

ENGLAND AND WALES / JUDGMENT

R v Luke Caudrey

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MR E FLINT appeared on behalf of the Appellant

J U D G M E N T LADY JUSTICE ANDREWS: 1. On 21 November 2025 in the Crown Court at Manchester, the appellant, then aged 20, was sentenced by Mr Recorder Long to two years' detention in a young offender institute for an offence of being concerned in the fraudulent evasion of a prohibition on the importation of a class B drug (cannabis). He had pleaded guilty to that offence before the Magistrates' Court and was committed for sentence to the Crown Court pursuant to section 14 of the Sentencing Act 2020. He appeals against that sentence by leave of the single judge. 2. We have been informed by the Registrar that the Crown Court wrongly recorded the sentence as one of imprisonment, and that this has been drawn to its attention. If the record has not already been corrected it should be corrected forthwith to make it clear that

the sentence was one of detention because the appellant was aged under 21 at the time. 3. The background facts can be summarised as follows. On 24 October 2025 the appellant arrived at Terminal 2 in Manchester Airport having been a passenger on a flight from Bangkok via Doha. His passport showed three entry stamps from Thailand in the preceding three months. Border Force agents became suspicious and spoke to him. He was then escorted to baggage reclaim where he admitted that he had "weed" in his suitcase. When the suitcase was opened it was found to contain 15 kilos of herbal cannabis in 1kg vacuum sealed packages with an estimated value of £37,500. He refused to provide the PIN number for his mobile phone and gave a no comment interview. 4. However, the appellant pleaded guilty at the earliest opportunity and was afforded the appropriate one-third credit for his plea. Thus the notional sentence after trial must have been three years' detention. 5. On behalf of the appellant, Mr Flint contends that his sentence was manifestly excessive. He first submits that when the aggravating and mitigating features were taken into account, particularly the appellant's age and immaturity, his personal history as recounted in the pre-sentence report, and his lack of previous convictions for drug offences (although he does have previous convictions for burglary, attempted burglary and domestic assault), a notional sentence after trial of three years reduced to two years for the guilty plea was manifestly excessive. 6. However, the focus of Mr Flint's submissions was on the contention that the Recorder did not address the factors in the guideline on community and custodial sentences when considering whether only an immediate custodial sentence would suffice to reflect the seriousness of the offending. Mr Flint contended that this was a case in which the sentence could and should have been suspended, particularly in the light of the views expressed in the carefully reasoned pre-sentence report. 7. In his written submissions, Mr Flint sought to rely on the case of *R v Gray*

[2024] EWCA Crim 296 in which this court had substituted a sentence of 22 months' imprisonment suspended for two years for a 33-month sentence of immediate custody imposed on an elderly and infirm Jamaican national who had brought a slightly larger quantity of cannabis into the country through Manchester Airport, even though he had two previous historic convictions for similar offending. 8. The appellant told the author of the pre-sentence report that he had received £5,000 from a drug dealer to bring cannabis into the country from Thailand but he had initially changed his mind. However, as he had spent the money and was unable to pay it back, he was in fear of reprisals and fled to Scotland for a short time. When he heard that the drug dealer was still looking for him and had visited the addresses of his elderly grandfather and of friends, he decided that he had no choice but to go through with committing the offence. 9. The appellant has been diagnosed with complex learning difficulties and foetal alcohol syndrome disorder. Professionals who examined him in custody are exploring the possibility that he also suffers from ADHD. These cognitive defects are likely to have contributed to his poor decision making and lack of consequential thinking, which were identified as the major factors in his offending behaviour.

10. As the pre-sentence report indicates, the appellant had an extremely dysfunctional childhood. He and his siblings spent time in foster care and were then brought up by their grandparents. His biological parents died when he was only 11 years old. He has little family support and only one pro-social friend. The probation officer considered that much of his offending was due to adverse peer association in the Bradford area. He then had no educational qualifications and was living on benefits. He was of no fixed abode and “sofa surfing” at the time of the offending.
11. Despite turning to cannabis as a coping mechanism for his anxiety, the appellant had indicated a positive intention to remain drug-free whilst in custody and to continue to abstain after his release. The probation officer realistically envisaged that in the light of his long-term use of the drug he would need support in these endeavours from the probation service. She stated that he would benefit from engagement with support services after his release. He had expressed a desire to seek stable employment on his release from custody and the Leading Care Team would offer him support in that regard.
12. Whilst the Offender Group Reconviction Scale assessed the appellant as posing a low risk of reoffending, the author of the pre-sentence report realistically considered the risk to be higher than that, if the appellant continued to associate with negative peers and was unable to find secure stable accommodation out of the Bradford area, which his Support Manager was helping to arrange.
13. We have had the benefit of seeing a letter from a Prison Offender Manager at the young offender institute at which the appellant is in custody, which speaks positively of his behaviour whilst in custody. He has shown engagement with the regime, and has received no adjudications. He had a positive behaviour report on 25 December for positive engagement in the regime, he conducts himself quietly, and he has been completing a maths course with a great deal of personal support because he needs one-to-one attention for that. However, he has not completed any offending behaviour work, possibly because of the relatively short term of his sentence. 14. The Recorder's sentencing remarks are seriously lacking in detail. He did not even indicate the category in the definitive guideline for fraudulent evasion of a prohibition on the importation of a class B drug into which he had placed the index offence. A helpful note for sentence prepared by the prosecution had indicated that in their submission the role of the appellant was a significant role, and we would not disagree with that. The quantity of drugs was somewhere between categories 2 and 3, being more than double the indicative quantity of six kilograms for category 3 but less than half the indicative quantity of 40 kilograms for category 2. The starting point for a significant role in category 3 is two years' custody, with a range of 18 months to three years, and the starting point in category 2 is four years' custody with a range of two years six months to five years. 15. The Recorder said that he considered that the background to the appellant's commission of this offence (to which we have referred) afforded him little personal mitigation. He then referred to the fact that the number of offences of this type (bringing drugs into the country via Manchester Airport) had greatly increased in recent

years from a small handful to over 100 a year. He said that in the light of that factor, a deterrent element in sentencing cases such as this was called for. The appellant's age and difficult personal circumstances "perhaps balances these matters out" but, taking into account the quantity of cannabis, he was increasing the "starting point" to one of three years' custody. He then gave full credit for plea. 16. It is to be inferred from this approach that the Recorder placed the offending into category 3 significant role with a starting point of two years, and that he then weighed the aggravating and mitigating factors to reach a notional sentence after trial of three years, the reference to the "starting point" being a slip of the tongue. 17. In his oral submissions, Mr Flint submitted that whilst one could see that the aggravating features, including the deterrent element rightly referred to by the Recorder, would have justified bringing the sentence up to the very top of the sentencing bracket for a category 3 offence, a proper reflection of the mitigating factors would have brought it down below that figure, and therefore the notional sentence after trial was too high. After the discount for the guilty plea, the resulting sentence was manifestly excessive.

18. However, Mr Flint's main focus, as we have said, was upon the question whether or not the Recorder erred in principle in failing to apply the definitive Guideline on the imposition of custodial and community sentences. Mr Flint pointed out that the Recorder never mentioned any of the factors in the Guideline, other than stating that only immediate custody would suffice to mark the seriousness of the offence.
19. Mr Flint submitted that there were a number of factors on the positive side of the equation if the Guideline were properly applied. There were many factors in favour of the likelihood of rehabilitation. The appellant had fully accepted his guilt at the earliest opportunity and indeed he had volunteered to the Border Forces when he was apprehended that there was cannabis in his suitcase, before he was asked. He had also shown a willingness to engage with the probation services. He had completed rehabilitation activity requirements in the past, and his Leaving Care Worker had attended in court and was working with him positively to ensure that when he was released from custody, emergency accommodation would be arranged for him with a view to further accommodation being secured in due course.
20. Mr Flint of course also referred to the positive report from the young offender institution as to his behaviour whilst in custody and to the fact that the probation officer who had produced the pre-sentence report had indicated that this was one of those cases in which, despite the need for deterrence, a community-based sentence would be more appropriate to mark the seriousness of the offending after all the considerable personal mitigation was taken into account.

21. Mr Flint pointed out that the appellant was not assessed as posing a serious or high risk of reoffending. He submitted that the probation officer's assessment was a realistic one and that in fact the appellant met almost all the criteria on the positive side favouring a suspended sentence, the only factor that potentially outweighed them being the deterrent factor referred to by the Recorder. Discussion
22. As the prosecution submitted, this offending was somewhere on the cusp between the two categories. The quantity of the cannabis alone would have justified an elevation from the starting point in category 3 of two years to one of two years and six months (which is the lowest sentence in the range for category 2 offences) before giving consideration to other aggravating factors and balancing those against the mitigating factors. The fact that the appellant had some previous convictions, albeit of a different nature (though the burglary offences were linked to his drug dependency) may have justified the Recorder in moving upwards again within the range, but it would not have justified him in moving outside it.
23. As for the increased prevalence of similar offending, that is an important feature. The context in which the offence was committed was plainly a relevant factor in gauging its seriousness, particularly in terms of harm. The factors referred to in the guidelines are specifically said to be non-exhaustive. However, a perceived need to pass a deterrent sentence (with which we wholeheartedly agree) would still not justify moving the sentence outside the range in category 3 before consideration of the mitigating factors. 24. In our judgment, this was a case in which the mitigating factors clearly outweighed the aggravating factors that the Recorder identified. Whilst the appellant was paid to bring the cannabis into the country, which is what caused his role to be categorised as a significant one, he was not only young and immature but very vulnerable to exploitation and coercion on account of his learning difficulties and his personal background. As the author of the pre-sentence report recognised, this is a case with elements of manipulation and exploitation falling short of duress. 25. The appellant had no relevant previous convictions, this would be his first experience of custody and he would find the experience particularly difficult because of his recognised vulnerabilities. He had expressed remorse, which the author of the report considered to be genuine, and a willingness to address his offending behaviour, that willingness having been demonstrated to us as a result of the report from the young offender institute to which we have referred. He had also been compliant with probation in the past because he received referral orders for all his previous offending and completed those successfully.
26. We consider that all those factors should have led to a significant reduction in the length of the custodial sentence. The notional sentence after trial should have been 27 months, which, after affording full credit for the plea of guilty, would lead to a sentence of 18 months' detention. 27. Turning to whether that sentence should be suspended, that is a much more difficult and finely balanced question. If the Recorder had referred to the guideline, addressed the factors in it, and had decided in the exercise of his discretion that the balance came down in favour of immediate custody, this court could not really have interfered with

that decision. However, he did not do what he was supposed to do, and therefore it is open to this court to reconsider the matter for itself. 28. The case of Gray upon which Mr Flint relied in his written submissions, although he did not press it orally, was a very different case which turned on its own peculiar facts. The offender in that case had very serious health issues, his past offending had occurred many years previously, he had been out of trouble since 2008 and he had committed the index offence because he was in dire financial straits. We wish to make it clear that Gray is not a guideline case. This court does not encourage the extrapolation of facts from other cases to use as a comparison when it comes to addressing the appropriate sentence in the appeal which it is currently considering.

29. However, there is force in Mr Flint's submission that the Recorder did not address the factors in the Guideline on the imposition of community and custodial sentences. We wish to stress that those factors should be addressed in every case in which a sentence is imposed which falls within the range where a suspended sentence order is in principle available. The Recorder made no mention of any of the other factors before he said that the offence was so serious (and prevalent) that only an immediate custodial sentence could be justified for it.
30. Whilst brevity in sentencing remarks is generally to be commended, enough must be said to demonstrate that the factors in the relevant guidelines were addressed, and to sufficiently explain the judge's reasons for reaching the sentence that is pronounced. On this occasion the sentencing remarks were too brief and the failure of the Recorder to properly address the factors in the Guideline was an error of principle. We must therefore address the factors for ourselves. 31. It is clear from the pre-sentence report that the author considered that there was a realistic prospect of rehabilitation in the community, provided that the appellant disassociated himself from the peer group which had influenced his behaviour. Steps needed to be taken and were being taken to help him with this, and he was engaging positively with probation in that respect. He had previously completed the four referral orders made by the youth court. He did not present a high risk of re-offending and there is very strong personal mitigation.
32. Although immediate custody would not result in a significantly harmful impact on others, the appellant therefore meets three of the four criteria in the guideline which favour a suspended sentence order. Such an order would be demanding, with the prospect of the appellant being returned to custody acting as a strong deterrent from future offending. The author of the pre-sentence report had given cogent reasons why in her view, despite the fact that the offending plainly crossed the custody threshold, a community-based order with a rehabilitation activity requirement and an unpaid work requirement should be imposed. She explained that the latter requirement would be as helpful to the appellant in terms of developing his skills, as it would serve to impose an element of punishment upon him. 33. Turning to the negative factors, in so far as the appellant was assessed as posing a risk to others it was to domestic partners, and that risk was something that was seen as being manageable within the community. It had nothing to do with the index offence. There was no history of poor compliance with court orders, quite the opposite. The key issue therefore

is the one of deterrence: whether the offence was so serious that only immediate custody would serve to mark its seriousness.

34. We have considerable sympathy with the way in which the Recorder viewed this, because it is very important that this kind of criminal activity is deterred, and if it is on the increase the message needs to be sent out that the court is not prepared to deal leniently with this type of offending. We do not accept Mr Flint's submission that to reflect the prevalence of this kind of offending in an uplift in the custodial term and then to consider it again when gauging whether to impose a suspended sentence order is double-counting. We endorse the Recorder's concerns to send out a clear message to those who engage in this kind of criminal activity that they can usually expect to face an immediate custodial term. It is sadly all too common for vulnerable people such as this appellant to be used as drugs couriers by criminals who wish to bring drugs into the country on the basis that they are seen as expendable.
35. However, whilst deterrence is an important factor in the reduction of crime, so too is the rehabilitation of offenders. The difficult question for us is whether, taking all the circumstances into account, appropriate punishment for this offence can only be achieved in this particular appellant's case by a sentence of immediate custody. Given his young age, his learning disabilities and his other very strong personal mitigation, we consider on balance that a proper application of the factors in the guideline would have led to a suspended sentence order. That is an exceptional course and it is peculiar to the facts of this case. This case is not to be seen as any form of guideline for the future. As we say, we endorse the Recorder's concerns about the prevalence of this kind of offending, particularly in Manchester, and the need for deterrence.
36. We therefore allow this appeal. We substitute for the sentence of two years' detention a sentence of 18 months' detention suspended for a period of two years, with a rehabilitation activity requirement of 25 days and an unpaid work requirement of 100 hours. We make it clear to the appellant that if he commits any further offences during the period of suspension or he fails to comply with the requirements, he may be returned to the young offender institute to serve the whole or part of the remaining custodial term of his sentence. Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof. Lower Ground Floor, 46 Chancery Lane, London, WC2A 1JE Tel No: 020 7404 1400 Email: rcj@epiqglobal.co.uk

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