

**APPEAL AGAINST SENTENCE FOLLOWING UPON A REFERENCE FROM THE
SCCRC BY CONOR McATEER AGAINST HER MAJESTY'S ADVOCATE**

APPEAL COURT, HIGH COURT OF JUSTICIARY

[2016] HCJAC 90

HCA/2016/000501/XC

Lord Justice Clerk

Lord Drummond Young

Lord Malcolm

OPINION OF THE COURT

delivered by LADY DORRIAN, the LORD JUSTICE CLERK

in

APPEAL AGAINST SENTENCE FOLLOWING UPON A REFERENCE FROM THE
SCCRC

by

CONOR McATEER

Appellant

against

HER MAJESTY'S ADVOCATE

Respondent

Appellant: C M Mitchell; John Pryde & Co, Edinburgh (For Aamer Anwar, Glasgow)

Respondent: B Erroch, AD; Crown Agent

4 October 2016

[1] The appellant in this case was convicted of being concerned in the supply of ecstasy over a period of three and a half months. A co-accused was convicted of a similar offence over a five week period. There were some differences between the two cases. So far as the appellant is concerned, he was found in possession of tablets worth £640 and cash of £425. The co-accused was in possession of tablets worth £230 and cash of £680, of which

£380 was attributed to drug dealing. The appellant had a conviction for possession of an offensive weapon for which he had been admonished in 2010 whereas the co-accused was a first offender. The appellant was 20 at the time of the offences whereas the co-accused was 18. The sheriff imposed a sentence upon the appellant of 28 months and a sentence on the co-accused of 20 months reduced from 21 months. The appeal for the co-accused proceeded and his sentence was reduced on appeal from a starting point of nine months to eight months. The appeal for this appellant did not pass the sift.

[2] The basis for the success of the co-accused's appeal was that there had been substantial mitigation in that during the lengthy period between the commission of the offence and sentencing the co-accused had improved his life and emerged as a mature adult with good prospects. Exactly the same applies in relation to this appellant and in our view the substantial disparity between the sentences notwithstanding the slight differences between the two cases is not justified. The position of this young man at the time of sentencing was much improved from his situation at the time of commission of the offence: he had addressed his addiction problems and had attended college where he had taken out an HND in quantity surveying resulting in a conditional offer of a place at university which he would start in the third year of that course. He had supported himself with part-time jobs since the offence, including working in a bank and at the time of sentencing was working as an assistant manager in an electronic cigarette shop. Since his sentence the appellant has continued to study in prison to advance his prospects. He has now served 8 months of the sentence imposed.

[3] In the circumstances therefore, the court considers that the sentence imposed on him was excessive and we will substitute for that sentence a sentence of 12 months detention.