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IN THE COURT OF APPEAL

CRIMINAL DIVISION

ON APPEAL FROM THE CROWN COURT AT MANCHESTER

MR. RECORDER VINSON CP No: 58DP0002124

Neutral Citation No, [2025] EWCA Crim 473

CASE NO 202404320/A5

Royal Courts of Justice
Strand
London
WC2A 2LL

Thursday, 20 March 2025

Before:

LORD JUSTICE JEREMY BAKER
MRS JUSTICE THORNTON DBE
MR JUSTICE BENNATHAN

REX
V
HAIDER ALI

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MR J HUDSON appeared on behalf of the Appellant

APPROVED JUDGMENT

LORD JUSTICE JEREMY BAKER:

1. On 29 November 2024 in the Crown Court at Manchester, Haider Ali, having previously pleaded guilty on indictment to an offence of fraudulent evasion of a prohibition on the importation of cannabis, contrary to section 170(2) of the Customs and Excise Act 1979, was sentenced to 41 months' imprisonment.
2. Haider Ali appeals against sentence with the leave of the single judge.

The offence

3. On 18 July 2024 Border Force officers stopped the appellant in Terminal 1 of Manchester Airport. He had travelled alone from Thailand via Dubai to the United Kingdom and was in possession of three large suitcases wrapped in clingfilm.
4. Initially, the appellant told the officers that the suitcases belonged to him. He said that he had packed the suitcases himself and denied having been asked to bring anything back for anyone else. However, when the appellant was asked to provide the combination for the locks on the suitcases he told the officers that he did not know the combinations and that the suitcases belonged to his friends. He told the officers that he did not know what was contained in the suitcases but when they were opened it was found that they contained cannabis blocks with a total weight of 79.3 kilograms.
5. The appellant was arrested and his mobile phone was seized. The appellant refused to provide the officers with the PIN number for the phone and declined to answer any

questions in interview.

The appellant

6. The appellant was 22 at the date of his arrest and is now 23 years of age. He has three sets of previous convictions between 2019 and 2024, including convictions for the possession of class A and class B controlled drugs.
7. In his interview with the author of the pre-sentence report, who described him as being immature and uncommunicative, the appellant stated that in 2022 his mother had become seriously ill and he had to assist his brothers with the care of his disabled younger sister. He stated that due to the resulting stress he began to use cocaine and ran up a debt of about £3,000 which he could not pay off. He stated that under pressure from his dealer he agreed to travel to Bangkok to collect some "car parts". He stated that the trip was organised by the drug dealer who told him not to ask any questions.
8. Although the appellant had been referred to the National Referral Mechanism, the decision of the Single Competent Authority was that there were no reasonable grounds to conclude that the appellant was a victim of modern slavery.

Sentence

9. The prosecution and the defence submitted written sentencing notes and whilst the prosecution submitted that under the relevant sentencing guideline because the appellant had an operational function within a chain, the appellant had a significant role, the defence submitted that his role fell between significant and lesser.

10. In the event, the judge determined that the appellant's role was significant "because you had an expectation of substantial financial advantage", and that the level of harm was in Category 2, albeit the judge observed that as the amounts of cannabis was almost twice that of the indicative weight for Category 2 it would be necessary to increase the period of custody within the category range in order to reflect this factor.
11. The judge stated that he did not consider that the appellant's previous convictions were a significant aggravating factor and that there was some mitigation arising from his lack of maturity and his exploitation by those more sophisticated than him in relation to his drug debt, albeit that as the judge observed, the appellant's account as to how he became involved in the offending was unable to be verified due to the fact that he had not provided the police with access to his mobile phone.
12. The judge determined that the offence justified a notional post-trial period of custody of 54 months and that he would afford a reduction of 25 per cent to reflect the timing of his plea of guilty, resulting in a sentence of 41 months' imprisonment.

Submissions

13. On behalf of the appellant, Mr James Hudson submits the notional post-trial period of custody determined by the judge was too high in that it failed to sufficiently reflect the appellant's role in the offending and his personal mitigation.
14. It is submitted that whereas there was one characteristic which may have demonstrated that the appellant had a significant role, namely that he had an operational function within

a chain, there were other characteristics which indicated that he had a lesser role, including being engaged by pressure by those to whom he owed a drug debt, his involvement through immaturity or exploitation, his lack of influence on those above him in the chain and the advantage to him being limited to meeting his own drug debt.

15. Mr Hudson submits, as he did in the lower court, that this ought to have led the judge to determine that the appellant's role was on the cusp between having a lesser and significant role and that although the amount of drugs justified some increase in the period of custody, it had to be borne in mind that the indicative amount for Category 1 offending was 200 kilograms of cannabis.

Discussion

16. The current sentencing guideline for this offence, as did the previous one, seeks amongst other matters to distinguish between the type of courier identified in *Boakye* [2012] EWCA Crim 838 as having a lesser role and one who has at least a significant role within a drug importation business.
17. This is not always a straightforward task for a sentencing judge and in the present case we consider that the judge's scepticism as to the account put forward by the appellant was justified in that not only had he declined to enable the police to interrogate his mobile phone but the Single Competent Authority had determined that there was no reasonable grounds to conclude that the appellant was a victim of modern slavery.
18. However, despite expressing this scepticism with the appellant's account, not only did the

judge appear to accept that there may have been some lack of maturity on the appellant's part, but the appellant may have been exploited by those more sophisticated than him in relation to his drug debt.

19. Moreover, the characteristic which the judge identified as justifying the appellant having a significant role was that the appellant had an expectation of significant financial or other advantage.

20. The difficulty with this being the basis upon which the judge determined that the appellant had a significant role is that the sentencing guideline goes on to make it clear that this will not be a characteristic of a significant role "where this advantage is limited to meeting the offender's own habit."

21. In our judgment, unless the judge had been entitled to determine that the account being put forward by the appellant was manifestly false, this was a case in which some thought ought to have been given as to whether it was necessary for a *Newton*-type hearing to be held: see Criminal Procedure Rules 9.3.3, so as to determine the basis upon which the appellant was to be sentenced.

22. However, as we have already pointed out, although the judge expressed some scepticism in the matters being put forward on the appellant's behalf in relation to his role in this offence, he appears to have accepted that these matters afforded the appellant some mitigation, such that it is implicit that he cannot have rejected these matters as being manifestly false.

23. In these circumstances, although we too have some scepticism in relation to the appellant's account, we do not consider that at this stage this is a case in which we can properly conclude that they are manifestly false and we consider that the correct approach is to accept that the appellant had a lesser rather than significant role in the offence.

24. However, not only do we consider that it was appropriate for there to be an uplift within the category range for Category 2 offence, in order to reflect the amount of cannabis involved, but we consider that the mitigation put forward on the appellant's behalf is amply catered for by the determination that he had a lesser rather than a significant role in the offence.

Conclusion

25. Although we consider that the level of reduction in sentence to reflect the timing of his plea of guilty was generous, we will not interfere with it and therefore taking this into account whilst we quash the sentence of 41 months' imprisonment, we will reflect the appellant's lesser role in the offence by substituting a sentence of 27 months' imprisonment. To that extent the appeal 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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