



Neutral Citation No. [2022] EWHC 1273 (SCCO)

Case No: 201803679 B4

SCCO Reference: SC-2022-CRI-000020

IN THE HIGH COURT OF JUSTICE
SENIOR COURTS COSTS OFFICE

Thomas More Building
Royal Courts of Justice
London, WC2A 2LL

Date: 18/05/2022

Before:

COSTS JUDGE ROWLEY

REGINA

v

COSTELLO

**Judgment on Appeal under Regulation 29 of the Criminal Legal Aid (Remuneration)
Regulations 2013/Regulation 10 of the Costs in Criminal Cases (General) Regulations
1986**

Appellant: Philip Rule (**Counsel**)

The appeal has been successful for the reasons set out below.

The appropriate additional payment, to which should be added the sum of £500 (exclusive of VAT) for costs and the £100 paid on appeal, should accordingly be made to the Applicant.

COSTS JUDGE ROWLEY

Costs Judge Rowley:

1. This is an appeal by Philip Rule of counsel against the fees allowed to him in respect of an appeal to the Court of Appeal by the determining officer in accordance with the Criminal Legal Aid (Remuneration) Regulations 2013.
2. Counsel was instructed in the appeal of Jack Costello. The events of the appeal are succinctly described by the determining officer in his written reasons in the following terms:

“On 7 August 2018 in the Crown Court at Preston, Costello was convicted of murder and sentenced to life imprisonment with a minimum term specified of 19 years. His trial counsel, who was Mr Vardon, drafted an Advice and Grounds of Appeal which were refused by a Single Judge on 13 August 2019. New solicitors and counsel (Mr Rule) were then instructed privately to renew both applications to the Full Court. Leave to appeal against conviction was refused but leave to appeal against sentence was granted with a Representation Order for Mr Rule to prepare and present the appeal. On 9 October 2020 the Full Court reduced the minimum term to 16 years’ imprisonment.”

3. Following the granting of the representation order, counsel was involved for just over an hour and a half between February 2020 and 7 October 2020 i.e. two days before the Full Court hearing. That period of 94 minutes was allowed by the determining officer in his calculations of an appropriate fee.
4. On the day before the hearing, i.e. 8 October 2020 counsel spent 8 hours 15 minutes, including liaising with the court’s lawyer and travelling to the court to deliver a copy of the CCTV footage which no one else possessed, and drafting a note for the court as to the relevant content of the CCTV and how to access each disc including passwords.
5. Counsel’s fee note records work on 7 October 2020 of considering the respondent’s skeleton argument, comparing it with the sentencing remarks on the transcript of the summing up, as well as discussing with the Court of Appeal lawyer the issues regarding the CCTV evidence. The determining officer has taken the view that this work on 7 October, when added to the work of counsel in February 2020 in obtaining leave to appeal against the sentence, meant that the further 8 hours of preparation on 8 October was not warranted. The returning officer allowed 15 minutes for dealing with the CCTV evidence but otherwise allowed only 2 hours of the preparation claimed on 8 October.
6. It is not obvious to me why the determining officer thought that only 15 minutes had been spent in relation to the CCTV issue. The times described above are set out on counsel’s fee note which is the basis of his claim for £1,875 plus VAT and for which the determining officer allowed £500 plus VAT. The fee note describes overall preparation of 10 hours together with court attendance on 9 October 2020 of 2 hours 30 minutes at an hourly rate of £150 plus VAT. The determining officer’s allowance amounts to 4 hours’ preparation plus attendance of 2 hours 30 minutes at a rate of £75 per hour.

7. Counsel, who appeared on his own behalf on the appeal hearing, told me that he had probably spent approximately 3 hours on 8 October in dealing with the watching and re-watching of the CCTV in order to describe its content and how to view it. Counsel had not made a contemporaneous note in relation to that work and it would appear that whilst travelling to the court to deliver the discs he had carried on with preparation for the appeal and as such there is no clear demarcation between the time of one element of preparation and another.
8. Counsel showed to me his preparation document for the appeal which amalgamated the contents of the various appeal documentation together with references to the evidence, case law et cetera. It was clear that that was the central work undertaken in terms of preparation for the appeal. It was a detailed 11 page document and plainly reflected counsel having spent the day in preparing for the Court of Appeal rather than the 2 hours allowed for by the determining officer. In my view, the amount of time allowed by the determining officer underplays the significance of appearance before a three-judge panel of the Court of Appeal and the need to be thoroughly prepared for that appearance.
9. I understand that Costello was unhappy that he could not appeal his conviction as well as his sentence and no doubt the pre-and post-hearing conferences with him required careful handling. But in any event, it does not seem to me that either the time spent on the day of the appeal hearing or on the preparation beforehand was anything but reasonable for an appeal against a murder sentence before the Court of Appeal. In my view the time claimed of 10 hours plus the court attendance i.e. 12 hours 30 minutes in total, was entirely reasonable and the fee allowed to counsel for the work done should reflect that time period.
10. In relation to the hourly rate allowed of £75 per hour, the determining officer does not specifically indicate why he has allowed that hourly rate. He states that he notes with interest that the £150 per hour claimed by counsel is the same as the rate “paid to leading Counsel in the highest category of Very High Cost cases in the Crown Court.” He says that he does not seek to argue that he is bound by such a rate and indeed it is obvious that he has not allowed that rate in this particular case. I agree with the determining officer that the rate for high cost cases in the Crown Court has no binding effect on rates to be allowed in respect of the Court of Appeal. The transactional nature of the rates in Very High Cost cases reflect the fact that considerable amounts of time are expected to be claimed when the bargain is struck at the beginning of the case. Appeals before the Court of Appeal involve less work being claimed and, as such, that transactional bargain does not apply. Moreover, the responsibility on counsel in appearing before the Court of Appeal is considerably greater than before the Crown Court.
11. It may well be that other advocates seek lower hourly rates in their claims under the Regulations. But that has no bearing on what is a reasonable rate for appearance before the Court of Appeal by counsel. The often quoted words of Higginbottom J, as he then was, in Evans and Others v the Serious Fraud Office, set something of a ceiling for criminal work. There is nevertheless considerable headroom between the rates referred to in Evans and the rates allowed by the determining officer here. Appeals against conviction or sentence in murder cases seem inevitably to me to be towards the top end of criminal work and the fees to be allowed should reflect that accordingly. I have no doubt that £75 per hour for counsel’s fees in this case does not represent reasonable remuneration and I allow the rate of £150 per hour claimed.

12. I appreciate that the attendance fee ought strictly to be looked at as if it were a brief fee by considering the so-called “seven pillars” rather than simply the time spent and the hourly rate. But the sum claimed for that attendance has been claimed at a particular rate and is only a small proportion of the overall figure. So, I have dealt with it on the basis it has been claimed: if it had been claimed in a more traditional fashion, I would still have reached the same conclusion.
13. Consequently, I direct the determining officer to pay the fees claimed of £1,875 plus VAT. Since counsel has been successful in his appeal, he is also entitled to the costs of it which I allow in the sum of £500 together with the appeal fee of £100.