

338.26 Custodians/Warehousing

R v Salia 2018 EWCA Crim 1118 D pleaded to two counts of conspiracy to supply. One involved heroin and one involved cocaine. Following a police surveillance operation during which D was not observed, M was seen to leave D's address with a large carrier bag. He was stopped by the police and M said the bag contained 4 kilos of cocaine. Police entered D's flat and D showed them a wardrobe in a child's bedroom where 30 kilos of heroin and cocaine was found. The heroin was 770 grams at 56% purity. The cocaine was of an 'extremely high' purity. D said the drugs had arrived earlier that day. R was seen to park near M's vehicle. R was arrested. D's basis of plea was that he agreed to store the boxes and that they would be collected the next day. It also said that D had not had any involvement until the day of seizure. D was aged 32 and of good character. The Judge held D was a very significant member of the organisation. M received 18½ years and R received 15½ years. The prosecution now accepted that the role was 'significant'. Held. Because the issue of when the defendant became involved had not been resolved and his personal mitigation, we start at 14 years not 16, making with plea 11 years 9 months not 13½ years.

338.36 Prisoners, Supplying to Guideline etc.

R v Whittaker 2018 EWCA Crim 701 D pleaded to possession of crack cocaine with intent to supply and a class B and C supply count. He was found with 0.8 grams of crack, 0.9 grams of spice and five diazepam tablets when visiting a friend of his in prison. The Judge declined to place the offence in Category 4, saying he did not want to be constrained by the guidelines. Held. The Judge misconstrued the guideline. Section 125 does not impose a duty to impose a sentence within the category range. There is a considerable discretion given to the sentencing Judge. We start in Category 4 and, like the Judge, make the role significant. This gives a starting point of 3½ years. The supply into prison moves that up. The sentence needs a modest uplift as it was a global sentence. D's good character was a 'very important' mitigating factor. We arrive at 4 years not 6, so with plea and good character, 2 years 8 months not 4.

338.65a Spice Cases

R v Razlansari 2017 EWCA Crim 1954 D pleaded on the day of his trial to possession of a class B drug with intent. During a police operation in Manchester, two plain-clothed police officers were patrolling the streets looking for spice dealers. They noticed two men looking suspicious, one of whom was D. D was searched and underneath his hat they found a wallet containing 23 snap bags of spice. A further bag was found sewn into a stocking that was part of the design of a Christmas jumper he was wearing. The street value of the drugs was around £110. D claimed that he used spice and had an addiction. He said he decided to bulk-buy spice to sell at a profit to help fund his own habit. A police officer said spice had side effects, namely convulsions, paralysis, psychosis, extreme bizarre behaviour, heart rate problems, aggression and damage to internal organs. D was now aged 32 and had one disregarded previous conviction. The Judge said that this was a Category 3 case and D had a significant role (starting point 12 months) and the Judge raised it to 2 years as 'D was targeting vulnerable individuals'. With plea, he made it 21 months. Held. There was no evidence that D was targeting vulnerable individuals. This was low-level street dealing and it was the first occasion on which D had engaged in such dealing. The Judge could take into account the particular dangers of spice. We start at 18 months, so with plea, **16 months.**

338.75 Minimum 7 years etc. Pre-sentence reports

Att-Gen's Ref 2018 Re Marland 2018 EWCA Crim 1770 D pleaded to three class A drug supply offences and claimed exceptional circumstances to avoid the minimum term. There was no pre-sentence report. Held. There should have been a pre-sentence report.

338.77 Minimum 7 years etc. Cases

Att-Gen's Ref 2018 Re Marland 2018 EWCA Crim 1770 D pleaded to three class A drug supply offences. On three occasions D sold wraps of heroin for £15 each. The amounts were 280, 311 and 259 milligrams. D was aged 46 when sentenced and had 36 convictions including violence and burglary. There were class A supply offences in 1997, 1997 and 2006 (3 years). D's last conviction was in October 2012 (12 months). A psychiatrist said that D had a history of mental problems, in particular a breakdown in 2012, which related to him being a child victim of sex abuse. This was probably related to his opiate abuse. The Judge found three exceptional circumstances, namely a) the gap since his last supply conviction, b) the gap since his last conviction in 2012, and c) D's 'position in the hierarchy'. Held. Minimum sentences are intended to have a deterrent effect. Normal circumstances are not to be regarded as particular circumstances. It is necessary to find it would be unjust to pass a minimum term. The word 'exceptional' is not to be diluted, *Att-Gen's Ref No 115 of 2015 2015 EWCA Crim 765, 2016 2 Cr App R (S) 23 (p 201)*, (a firearms case) see **260.49**. The length of time since the last qualifying conviction does not itself make a sentence unjust but it may be taken into account. The matters in the psychiatric report and D's steps to master his addiction did not justify a departure from the mandatory provisions. The Judge's reasons were insufficient. We start at 7 years and give D the 20% credit for his plea, so **5 years, 7 months** not 3 years 9 months.