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IN THE COURT OF APPEAL

CRIMINAL DIVISION

[2020] EWCA Crim 1450



No. 202000248 A3

Royal Courts of Justice

Friday, 23 October 2020

Before:

LADY JUSTICE STUART-SMITH  
MR JUSTICE JAY  
HIS HONOUR JUDGE MENARY QC

REGINA  
V  
LIAM CORNETT  
MICHAEL ANDREW RICE  
DARRYL CLOUGH

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MR O. POWNALL QC appeared on behalf of the First Appellant.  
MR S. G. DRIVER appeared on behalf of the Second Appellant.  
MR D. SCUTT appeared on behalf of the Third Appellant.  
MR A. THOMAS QC appeared on behalf of the Respondent.

**J U D G M E N T**

MR JUSTICE JAY:

- 1 These are three appeals against sentence in a case involving a large drugs conspiracy in Liverpool. The renewed application for permission to appeal against sentence sought by a co-accused, Craig Gowland, has had to be adjourned. All these sentences were passed by HHJ Murray sitting in the Crown Court at Liverpool on 19 December 2019. They followed two trials, which we have been told lasted about five months in all.
- 2 Following his trial, Liam Cornett received a total sentence of 26 years' imprisonment. This comprised 26 years for a conspiracy to supply Class A drugs and a nine-year concurrent sentence for a conspiracy to supply Class B drugs. Following his guilty pleas, Michael Rice received a total sentence of 12 years and eight months' imprisonment consecutive to a sentence that was being served. This comprised 12 years and eight months for the conspiracy to supply Class A drugs and a five year and four-month concurrent sentence for Class B drugs. This was consecutive to a sentence of six years being served for a firearms offence. Following his trial, Darryl Clough received a sentence of 12 years' imprisonment for the conspiracy to supply Class A drugs. This was consecutive to a sentence of eight years' imprisonment being served for false imprisonment. Other orders that were made have not been appealed. There were a number of co-accused whose sentences will be considered to the very limited extent relevant in the context of disparity arguments that have been raised.
- 3 The facts in outline were that between March 2017 and July 2018 a Liverpool-based organised criminal group ("OCG") operated a drug supply network in Liverpool and established operations in at least four other cities; Plymouth, Exeter, Cardiff and Hull. The supply involved heroin, cocaine and amphetamine. The heroin was 40 to 45 per cent purity and test purchases indicated that the cocaine was between 70 and 80 per cent purity. The OCG kept control of a centrally organised high-speed operation in these various cities. They sent drugs by courier to supply individual transactions and the organisers, often based in Liverpool, controlled the dedicated mobile phone numbers (the graft phones) and passed on the orders to locally recruited managers and street dealers. Phone analysis revealed the volume of calls and callers as well as the advertising texts.
- 4 Between October 2017 and June 2018 there were multiple seizures of drugs in Liverpool, Plymouth, Hull, the West Midlands, South Wales and Exeter. Encrypted phones were used by various members of the conspiracy, including Cornett and Rice.
- 5 Liam Cornett lived mostly in Spain and returned to Liverpool when necessary. He was the ringleader and a principal organiser within the OCG and was involved in setting up the network. The term used by Mr Andrew Thomas QC for the prosecution was that he was in effect the chief executive officer and that corresponds with the evidence. His luxurious lifestyle stood him apart from the other conspirators. His role was mainly strategic in expanding the drug supply network outside Liverpool by negotiating with other OCGs in Plymouth, Torquay and Cardiff. He gave instructions to Rice and others, supervised the operations, recruited organisers, organised their employment and activated the Exeter graft phone. Cornett was aged 29 at sentence. He had 27 convictions for 45 offences between 2006 and 2017. His relevant offences included five convictions for possession of Class B drugs between 2009 and 2011, although the sentencing judge did not consider those convictions to be aggravating factors.
- 6 Michael Rice lived in Liverpool and was the principal organiser with day-to-day control of the operations. To return to Mr Thomas' description, he was in effect the chief operating officer of this criminal enterprise. He accompanied Cornett, who was a close friend of his, to key meetings in Cardiff, Plymouth, Torquay and Exeter and went on holiday with him. He travelled to Cardiff, coordinated the mid-level organisers, organised courier runs and had

control at times of the various graft phones until his arrest in December 2017, which naturally removed him from the conspiracy. He was aged 26 at sentence. He had three convictions for five offences between 2014 and 2018. His relevant conviction was for production of cannabis in 2014 and possession of a firearm and ammunition. That was in 2018, when he was arrested during this conspiracy.

- 7 Darryl Clough was living in Plymouth and was recruited by Cornett as the senior organiser of the OCG's drug supply in Devon. He subsequently met and travelled with Cornett and Rice to Exeter. He organised courier runs between Liverpool and Devon and was closely associated with the drugs warehouse in Plymouth, the home of a vulnerable adult, Richard Walters, cared for by Clough's mother. He was aged 29 at sentence. He had 21 convictions for 45 offences. His convictions included possession of a Class A drug with intent to supply. That was in 2005 and it was dealt with by the Youth Court. We accept this submission that it was not taken into account by the sentencing judge and should not be by us, but he also had convictions for possession of a Class B drug in 2012, 2013, 2015 and 2017. At the time of sentence, he was serving a sentence of eight years' imprisonment for an offence of false imprisonment to enforce a drug debt.
- 8 In relation to Darryl Clough, there was a report from a psychologist which concluded that he had a learning disability and a low level of intellectual functioning. It was likely that he met the diagnostic criteria for drug dependency, but had no significant mental health issues. It would be fair to say that the judge who saw and heard Clough give evidence formed a rather different view of his cognitive ability.
- 9 Aside from having presided over these trials, the judge had the benefit of an exceptionally detailed comprehensive sentencing note prepared by Mr Andrew Thomas QC and his junior, Mr Henry Riding. The narrative part extends to 97 pages and is exemplary. In his detailed and thorough sentencing remarks the judge considered that the harm would be categorised for the conspiracy as a whole and then the role of each individual conspirator with an uplift that reflected the extent to which he had advanced the interests of the wider conspiracy. Concurrent sentences would be passed where applicable on both counts and the sentence on Count 1 would be uplifted to reflect the overall criminality.
- 10 The first count involved a "large professional, sophisticated, well planned, well prepared, well organised successful and persistent criminal operation," and great care had been taken to try and avoid detection by the police. The conspiracy was "slick" in its manner of operation. For example, new members were recruited as and when necessary. The organisation had retained control of the drugs supply network with operatives from top to bottom in order to maximise profit and it had exploited a vulnerable person to warehouse drugs in Plymouth.
- 11 Having heard evidence through the two trials, the judge was satisfied that, despite submissions to the contrary, which were not repeated before us, sentence should be passed based on 20kg of Class A drugs and 10kg of Class B drugs. It is clear from the judge's review of the evidence that he considered that he was being conservative and we entirely agree. With regard to the Guideline, the judge stated that the Class A conspiracy was "at the very least" in category 1, noting that category 1 of the Guideline has an indicative quantity of 5kg. The judge noted the terms of the introduction to the Guideline, which is to be found on p.10:

"Where the operation is on the most serious commercial scale involving a quantity of drugs significantly higher than in category 1, sentences of 20 years and above may be appropriate depending on the role of the offender."

12 Having regard to this, the judge said that he bore in mind the quantities, as well as the nature and extent of the conspiracy. In addition, an aggravating factor was that this was a county lines operation, although the way in which the judge expressed this point is important:

"Whether I treat that as an aggravating feature, as the prosecution suggest, or treat it as part of the overall facts in the case does not matter, but I make it clear that I have not taken this aspect of the case into account twice."

13 Those with leading roles must have known that young and vulnerable people would have been exploited. The judge also observed that he "must also scale up sentences having regard to roles at every level, given the nature of this case and that it is a large conspiracy".

14 As for Count 2, the conspiracy to supply Class B drugs, that was placed in category 2 with a starting point of six years' custody and a range of four and a half to eight years, although those with leading roles would be taken outside the range, because of the nature of the operation. Where relevant, the principle of totality was noted. The judge stated that Liam Cornett and Michael Rice were both "generals" and at the pinnacle of the conspiracy. Cornett was the operation's number one leader with Rice not far behind, but Rice only played a role until his departure from the scene in December 2017.

15 On Count 2, in August 2017 both men set up a supply network from Liverpool to Cardiff. Liam Cornett's previous convictions did not aggravate his sentence and no account was taken of admissions in evidence that he imported and supplied cannabis on an industrial scale. He was the leader of the Liverpool OCG and had strategic control over the organisation where necessary. He organised recruitment; met with other criminal groups; set up business deals; expanded the network by, for example, incorporating Clough's Plymouth business; set up supply in Exeter; set up graft phones; met couriers; replaced people after arrest and gave instructions to others that were high up in the organisation. His involvement on Count 2 was not restricted to Cardiff, because drugs were being supplied in other parts of the UK. The judge's approach led to a term of nine years on Count 2 and of 26 years on Count 1 and the overall sentence was one of 26 years' imprisonment.

16 Michael Rice was not heavily convicted until his conviction for possession of a firearm which arose out of his arrest on 4 December 2017. That would be reflected in sentence. He was a partner and in day-to-day charge of the OCG. He implemented Cornett's plans; took part in the negotiations to expand the network; coordinated the organisers below him; sometimes answered the graft phones and organised couriers and gave them instructions. Mitigation it was noted, as with the others, that that could only be of limited effect. The judge passed concurrent sentences on Counts 1 and 2 consecutive to the six years' imprisonment involving the possession of a firearm which was already being served before credit for his guilty pleas was given. The judge's starting point on Count 1 of 22 years was therefore reduced by a full one-third to 14 years and eight months and he received a further two years' discount to reflect totality.

17 Darryl Clough had no relevant previous convictions. His role was as a senior organiser and leader. He was already involved in the supply of Class A drugs in Devon when he joined forces with the OCG. He knew that he was part of a wider organisation. He met up with Cornett and other senior organisers, organised courier runs from Liverpool and organised and attended the warehouse. He provided and at times had control of a graft phone. He directed and organised the sale of Class A drugs on a commercial scale, had substantial links

to and influence on others in the chain and had an expectation of substantial financial gain. He was already serving a sentence of eight years' imprisonment for false imprisonment, which involved punishing a drugs user to enforce drugs debt. This offence was committed during the course of the conspiracy. The judge rejected the defence submission that is not persisted with before us to subsume that sentence into the sentence of the conspiracy and that the sentence on Count 1 should reflect the drug supply in Plymouth. The judge's approach was to take an adjusted starting point of 14 years for the drugs conspiracy, but reduce the sentence on Count 1 to 12 years to reflect totality.

- 18 As for potentially relevant co-accused, Craig Gowland, a principal organiser, received 17 years' imprisonment after trial. Kieran Eaves, a senior organiser with a leading role, received 10 years after a trial.
- 19 Finally, given one of the issues mentioned by the single judge when granting permission, we should record part of p.6 of the transcript of the sentencing remarks:

"Bunching. I shall do my best to ensure that the sentences which I impose reflect not only the roles of the individual offenders but also any distinctions between their situation and those of their co-conspirators. However, as explained by Sir Brian Leveson in the case of *Welsh & Others* (2014) EWCA Crim 1027, given the number of defendants that I have to sentence and the circumstances of this case, it may well be that bunching may result. However, I make it clear that I have considered the cases of each defendant individually and I have exercised my judgement in the way set out by Sir Brian Leveson."

- 20 The vice of bunching, if we may put it in this way, is that the sentences of those at the very highest end of the hierarchy may be unjustly too high to ensure a sufficient gap between them and those lower down.
- 21 The grounds of appeal are as follows. For Liam Cornett it is contended that the sentence of 26 years was manifestly excessive. Seven points were raised in writing, but not all of those have been pursued with equal emphasis by Mr Orlando Pownall QC representing him today. First, it was accepted that by virtue of the verdicts the appellant had a leading role with Rice who was arrested on other matters in December 2017. It is said that Rice did continue to make calls in connection with the conspiracy. There is disparity between the appellant and Rice and Gowland. The appellant was not the mastermind behind the conspiracy, graft phones were used before and after it. Secondly, it is submitted that in reflecting the role of the individual and uplifting the sentence to reflect what that individual did to advance the interests of the conspiracy there was a risk of duplicating the aggravating factors.
- 22 Thirdly, the reference to county lines should not have been an aggravating feature. This was, in essence, an organised team of street suppliers. Fourthly, the appellant was not a wholesale supplier. He was not close to importation or the cutting of the drug. Fifthly, there was no evidence that the appellant had used or caused others to use duress. Sixthly, although significant profits would have been made, it would not have been significantly more than £1 million. Seventhly, the quantity of the drug was in dispute. The appellant contended that it was between £10 to 20kg, although the approach of the judge cannot be said to have been irrational. However, and this is the real point Mr Pownall advances, it was not "massive", that is to say not hundreds of kilograms and there was no evidence that it was substantially more than 20kg.

- 23 Mr Pownall's oral argument was directed to the note which he has helpfully recently submitted to us supporting the proposition that the correct sentence here should be no more than 22 years. He drew attention to the fact that there is no case in the schedule of cases that was placed before us which showed sentences passed as high as 26 years for this type of offending. He accepted that only limited assistance could be derived from comparison with other cases, particularly in circumstances when this court has dismissed the appeal, but, nonetheless, some assistance could be derived.
- 24 Mr Pownall in oral argument placed particular weight on a number of previous decisions of this court and, in particular, this court's decision in *R v Welsh* [2014] EWCA Crim 1027. The sentences there were 25 and 23 years respectively for Mr Christopher Welsh Sr and Jr in a situation which did not involve, as it does here, county lines activity. The quantities there were "monumental" and the value of drugs concerned was in the region of £100 to £200 million. Mr Pownall's over-arching submission was that the quantity of drugs was the driving force in assessing harm and the level of sentence, which is the approach underlying the Sentencing Guideline. Mr Pownall accepted that the sentencing judge in the present case did have regard to *R v Welsh*, but submitted that he gave no reason for imposing higher sentences in relation to his client.
- 25 Mr Pownall then drew attention to the case of *R v Cooke* [2014] EWCA Crim 53 where the starting point was one of 23 years in relation to 20kg of 100 per cent pure heroin. This indicates, he submitted, that the sentence in our case was too high. Finally, reference was made to the cases of *R v Hinchcliffe* and *Atherton* [2019] EWCA Crim 1155 and the point there is that the amounts were very considerably higher than in the present case. For Atherton, who was the lead conspirator, the amount was 216kg of cocaine. Atherton did not argue that the sentence of 25 years was manifestly excessive.
- 26 Mr Pownall sought to draw a comparison with Rice, who did not leave the conspiracy voluntarily. He departed from it, as we have said, in December 2017. His reasoning was that in reality Mr Rice was receiving an adjusted starting point of 19 years, but as Mr Thomas points out there is absolutely no merit in that submission. The true comparison is with the 22 years we have already referred to.
- 27 Mr Michael Rice's ground of appeal is that the sentence was manifestly excessive and there was insufficient regard to the principle of totality. Two points were taken. First, that the starting point was too high and, secondly, that the combined sentences for the possession of the firearm and the conspiracy were simply too long, especially as there had been guilty pleas on both matters. Mr Driver, on behalf of Mr Rice, supplemented those submissions orally and with effect. His basic submission was that if Mr Pownall's contention was right in relation to Mr Cornett then the sentence for Michael Rice would have to be too high. The distinction between his client and Liam Cornett had to be maintained. His subsidiary submission was that in any case totality was not respected by the judge, because the reduction of two years was insufficient to reflect the firearms matter, even if the firearms offence should not be regarded as part of the conspiracy. Overall, Mr Driver invited us to stand back and conclude that what in effect was a sentence of nearly 19 years for this criminality was too long.
- 28 Darryl Clough advances two grounds of appeal. First, that the sentence of 12 years imposed consecutively to the existing sentence of eight years was wrong in principle. The false imprisonment and assault occasioning actual bodily harm which resulted in eight years' imprisonment took place during the currency of the conspiracy, must have been committed as part of it and, therefore, should have been subsumed into the sentence of the conspiracy; and, secondly, that the sentence was manifestly excessive and that regard was not properly made to the principle of totality. In oral argument, Mr Skutt refined those submissions. He

accepted that viewed in isolation the sentences for the drugs conspiracy, 14 years, and the false imprisonment, eight years, were not manifestly excessive nor wrong in principle. His real point was that the total sentence was too long and that the principle of totality was not properly taken into account.

- 29 In his brief submissions, Mr Thomas reminded us of the particularly pernicious and insidious nature of county line conspiracies, which are a relatively new phenomenon. He submitted that Darryl Clough prevailed on a vulnerable individual, Richard Walters, to permit the use of the warehouse in Plymouth. He reminded us of the extent of the courier runs in this case; 27 to Plymouth, four to Cardiff and 29 to Hull.
- 30 We have carefully considered all these grounds as well as the submissions which have been very effectively advanced to us orally today. As we have said, our attention was drawn to a number of authorities of this court dealing with what may be described as top-end drugs conspiracies falling short of importation. We should also mention the case of *R v Ajayi* [2017] EWCA Crim 1011, where it was said that county lines are capable of being an aggravating factor, although care should be taken to avoid double counting. In the circumstances of this case, we have no doubt that the feature of county lines was of importance.
- 31 In our judgment, there is no visible fault or flaw in the judge's sentencing remarks. For obvious reasons, he had a very detailed knowledge of the case and his remarks are full and deeply considered. His characterisation of the gravest features of this conspiracy was correct and cannot be improved on. For those at the top of this hierarchy sentences in excess of 20 years' imprisonment, in the absence of any credit for pleas, were inevitable and that was fairly accepted by Mr Pownall.
- 32 The relevance of the surpassing of county boundaries was that this conspiracy was extensive and insidious. Had it been confined to Liverpool, the sentences would have been lower. The judge specifically directed himself as to the risk of double counting and there is nothing to suggest that he succumbed to it. He assessed the difference in roles and calibrated the sentences accordingly. We cannot accept submissions to the effect that he was wrong in that exercise. He presided over the trial and was fully entitled to reach the conclusions that he did. The judge proceeded on the conservative and fair basis that the total drugs involved were 20kg and 10kg respectively of classes A and B, although we take the point that three figure or massive quantities could not be proved. In our view, considerable caution must be exercised by the appellate court from placing too much emphasis on quantities. The whole picture must be considered and it is that picture which the sentencing judge bore in mind throughout.
- 33 The submission with the greatest force is that the sentence of 26 years' imprisonment for Cornett was simply too high and that this had a knock on impact for Rice. As Edis J explained when granting permission:
- "The consequence of bunching may sometimes be that sentences for the ringleaders may be somewhat higher than they need to be in order to reflect the difference in roles."
- 34 Of course, Edis J was doing no more than identify an arguable point, but it is the point which appears to us independently to have the greatest force. We have referred to the helpful table analysing relevant case law that has been prepared by Mr Pownall and have mentioned some of the cases in that table. We should say that we have paid careful

attention to all those cases to the extent that they assist. We accept the submission of Mr Thomas, on behalf of the Crown, that (a) each case must turn on its own facts and (b) given in all the cases the appeals were dismissed, even higher sentences would not necessarily have been manifestly excessive. That point was specifically made in the case of *Welsh* which the sentencing judge specifically considered. *Welsh* was not a county lines case and sentences before credit for plea of 25 and 23 years were upheld. Although the quantities in *Welsh* were higher, that conspiracy was otherwise comparable in size and duration. There is also force in Mr Thomas' observation that the role of Christopher Welsh Jr was broadly equivalent to that of Rice.

- 35 In our judgment, Cornett's sentence of 26 years' imprisonment was undoubtedly severe. However, these cases must turn on their own precise facts and the assistance to be drawn from the sort of comparison that has been urged upon us is necessarily limited. We have already drawn attention to the duration, scale, sophistication and geographical scope of this conspiracy. The judge was abreast of all its salient aggravating features and we cannot conclude that the sentence was manifestly excessive. Cornett's appeal must therefore be dismissed.
- 36 Rice's appeal is very much dependent on the fate of Cornett. His role was slightly lower down the criminal hierarchy and we cannot conclude that the sentence of 22 years' imprisonment before credit for plea and further deductions for the firearms matter was manifestly excessive. The overall sentence did reflect totality and the deduction that the judge imposed – 2 years – was reasonable. In our view, it cannot be said that he erred in that respect. Rice's appeal must therefore be dismissed.
- 37 As for Darryl Clough, there is no merit in the argument that the sentence on the conspiracy taken in isolation was manifestly excessive and Mr Clough accepted that. The judge calibrated his case against that of other conspirators and, in our judgment, he was entitled to do so. Darryl Clough's real point is that an overall sentence of 20 years was essentially too high, because at the very least the false imprisonment was committed during the currency of the conspiracy and was related to it. We have carefully reflected on this submission. The judge's imposition of a consecutive sentence was correct in principle and it is not said before us today that he erred in that respect. It was separate vicious criminality which was required to be marked separately. The judge deducted two years for totality. In our judgment that was not generous, but we cannot conclude that the overall sentence was manifestly excessive. Clough's appeal must therefore be dismissed.
- 38 All these appeals are therefore dismissed.
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