

Regina v Mario Ilias Ro

No: 200905783/A3

Court of Appeal Criminal Division

5 March 2010

[2010] EWCA Crim 584

2010 WL 903132

Before: Mr Justice Griffith Williams Mr Justice Foskett

Friday 5th March 2010

Representation

Mr H Bentley appeared on behalf of the Applicant.

Judgment

Mr Justice Foskett:

1 On 3rd August 2009 at Blackfriars Crown Court the applicant pleaded guilty at the plea and case management hearing to fraudulent evasion of prohibition on drugs, namely, the importation of a Class A drug methyl amphetamine hydrochloride (Crystal Meth). It is a highly addictive drug and has some well-publicised users. It is widely regarded as an extremely dangerous drug which has been said by a judge sitting in a South London Crown Court to cause "misery and havoc": see R v Vieira (Eduardo) [2009] EWCA Crim 528 .

2 The matter was put back for reports and the applicant was due to be sentenced on 21st September. The basis of plea had been advanced which on that day the prosecution indicated was not acceptable. The case was put back for a Newton hearing on 2nd October 2009. The case was then listed before His Honour Judge Peter Clarke QC, who indicated to the prosecution that a Newton hearing was unnecessary because it would not affect the level of sentence. Against the background of that indication the case proceeded to sentence in the normal way. He was sentenced to 8 years' imprisonment with a direction that 144 days spent on remand should count towards sentence. He renews his application for permission to appeal against that sentence, permission having been refused by the single judge.

3 The applicant was aged 45 at the date of sentence. He had five previous convictions for possession of drugs, and one for possession of GHB, with intent to supply. GHB is a well-known date rape drug albeit only a Class C drug. He was sentenced to 51 weeks' imprisonment suspended for 2 years for those offences on 25th May 2007.

4 On 7th May 2009 a parcel sent from an address in Vancouver addressed to the applicant was intercepted by customs officials since he it been sent by a private freight service. When examined it was found to contain various items of cosmetics and beauty cream. When the jars were opened a crystalline substance was found secreted in the jars that tested positive for amphetamine. Two packages were recovered from the jars containing a total of 56 grams of Crystal Meth with the street value being about £11,000.

5 On the following day a controlled delivery was made to the applicant's home address. He identified himself and accepted delivery of the parcel and then was arrested. He said he knew the parcel contained the drugs. His home was searched and a large number of small self-sealed plastic bags

were recovered which the applicant said he would have used to put the drugs in. The officers also recovered two sets of scales and other drugs paraphernalia. When interviewed he largely declined to comment.

6 The basis of plea was that the applicant intended to supply half of the drugs to a friend and retain the remainder for his own use. As already indicated, the prosecution was not prepared to accept that, but the judge said it would make no difference to sentence and indeed expressly said that he would sentence on that basis. Indeed he said that he would sentence on the basis that the applicant was "not yet in full commercial importation mode" and that "this was the first consignment that he had received from Canada".

7 In his sentencing remarks the judge said there was "an obvious international dimension to the offence". He accepted that the applicant was addicted to the drug, but said that within 6 months of the expiration of a suspended sentence, he was again involved in what was effectively the supply of a large quantity of drugs for someone else. He said it was necessary to stamp down on importation of class A drugs and anyone involved with the importation of such drugs fell to be sentenced in accordance with certain guideline. As a result the minimum sentence he could pass was one of 8 years' imprisonment.

8 Mr Bentley, for the applicant, has argued and argued in the written material which we read before the hearing commenced, that that sentence was manifestly excessive and that the judge adopted too high a starting point. He argued that insufficient weight was given to the factors advanced in mitigation including his early plea, his admissions to the police and the fact he was heavily addicted to the drug and his partner was suffering from AIDs and receiving treatment in hospital.

9 Mr Bentley rightly pointed out that there were no specific guidelines for Crystal Meth and given what we understand to be its dangerous and increasingly widespread use, it may be that guidelines for offences concerning its use, supply and importation may be required if it is perceived to be different in any significant way from other Class A drugs. For present purposes, and subject to any local issues in courts for offences relating to it becoming prevalent, the broad guidelines are those relating to Class A drugs. He has reminded us in that context of the well known case of *R v Arunguren* (1994) 99 Cr App R(S) 347 , where it is said the importation of 500 grams or more of Class A drugs at 100 percent purity "sentences of 10 years or more are appropriate after a contested trial". He submits that given that guideline this sentence for the importation of 56 grams is simply too long.

10 We think there is force in that submission. This particular drug is one that gives rise to particular concerns and there may, as we have indicated, be grounds for considering the approach to sentences in relation to it. But until any particular guidance is given the broad guidelines to which we have referred need to be observed.

11 The judge may well have concerns about how deeply the appellant was engaged in the supply of drugs of this nature and Crystal Meth in particular. But given the express basis of plea, we do not think he would have been justified in taking a sentence of 12 years as the starting point for importation on this scale after a trial.

12 The amount of drugs involved was not insignificant and the judge was certainly justified in regarding the appellant's prior recent involvement in the supply of drugs as an aggravating feature, but a sentence of 8 years, following a plea of guilty was, in our judgment, manifestly excessive.

13 Overall we consider that the proper sentence, following a plea of guilty, in which full credit was given would have been one of 5 years' imprisonment and accordingly we grant permission to appeal against sentence, treat this, with the consent of Mr Bentley, as the hearing of the appeal and we quash the sentence of 8 years' imprisonment and substitute one of 5 years' imprisonment with credit to be given for the time spent on remand.

14 MR BENTLEY: May I ask for a representation order?

Mr Justice Griffith Williams:

15 Yes. The normal order, Mr Bentley, where the applicant is not present is that you have 7 days to notify the office if you want to make further representations.

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