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**Neutral Citation No. [2023] EWCA Crim 1634**

IN THE COURT OF APPEAL  
CRIMINAL DIVISION



CASE NO: 2023 03803 A5

Royal Courts of Justice  
Strand  
London  
WC2A 2LL

Thursday 21 December 2023

Before:

LORD JUSTICE DINGEMANS

MR JUSTICE HILLIARD

HIS HONOUR JUDGE DREW KC

REFERENCE BY THE ATTORNEY GENERAL UNDER S.36 CRIMINAL JUSTICE ACT 1988  
REX  
v  
REDI GJONI

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MR JOEL SMITH appeared on behalf of the Solicitor General  
MR NICHOLAS ROBINSON appeared on behalf of the Offender

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

LORD JUSTICE DINGEMANS:

**Introduction**

1. This is the hearing of an application on the part of His Majesty's Solicitor General for leave to refer a sentence to this court. We grant leave.
2. The respondent is Redi Gjoni, a 26-year-old man who was born in May 1997. He was granted pre-settled status to remain in the United Kingdom in 2020.
3. Mr Gjoni's case was listed in December 2022 and sending records at that time indicated that he would be entering not guilty pleas to the counts on the indictment. There was a PTPH on 6 January 2023, but at that stage Mr Gjoni was not arraigned because he had no legal representation. On 7 February 2023 the matter was listed at Croydon Crown Court and a trial date was set. There was a note which suggested that all three defendants intended to plead not guilty, but Mr Gjoni had only recently had legal aid sorted out. If the indication of plea was to change, solicitors would be in contact. The solicitors were in contact, and on 26 May 2023 Mr Gjoni entered guilty pleas to both counts on the indictment. It seems that this was on the agreed basis of plea and there had been some negotiation on the basis of plea.
4. There were two other defendants who were jointly charged on count 2. One was a brother and one was a cousin of Mr Gjoni. Those two co-defendants maintained their not guilty pleas and contended that they had no idea about the drugs which were found in relation to count 2. They simply attended the accommodation and it was Mr Gjoni who was solely responsible for the drugs. Their trial took place in July 2023 and they were both acquitted by the jury.
5. Given the importance of the basis of plea for the sentence that was imposed, we have set it out in whole. There were two counts on the indictment and as to count 1 it was said this:

"This was not the defendant's own operation. He acted under direction. He was directed to collect, store and deliver cocaine. He acted as a custodian and courier. He was told what to do and when. He was given a phone which he used as directed for the indictment period at the end of which it was taken off him. He had no influence upon those above him in the chain. At the time of the offence in

count 1 he was aged 22-23 (date of birth 11/05/1997)."

In relation to count 2 it said:

"In the period between June 2020 and December 2022 the defendant lived with his wife ... in London. She is a Pharmacist. He was given a 5-year visa ... and so he was allowed to remain and work in the UK. In between June 2020 and December 2022 he returned to Albania on numerous occasions for a week or weeks at a time to study, visit family and friends. Between 19 November 2020 and 8 October 2021 he studied and completed the final year of bachelor's degree in law at the Mediterranean University of Albania. He completed some seminars and lectures online from the UK. He completed all of his exams in Albania. He had a contract to work in construction in the UK from August 2022. This was lawful employment. His wages were paid into his bank. He returned to Albania in November 2022 to see family.

He returned to the UK and was given the keys to the address where he was arrested and he was directed to look after the drugs that were seized by police. When he first went to this address the drugs were already there. His expectation was that like in 2020, he was to act as a custodian and courier. He had no influence upon those above him in the chain.

#### *Summary*

This was not the defendant's own operation. He acted under direction. He was directed to collect, store and deliver cocaine. He acted as a custodian and courier. He was engaged by pressure, albeit of his own making, because of his gambling debt. He had no influence upon those above him in the chain.

#### *Sentencing guidelines*

The prosecution and defence agree that the defendant falls within significant role."

6. On 5 October 2023 Mr Gjoni was sentenced to a total of 9 years' imprisonment on count 1, with a further 7-years-6-months' imprisonment concurrent on count 2, making an overall sentence of 9 years.
7. On behalf of the Solicitor General it is submitted that the weight of drugs for both counts 1 and 2 was some ten times more than the indicative amount in the guideline, that the judge had taken a sentence of 12 years as a notional sentence before reduction for guilty plea which failed to reflect the scale of the offending, the judge had been drawn into error by considering other cases which turn on individual facts, and that there was separate criminality on count 2 which does not appear to have been reflected in the sentence.

8. It is submitted on behalf of Mr Gjoni that the sentencing judge was experienced and best placed to consider the circumstances of the offence, which included the basis of plea that this was not Mr Gjoni's operation and it was apparent from the EncroChat that Mr Gjoni was working under direction; the quantity of drugs is important but only a factor; the agreed basis of plea reflected that Mr Gjoni did not have influence on those above him in the chain, which is a lesser role factor which affects the starting point. The judge might have taken a sentence of 15 years after trial to include all matters of aggravation, before mitigation for age, limited financial advantage, personal mitigation, to get to some 12 years before credit for plea, showing that the overall sentence was not outside the reasonable range, and that that uplift was sufficient to take account of the criminality in count 2.

#### **Factual circumstances**

9. In relation to count 1 Mr Gjoni received 46 kgs of cocaine and distributed it to others in four consignments over a period of approximately six weeks between 1 April and 13 May 2020. The offending was discovered through the EncroChat device and decryption of that, and Mr Gjoni had been himself provided with a secure communication device. He used name 'quietwasp'. During the Covid pandemic the wholesale prices for cocaine were higher than in 2022, and were in the region of £36,000 per kilogram, giving an overall value of £1.65 million for the cocaine which had been distributed by Mr Gjoni. There were conversations on the device which indicated that Mr Gjoni was going to be paid £100 per kilogram of cocaine that he handled, but he was demanding greater payment for subsequent deliveries. The evidence does not show that those demands were successful. So far as the submissions this morning are concerned on behalf of the Solicitor General, emphasis was placed on the fact that he had been provided with 2 kgs on his own account, and he organised deliveries and he suggested customers, as appears from the downloads from the EncroChat.
10. Count 2 reflects further criminality which took place after the compromise of the secure EncroChat devices had become public knowledge in about June 2020. An address at which

Mr Gjoni was present (and he was now aged 25 years) but which was not his home address was raided by police on 8 December 2022. Around 11 kgs of cocaine was recovered together with nearly £44,000 in cash. The police had attended a flat in Edgware. They forced entry using a chainsaw and other tools. Mr Gjoni and his brother and cousin were present in the flat and fled. Mr Gjoni was wearing only his underwear. He tried to vault a fence into a neighbouring property but was detained by police. Five of the 1-kg blocks of cocaine (at 94 per cent purity) were marked with the logo 'KC' and recovered from the garden. The address was searched. In the kitchen police recovered 96.8 gms of cocaine powder wrapped in clear plastic film at 89 per cent purity. In a kitchen cupboard they found a further small bag with 1.16 gms of cocaine powder at 75-95 per cent purity and a further 41.2 gms of white powder, mostly of adulterants. They then recovered three blocks of cocaine from the bedrooms. Two of the blocks weighed 1 kg and another just under that. In a wardrobe the police found £43,930 in cash and a black bag containing three further blocks of cocaine with various weights. The expert evidence suggested that the wholesale price of cocaine in December 2022 was £25,000.

### **The sentence**

11. There was no transcript of the sentencing remarks available to us because of problems with the recording, but we were very grateful to counsel for the agreed note that was produced. We were this morning told that an audio download had been obtained, and we listened to that audio download. It is apparent that the judge took a discount of the full plea of 25 per cent, and no challenge can be made to that. The judge had also recorded that Mr Gjoni had returned to Albania to study and had worked legitimately after his involvement in the conspiracy on count 1 before the commission of count 2. The judge recorded Mr Gjoni's role from the basis of plea.
12. The judge reminded himself of the starting point and sentencing range for a category 1 offence where a defendant plays a significant role, which is a starting point of 10 years with a range of 9-12 years, but on an indicative amount of 5 kgs. The judge had reminded

himself of all the mitigation advanced on behalf of Mr Gjoni, and he reiterated the comments that he had made about Mr Gjoni's decision to recommence offending despite the public compromise of the EncroChat network. The judge said that in the circumstances of the case the proper approach would be to impose concurrent sentences in respect of each count on the indictment.

13. The judge then turned to count 1. He said he took a starting point of 12 years' imprisonment in respect of count 1 before giving Mr Gjoni 25 per cent credit for plea. He then took what he said was a starting point of 10 years for count 2 before giving the credit which is why he ended up with the 7-years-6-months, which was made concurrent. It is only right to say that although the judge used the term "starting point", it is common ground that could not have been correct use of the term. It must have been the figure that the judge took for sentence after a trial and before discount for plea to reflect all the matters of aggravation and mitigation.

#### **The sentencing guidelines and other relevant factors**

14. It was common ground that count 1 was harm category 1, which is based on 5 kgs of cocaine, and similarly for count 2. There was, therefore, a need for an uplift to reflect the amount of cocaine. Significant role is indicated by one or the more of the following: operational or management function within a chain; involves others in the operation whether by pressure, influence, intimidation or reward; expectation of significant or financial or other advantage (save where this advantage is limited to meeting the offender's own habit), and whether or not operating alone; and some awareness and understanding of scale of operation.
15. A lesser role is indicated by: performed a limited function under direction; engaged by pressure, coercion, intimidation, grooming and/or control; involvement through naivety, immaturity or exploitation; no influence on those above in a chain; very little, if any, awareness or understanding of the scale of operation; and expectation of limited, if any, financial or other advantage.

16. It is right to record that the judge accepted that this was a significant role in accordance with the basis of plea, although the basis of plea did not explain why that was a significant role. The judge also accepted one aspect of a lesser role, which was 'no influence on those above in a chain'.
17. As already indicated, a significant role category 1 has a starting point of 10 years with a range of 9-12 years, but the guideline notes that "where the operation is on the most serious and commercial scale, involving a quantity of drugs significantly higher than category 1, sentences of 20 years and above may be appropriate, depending on the role".
18. It is recognised that there is a need to uplift sentences to reflect the amount of cocaine: see generally *R v Cuni* [2018] EWCA Crim 600; [2018] 2 Cr App R (S) 18. Sentencing in these cases depends on quantity, role, seniority in the chain, geographical scope, length of time and the number of different conspiracies engaged: see *R v Greenfield* [2020] EWCA Crim 459; [2020] 2 Cr App R (S) 19. When sentencing for a conspiracy it is important to reflect not only the amount supplied, and therefore harm done, but also the intended amount. It is difficult to derive much assistance from other sentences in individual cases, which turn very much on the amount and role, for example *R v Costi* [2023] EWCA Crim 235; and *R v Clarke* [2023] EWCA Crim 933, because each case will have different factors of lesser role and particular mitigating factors.
19. In this case there were the following aggravating factors: the offending took place in relation to count 1 over a reasonably short period of time but used an EncroChat device in order to avoid detection; there was the separate offending after the compromise of the EncroChat network and after a period of time when Mr Gjoni had appeared to devote himself to a lawful life; the aggregate weight involved was over 50 kgs of cocaine; there was a significant role (involving awareness of the scale of the operation, involvement of others in the operation, organising the purchase of drugs and financial reward, and as was pointed out this morning even identifying customers); there was the involvement of others (drivers and couriers); and there was payment for services, including a demand for further increased pay.

20. There were mitigating factors being the lack of previous convictions and excellent references about Mr Gjoni, and the work he had done. Mr Gjoni was a custodian and courier with, on the finding of the judge, no influence on those above him in the chain. There were also letters from the family, showing the life that the Mr Gjoni had lived before he became involved in offending, and Mr Gjoni had written to the judge to apologise for his offending.

### **An increase on count one**

21. In this case there was one conspiracy in count 1 for 6 weeks involving 46 kgs of cocaine and another supply of 11 kgs in count 2 some 2 years later. The real difficulty in this case is that there were two completely separate sets of offending, with separate harm caused by separate dealing in drugs. It is right to note that counts one and two involved the same type of offending, namely dealing in Class A drugs, but the offences were separated in time by 2-years-and-4-months and by Mr Gjoni's lawful study and work. Mr Gjoni had, however, decided to return to criminality to look after substantial quantities of drugs, which obviously merited the separate sentence of 7-years-6-months imposed by the judge. The question is whether the whole of this sentence on count 2 should have been concurrent, or consecutive but reduced for totality, or concurrent with an addition to the sentence on count 1.
22. The principles of totality addressed in the Totality guideline are relevant. These provide that there is no inflexible rule as to whether the sentence should be consecutive or concurrent, but if concurrent it will often be the case that the notional sentence on any single offence will not adequately reflect the overall offending.
23. We do consider that the judge was entitled to make count 1 the lead offence and to make count 2 concurrent, but we also consider that there had to be some upward adjustment to reflect the separate criminality and harm caused by the separate offending on count 2 which itself related to 11 kgs of cocaine. It is not apparent from the sentencing remarks on the note that we have been provided with or from the audio tape of the sentencing remarks that we have listened to, that this featured at all in the judge's analysis of sentence. The judge



simply appears to have decided that the sentence on count 2 was to be concurrent and left it at that. In our judgment some uplift to count 1 had to be made for the separate offending and separate harm, which in itself was twice the indicative amount for a 10-year starting point for a significant role. Any final sentence must be proportionate and we therefore have to bear that in mind.

24. Having granted leave for this Reference and having reflected carefully on what is the proportionate amount to increase the sentence on count 1 while leaving the sentence on count 2 concurrent, the lowest that we have been able to consider that fairly reflects all of the criminality disclosed by this offending, the aggravating and mitigating features and discount for pleas, is an increase of 4-and-a-half years. In those circumstances, we will allow the Reference to the extent of increasing the sentence on count 1 by 4-and-a-half years from 9 years to 13-and-a-half years. We will leave the sentence on count 2 of 7-and-a-half years to remain concurrent.
25. We are very grateful for all the assistance that we have had from Mr Robinson and Mr Smith.

**Epiq Europe Ltd** hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

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