



APPEAL COURT, HIGH COURT OF JUSTICIARY

[2019] HCJAC 5
HCA/2018/000473/XC

Lord Glennie
Lord Turnbull

OPINION OF THE COURT

delivered by LORD TURNBULL

in

APPEAL AGAINST SENTENCE

by

ANDREW MCLAUGHLIN

Appellant

against

HER MAJESTY'S ADVOCATE

Respondent

Appellant: Paterson, sol adv; Paterson Bell Solicitors, Edinburgh for Aidan Gallagher, solicitors,
Greenock

Respondent: M Hughes AD; Crown Agent

8 January 2019

[1] The appellant, Andrew McLaughlin, is 33 years old. On 5 June 2018 he tendered a plea of guilty to a charge of supplying cannabis resin to another in contravention of the Misuse of Drugs Act 1971. After the preparation of a social enquiry report, the sentencing sheriff imposed a sentence of 29 months imprisonment, restricted from the period of 32 months which he would have imposed but for the guilty plea tendered.

[2] The appellant was observed in the company of two associates in a motor van travelling between various places such as Port Glasgow, Glasgow and Edinburgh. At a point during the evening the vehicle was seen to stop outside an address in Port Glasgow. The appellant was later observed to walk from the area of one of the nearby properties carrying a weighted cardboard box which he placed into the boot of a parked Mercedes motor vehicle. The driver of that vehicle then drove off and was in due course stopped by police officers. The box was found to contain one hundred and thirty 100g bars of cannabis resin with a value of approximately £36,000.

[3] In presenting the appeal on the appellant's behalf it was accepted by Mr Paterson that the seriousness of the offence merited a custodial sentence. However, he submitted that the appellant was not the prime mover in the drug supply enterprise, as was demonstrated by the fact that the authorised surveillance, under which the police officers concerned had been acting, was targeted at one of his associates rather than the appellant. It was also submitted that the plea which the appellant had tendered was a plea restricted to the terms of the indictment and to the narrative given as to his involvement. It followed that the earlier journeys from Glasgow, Port Glasgow and Edinburgh were of no relevance to the nature of the drug supply with which he was involved. Attention was drawn to the fact that the appellant had only one previous conviction from 2016 for a road traffic matter and to the fact that the driver of the Mercedes motor vehicle, into which the cannabis had been loaded, received a sentence of 15 months imprisonment.

[4] In all these circumstances, taking account of the relative seriousness of the offence, the appellant's own background and a comparative exercise in relation to the driver of the Mercedes, it was submitted that the period selected by the sentencing sheriff was excessive.

[5] In his report to this court the sentencing sheriff explained that because of the substantial quantity of drugs which had been uplifted and supplied, apparently by prior arrangement, it seemed to him that the case had all the hallmarks of a significant commercial operation. That assessment was not, and could not have been, disputed. However, the appellant's involvement was said to be as a helper rather than a prime mover. His own circumstances were also relevant to the assessment of sentence. He was, for practical purposes, a first offender aged 33 years at the date of sentencing and, as Mr Paterson explained to us, he had a history of working and of pro-social conduct.

[6] It also appears to us that there is a further matter of significance to be noted in the circumstances of this case. The offence to which the appellant pled guilty took place on 26 April 2016. In circumstances which were not explained, he was not spoken to about the matter until he was charged on 21 December of that same year. He did not appear on petition until a much later date and further did not appear before the court again until the first diet on 9 January 2018. After the appellant tendered his plea of guilty in June a social enquiry report was prepared and sentence was eventually passed on 11 July 2018.

Accordingly, more than two years passed between the offence occurring and sentence being imposed. That was a lengthy and largely unexplained period throughout which this serious matter was hanging over the appellant and throughout which he appears to have kept out of any further trouble.

[7] In our opinion this is a circumstance which the sheriff ought to have taken account of in determining the appropriate sentence and ought to have given due weight to. When appropriate weight is given to all of the relevant circumstances of this case, we consider that there is merit in the submission that the sentence selected was excessive. We shall therefore quash the sentence imposed and in its place we shall impose a headline sentence of

15 months imprisonment, reduced by approximately 10% to a period of 13 months to reflect the utilitarian value present in the guilty plea, albeit tendered at a late stage, and sentence will be imposed to date from the same date as selected by the sheriff.