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IN THE COURT OF APPEAL
CRIMINAL DIVISION
ON APPEAL FROM THE CROWN COURT
AT SOUTHAMPTON
HHJ CHRISTOPHER PARKER KC T20220016



CASE NO: 2024 02139 A4

Royal Courts of Justice
Strand
London
WC2A 2LL

Wednesday 31 July 2024

Before:

LORD JUSTICE SINGH

MR JUSTICE JOHNSON

HIS HONOUR JUDGE TIMOTHY SPENCER KC

REFERENCE BY THE ATTORNEY GENERAL UNDER S.36 CRIMINAL EVIDENCE ACT
1988

REX

v

SCOTT GAVIN PARRY

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MR WILL MARTIN appeared on behalf of the Solicitor General
MS FRANCESCA LEVETT appeared on behalf of the Respondent Offender

J U D G M E N T
(Approved)

LORD JUSTICE SINGH:

Introduction

1. This is an application on behalf of His Majesty's Solicitor General for leave to refer sentences to this Court under s.36 Criminal Justice Act 1988 ("the 1988 Act") on the ground that they were unduly lenient.
2. The Respondent Offender was born on 26 January 1986. He was aged around 33 and 34 at the time of the offences and 38 at the date of sentence.
3. On 15 January 2024, in the Crown Court at Southampton, the Offender changed his plea to one of guilty. This was some six weeks before a trial was due to take place.
4. On 17 May 2024, at the same Crown Court, the Offender was sentenced by His Honour Judge Christopher Parker KC as follows.
 - On count 1, which was an offence of being concerned in the supply of Class A drugs, namely cocaine contrary to s. 4(3)(b) of the Misuse of Drugs Act 1971, the sentence was 13 years 8 months' imprisonment.
 - On count 9, an offence of possessing criminal property contrary to s.329(1)(c) of the Proceeds of Crime Act 2002, the sentence was 2 years' imprisonment, made concurrent.

Accordingly, the total sentence was 13 years 8 months' imprisonment.

The facts

5. The facts can be taken for present purposes from the Final Reference. In summary, between 28 February 2019 and July 2020 the Offender played a leading role in the wholesale supply of 82 kgs of cocaine in the Southampton area, directing and organising dealing via his EncroChat device and controlling a safe house where the drugs were stored and cut with adulterants.
6. The facts are set out in the Final Reference in more detail as follows. Operation Scowl was a Hampshire Police investigation into the supply of cocaine. It arose from the National Crime Agency investigation known as "Operation Venetic" relating to the use of EncroChat encrypted communications. Alongside the EncroChat material, the Operation Scowl

investigation involved surveillance, communications data and financial material.

7. Between 28 February 2019 and July 2020 the Offender was involved in the wholesale supply of cocaine in the Southampton area. The EncroChat evidence shows that from April 2020 the Offender sourced cocaine in kilo blocks from upstream suppliers to be sold wholesale to downstream suppliers. The Offender managed the enterprise at arm's length using a co-defendant. The wholesale price at the time was around £38,000 to £40,000 per kg.
8. The cocaine purchased by the Offender was stored at an address known as "*the Spot*". It would then be diluted to increase profit. When the premises were searched by police on 13 July 2020 a relatively small amount of cocaine (35.4 gms) was found, albeit there were also six drugs' wrappings for kilo blocks of cocaine. Large quantities of adulterants were found: 29.9 kgs of Benzocaine (in kilo bags) and 24.9 kgs of boric acid respectively.
9. In April 2020, following a discussion with an upstream supplier, the Offender arranged for his co-defendant to purchase a van for £8,000 with the intention of fitting it with a hidden compartment to transport the drugs. Although the van was ultimately purchased it was not in fact adapted.
10. The Crown's drug expert, Mr Broughton, reviewed the EncroChat material, including the 'notes' associated with the Offender's handbook. These showed that the Offender and his co-defendant were involved in the supply of 82 kgs of cocaine during the indictment period. The value of that quantity at wholesale prices is more than £3.1 million. When cut, diluted and sold in smaller quantities, the value is somewhere between £4 and £8 million.
11. Mr Broughton concluded that:
 - the Offender was the head of a regional supply operation, with a role akin to that of a CEO of a company, and would supply other regional and local suppliers;
 - that the Offender was receiving substantial quantities of cocaine at wholesale and distributing onwards;
 - that he was assisted by his co-defendant who worked as a courier of cash and drugs, but also stored, divided and packaged drugs for onward distribution.

12. When the Offender was arrested on 30 July 2020 at his home address he was wearing a black rucksack containing £1,750 in cash, three mobile telephones, some zipper bags, a box of plastic latex gloves, a bunch of keys and a passport photograph of his co-defendant. The keys opened a communal door at “*the Spot*”. Further, £6,750 was found in a Sainsbury’s bag in the wardrobe in the master bedroom. The total cash seized from him was £8,500 (that was reflected in count 9).

The sentencing process

13. The maximum sentence for the lead offence in this case is one of life imprisonment. The Offender had no previous convictions and a single reprimand from November 2022 for possession of an offensive weapon in a public place.

14. The Sentencing Council has issued a Definitive Guideline for drugs offences of this kind. Step 1 of the guideline requires an assessment to be made of both culpability and harm.

- For *culpability* there are three levels: *leading role*, *significant role* and *lesser role*.
- For *harm* there are four categories, generally determined by the quantity of drugs.

The guideline recommends that for a case which falls within category 1A the starting point should be one of 14 years' custody, with a category range of 12 to 16 years. However, very importantly, the guideline expressly states the following:

"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 offender's role."

15. Although it is common ground before this Court that this Court will not generally be assisted by consideration of other decisions which concern their own particular facts, we do accept the submission made on behalf of the Solicitor General that some assistance can nevertheless be derived from the decision of this court in *Cuni & others* [2018] EWCA Crim 600; [2018] 2 Cr App R (S) 18. The Court summarised the principles where the quantities of drugs involved are significantly in excess of the guideline figures, as derived

from earlier decisions of this court, including the following observations:

- First, in the regime before the publication of the guideline there was in general a ceiling on sentences of around 30 years save in cases involving really extraordinary figures such as imports of between 2,000 and 3,000 kgs.
- Secondly, for very significant commercial offending there is bound to be a degree of bunching between 20 and 30 years since the scope to differentiate for amounts and roles is compressed.
- Thirdly, for very serious offences, factors which might otherwise mitigate sentence, such as remorse or the impact of the sentence on children, are less important.

16. The sentencing Judge had, as we have also seen, a number of documents on behalf of both the Prosecution and the Defence. These included character references on behalf of the Offender.
17. There was a pre-sentence report dated 1 May 2024. This opined that the Offender had been financially motivated to offend but that he fully accepted he had done wrong and had made serious sustained errors of judgment. He did not seek to excuse or justify his behaviour. The report assessed the Offender as having a low to medium risk of reconviction and posing a medium risk of serious harm.
18. In passing sentence the Judge said that from the spring of 2019 until the Summer of 2020 the Offender was "very heavily engaged" in supplying cocaine within the Southampton area in bulk. He referred to the quantities and the values of the drugs concerned to which we have already made reference. The Judge continued that, on any view within the Sentencing Council's guidelines the Offender had played a leading role in the enterprise. He was dealing on a commercial scale, as is evident both from the money involved and the weight of the drugs involved. The Judge accepted that the Offender was not absolutely at the top of the chain; he was not right next to the importers so far as could be seen but he did have close links to the source of the drugs and he knew all about the quality of the material with which he was dealing. The Judge said that self-evidently the Offender expected substantial financial gain from what he was doing. The guidelines cater for people dealing in drugs, with the top category having a starting point of some 5 kgs, which, the Judge observed, was

nowhere near the amount of drugs with which this Offender had been involved. The Judge said that had he been convicted by a jury after trial and before taking into account any aggravating features or mitigating features, the sentence would have been 18 years' imprisonment. The Judge said there were no aggravating features. The Judge then referred to the mitigating features. Allowing for those, which included conditions in prison, the Judge reduced the starting point from 18 years to 16 years. He then reflected the stage at which a guilty plea had been entered by reducing the sentence by 15 per cent; but no criticism has been made of that approach. That led to a figure, as we have mentioned, of 13 years 8 months' imprisonment. As we have also mentioned, the Judge made the sentence of 12 years' imprisonment on count 9 concurrent. Again no criticism has been made of that approach.

Submissions on behalf of the Solicitor General.

19. On behalf of the Solicitor General Mr Martin submits that the sentence passed in this case was unduly lenient. In respect of count 1 (the lead offence) he submits that the Judge took a starting point that was simply too low given that the Offender had played a leading role in the supply of 82 kgs of cocaine. Mr Martin submits that this is exactly the sort of case where the Definitive Guideline contemplates, as it expressly states, that a starting point of 20 years or even higher may be appropriate. Mr Martin notes that the Offender's enterprise amounted to a cocaine supply operation on the most serious and commercial scale, involving quantities more than sixteen times the category 1 indicative amount of 5 kgs, with nearly 55 kgs of cutting agents discovered. Further, he observes that the Offender was found by the Judge to have played a leading role, with a large number of the characteristics mentioned in the guideline as going to a leading role. He submits that there were four of the six expressed characteristics present in this case, namely, buying and selling on a commercial scale, having substantial links to and influence on others in the chain, having close links to the original source, and expectation of substantial financial gain.
20. Secondly, Mr Martin criticises the approach taken by the Judge on the ground that his

reduction of 2 years from the notional starting point of 18 years to allow for mitigating features was simply too generous. It is accepted that the Judge was entitled to give some reduction for the lack of previous convictions and the Offender's good character. However, it is submitted that the role played by personal mitigation in cases of this kind is likely to be relatively slight, as this Court has previously said. It is also submitted that a reduction on the basis of overcrowding in prison was not appropriate given the inevitably lengthy sentence faced by the Offender: see *Ali* [2023] EWCA Crim 232 and *Tripathi* [2024] EWCA Crim 759; in particular the observation that the reduction which may be appropriate to reflect prison conditions is likely to be apt in cases which fall at the "cusp" of immediate custody.

Submissions on behalf of the Respondent Offender

21. On behalf of the Respondent Offender Ms Levett submits that the sentence was not unduly lenient. She reminds this court that the sentencing Judge is not only a highly experienced judge but that he had conducted the set of cases of which this was one from the outset and that he presided over a trial in other cases. Ms Levett relies on a number of decisions of this Court in which it can be emphasised that where a sentencing judge has been involved in a case from the outset and has a good understanding of its details this Court will be reluctant to interfere unless there has been an error of principle, or the judge proceeded on an obviously mistaken factual basis, or when assessing weight the judge formed a view which could not reasonably have been formed: see *Wilson* [2024] EWCA Crim 124 at [28] in the judgment of Warby LJ.
22. Further, Ms Levett submits that while the Respondent did play a leading role, he did not do so throughout the period of offending and so the 82 kg figure is not entirely reflective of the period during which he played a leading role in the conspiracy.
23. On that particular point we are not persuaded that this has any material bearing on the issues which arise on this application on behalf of the Solicitor General. The fundamental and indisputable point is that the Judge himself found that the Offender had played a leading

role. It is whether the Judge then followed through logically the implications of his own findings which lies at the heart of this application. Other matters of relative detail and nuance do not have a material bearing on those fundamental issues.

24. Next, Ms Levett reminds us that this Court has frequently said that it is not usually assisted by comparisons with sentences in other individual cases. We accept that, but we do not understand Mr Martin to be suggesting otherwise, as we have already indicated.

25. Ms Levett concedes that *Ali* was concerned with the situation with what is under consideration is whether a sentence can be suspended and therefore applies only to short sentences. Nevertheless she submits that conditions in prisons are now so severe that even long-term prisoners are subject to lock-up conditions of 22 or 23 hours per day. The result is that educational and exercise opportunities are limited and this can have a knock-on effect on the ability of a prisoner to do courses which would assist in seeking transfer to a lower category of prison in due course. She submits that the long-term prisoner faced with many years of onerous restrictions is, in that sense, more likely to be affected by prison conditions than a short-term prisoner who only has to endure such restrictions for a limited period of time.

Our assessment

26. The principles to be applied on an application under s 36 of the 1988 Act are well established and were summarised in *Attorney-General's Reference (Azad)* 2021 EWCA Crim 1846; [2022] 2 Cr App R (S) 10 at [72] by the Chancellor of the High Court:

"(1) The judge at first instance is particularly well placed to assess the weight to be given to competing factors in considering sentence.

(2) A sentence is only unduly lenient where it falls outside the range of sentences which the judge at first instance might reasonably consider appropriate.

(3) Leave to refer a sentence should only be granted by this court in exceptional circumstances and not in borderline cases.

(4) Section 36 of the 1988 Act is designed to deal with cases where judges

have fallen into 'gross error'."

27. We should also mention *Attorney-General's Reference (No 132 of 2001) (Bryn*

Dorian Johnson) [2002] EWCA Crim 1418; [2003] 1 Cr App R (S) 41 at [24]

where Potter LJ said:

"... there is a line to be drawn ... between the leniency of a sentence in any given case and a sentence which is 'unduly' lenient in the words of the statute ... The purpose of the system of Attorney-General's References in particular cases seems to us to be the avoidance of gross error, the allaying of widespread concern at what may appear to be an unduly lenient sentence and the preservation of public confidence in cases where a judge appears to have departed to a substantial extent from the norms of sentencing generally applied by the courts in cases of a particular type."

28. Since that passage we would observe that Parliament has enacted what is now s.59

Sentencing Act 2020 (or the Sentencing Code) which requires a sentencing court to follow any relevant sentencing guideline unless that would be contrary to the interests of justice.

29. Turning to the present case, we have reached the conclusion that the total sentence passed in this case was unduly lenient, essentially for the reasons advanced by Mr Martin. We bear in mind that the sentencing Judge is a senior and very experienced criminal judge and that he was closely involved with this case from an early stage, including presiding over a trial in so far as one was necessary. Nevertheless, making due allowance for those considerations, in our judgment the scale of the commercial operation in this case was so large that a starting point much higher than the normal range in the guideline was called for. The guideline itself, as we have mentioned, expressly states that the starting point may have to be 20 years or above. We consider that this was such a case. Indeed we think that before consideration of mitigation it should have been in the region of 21 years.

30. We also accept the submission that the Judge made too great a reduction to reflect such mitigation as was available in this case. We consider that a reduction of 1 year was warranted. That would mean that the notional sentence after trial should have been 20 years' imprisonment.

31. The appropriate reduction for the guilty pleas was 15 per cent, as the Judge said, and no

issue has been raised before us about that. Applying that reduction leads to a sentence of 17 years' imprisonment. There is no need to interfere with the concurrent sentence that was passed on the count of possession of criminal property.

Conclusion

32. For the reasons we have given, we grant this application by the Solicitor General under s.36 of the 1988 Act for leave to refer these sentences to this Court. On that Reference we quash the sentence of 13 years 8 months' imprisonment on count 1 and substitute a sentence of 17 years' imprisonment. That makes a total sentence of 17 years' imprisonment.

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

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