectly properly, is an argument which has been adopted before us today by Mr Jones.
12. However, we reject that criticism. It is clear that this experienced judge considered whether the sentence could be suspended and concluded that it could not and should not be. Further, in our judgment, this was a local judge who will have had other Creamfields supply cases before him. He was entitled to point to the conscious

decision which the appellant made, sign after sign, bin after bin, to proceed to the festival queue in the hope (and no doubt expectation) that he would get away with it, not only as a significantly aggravating feature over and above the venue at which the supply was to take place, but also as a reason why the sentence should not be suspended.

13. Having given the matter careful thought, in the light of Mr Jones' cogent submissions, we do not consider that the judge fell into error, either with the starting point of two years or by failing to suspend the sentence of eighteen months which he imposed. This was a case which called for a deterrent sentence, albeit one which fell within the definitive guidelines. Such was the sentence which was imposed. Accordingly, this appeal is dismissed.

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