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IN THE COURT OF APPEAL  
CRIMINAL DIVISION

CASE NO 202301621/A4-202301783/A



[2024] EWCA Crim 117

Royal Courts of Justice  
Strand  
London  
WC2A 2LL

Thursday 25 January 2024

Before:

LORD JUSTICE DINGEMANS

MR JUSTICE ANDREW BAKER

HER HONOUR JUDGE ANGELA RAFFERTY KC  
(Sitting as a Judge of the CACD)

REX

V

KAMARAN KADAR  
MARIWAN MUSTAFA

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MR G KING appeared on behalf of the Appellant Kadar.  
MR A BREWER appeared on behalf of the Appellant Mustafa.

**J U D G M E N T**  
(Approved Transcript)

**Mr Justice Andrew Baker:**

1. These appellants are Kamaran Kadar (who is now 44 and was 40 at the time of his offence) and Mariwan Mustafa (now 34, at the time 30). They appeal with leave granted by the single judge against sentences imposed in the Crown Court at Bournemouth (HHJ Mousley KC), after conviction in the same court for the parts they each played in a criminal people smuggling operation to bring individuals from Kurdish communities in Iran and Iraq into the United Kingdom illegally.
2. Kadar was sentenced on 20 April 2023, having pleaded guilty a few months earlier to conspiring to facilitate a breach of immigration law. The maximum sentence for that offence is 14 years' imprisonment. The sentence was 4½ years' imprisonment, reduced from 5½ years to give credit for plea. That is credit of about 18. The indicted conspiracy period was 1 December 2018 to 12 March 2019.
3. Mustafa was sentenced on 10 May 2023, having been found guilty at trial of assisting the final unlawful immigration that was conducted as part of the conspiracy. The maximum for that offence is also 14 years. The sentence was 2½ years' imprisonment.
4. There was a pre-sentence report for Mustafa but not for Kadar. We agree that none was or is now needed in order properly to sentence Kadar.
5. Various co-defendants were also convicted, including Marinel Palage, who was convicted of the conspiracy offence at trial, and sentenced to 9 years' imprisonment, and a co-defendant, Ghafour, who we are told was sentenced to 5½ years after a guilty plea, prior to trial but a little later than Kadar's plea.
6. The learned judge sentenced on the basis that a man called Goran Jalal, a British national of Kurdish background, was the leading figure in the conspiracy. On the evidence at trial, the people smuggling operation appeared to have been Jalal's operation but to date he has

escaped prosecution. The learned judge indicated that, had Jalal been convicted, he would have had in mind a sentence in the region of 12 years' imprisonment for him.

7. The illegal immigration in which Mustafa participated was committed in sight of a surveillance operation being conducted by National Crime Agency officers. They closed in, effecting arrests and detaining the unlawful entrants involved, during the night of 10-11 March 2019. The method of entry was by carrying the migrants in the refrigerated trailer of an HGV carrying food cargo into the UK on a cross Channel ferry. The conspirator Palage was the HGV driver. The intercepted final mission involved bringing in two teenage siblings (a brother and sister), later confirmed to be Iraqi nationals, who, by arriving in Palage's wagon, became illegal entrants to the UK. We were told they have subsequently been granted asylum. Kadar and Mustafa both played a part in that final mission.
8. Palage's HGV was later searched. The load in the refrigerator trailer was confirmed to be pallets of fresh spinach. In the rear of the cab, officers found a knotted Tesco carrier bag containing three plastic bags of cash, £9,500, £10,000 and £15,000, so a total of £34,500. Officers found a further €4,950 and £2,685 in cash elsewhere in the lorry, and evidence of the immigrants' enforced use of the lorry as temporary accommodation, as part of their illegal transit. The tachograph had been interfered with so that the lorry's movements were not recorded as they ought to have been. Some of the bank notes seized and the bags they were in were checked for fingerprints, and one of the bags had six marks that were a match with Kadar's fingerprints. There was mobile phone call data evidence of Kadar being in contact with Jalal, and Jalal sending a key location for the mission to Mustafa, and contact between Kadar and Mustafa. Jalal also sent the appellant Mustafa an address in Manchester and two mobile phones, one of which was a number used by one of the

migrants and there were calls from Mustafa to this number. Cell site data also evidenced Kadar and Mustafa's movements from West Yorkshire to Bournemouth during the afternoon of 10 March 2019.

9. When interviewed under caution, Mustafa accepted he had driven south to collect the teenagers but said he had done so as a favour for a friend and was not aware they were recent illegal entrants.
10. Kadar accepted being present on three occasions when Palage brought unlawful immigrants to the UK but maintained that he only participated actively on the last occasion and did so under pressure from Jalal. He pleaded guilty on a basis of plea that was not contested by the Crown by which he stated that:
  - Jalal is a very influential person, well connected in England and in Iraq. People are afraid of crossing him as that can lead to unwanted consequences.
  - Jalal would often ask his employees to conduct tasks for him such as delivering or collecting items. Refusal would mean losing your job and possibly more significant repercussions.
  - He, Kadar, was in the UK having escaped war and, he believed, possible assassination due to his Kurdish background, and he believed there was nowhere else for him to go if he made an enemy of Jalal.
  - Jalal is a very controlling individual who would often take Kadar and others' phones from them and read their messages or monitor their calls. Kadar's mobile phone was in Jalal's name and he would often take it from Kadar.
  - He, Kadar, travelled to Chichester on Jalal's orders on 24-25 January 2019, knowing only that Jalal had told him to go. On arrival, he found out the purpose was to accompany Jalal and others as they collected immigrants. On that

occasion, he said, he had a minimal role in what happened, had no dealings with the immigrants, but witnessed what happened and saw how it worked.

*[We note here that the court was not bound by Kadar's opinion that his role had been a minimal role, as that is a matter of opinion or evaluation, not a simple matter of fact.]*

- He participated in a second operation on 1 March 2019. That time, he knew the purpose from the outset, but again (he said) he had a minimal role. He did not take anyone with him or come back with anyone. The operation was explained to him and he was told what he would have to do on the next occasion.

- For the final operation, Jalal again asked him to participate and said that this time he would hold the money and deliver it as instructed. Kadar followed his instructions. He was an employee of Jalal who made it clear he was expected to participate in this illegal activity in return for a bonus and other favourable treatment as an employee in Jalal's car wash business.

11. It is obvious on that basis that Kadar was a limited participant in the first two operations only because they were in effect training runs for him for taking on an important role going forward, for reward, albeit also under implicit pressure from Jalal. He was rightly sentenced by the learned judge in those circumstances as having become, like Ghafour, a trusted assistant in Jalal's illegal operation.
12. Kadar was of previous good character except for a police caution in 2004 for possession of an offensive weapon in a public place. Mustafa was of previous good character except for a police caution in 2011 for possession of altered documents connected to his own originally illegal entry into the UK.

13. There were character references for both and clear signs of remorse on the part of Kadar. In Kadar's case, in particular, he had written an impressive and seemingly heartfelt letter to the court showing a mature awareness of the seriousness of the offending in which he had become involved and of his own wrongdoing within it.
14. There is no offence-specific guideline for either of the offences in this case. Harm and culpability fall to be assessed under the General Overarching Principles Guideline, and an appropriate sentence fixed, bearing in mind the maximum fixed by Parliament at 14 years in each case., the spectrum of offending behaviour covered by the offence charged at any guideline authorities.
15. Factors it will normally be helpful to consider were identified by this Court in *R v Le and Stark* [1999] 1 Cr App R(S) 422; *Attorney-General's Reference No 28 of 2014* ([2014] EWCA Crim 1723; and *Attorney-General's References Nos 49 and 50 of 2015 (R v Bakht)* [2015] EWCA Crim 1402. In the first of those cases the court said that, “[*the appropriate penalty for all but the most minor offences against section 25(1)(a) [Immigration Act 1971] is one of immediate custody*”, but there is no guideline authority as to sentencing levels or ranges.
16. The grounds of appeal on behalf of Mustafa cited *R v Nogib Ali & Ors* [2018] EWCA Crim 405, in which the Court said at [22]:
- “There are no guidelines set for this offending and it may be that the judge's task would have been made easier had there been... We stress that our judgment in this case is not intended to represent such a guideline case. Such a case requires clearer and fuller facts on which to establish a guideline.”
17. Mr Brewer submitted that it could be acknowledged that *Nogib Ali* was expressly not a guideline case, and at the same time *Nogib Ali* could be used for benchmarking

appropriate sentences, as he put it in the Advice and Grounds, for defendants who play a limited role similar to that of Mustafa. In our judgment, the second proposition contradicts the first. What it means for the court so clearly to have said it was not laying down guidelines is that it was not creating any benchmarks for future cases.

18. We now deal first with the appeal by Kadar.

19. Mr King contends that the learned judge did not follow the stepped approach of the Overarching Principles Guideline, so it cannot be ascertained how he arrived at his figure of 5½ years for a sentence after trial. He argues further that the learned judge did not assess culpability and harm by reference to the factors referred in the authorities we have mentioned or by reference to Kadar's basis of plea. The submission was that as a result whatever starting point the learned judge had used was manifestly excessive. It should have been, it was submitted, 4 years or thereabouts so that after an appropriate reduction for what was said to be substantial personal mitigation and then credit for plea, a sentence much shorter than 4½ years ought to have been the outcome. The 4½ year term imposed, it is contended, is manifestly excessive.

20. In his concise and helpful oral submissions elaborating those grounds, Mr King also emphasised that the co-defendant Ghafour's sentence of 5½ years was, as he submitted, difficult to square with the sentence imposed on Kadar, if Kadar's sentence was not excessive, the submission being that Ghafour plainly played a more significant role than Kadar's. The learned judge's assessment, however, to which we consider he was entitled to come on the evidence, was that Ghafour and Kadar were each, that is to say had each become, important trusted assistants and the reality, in any event, is that Kadar's sentence as imposed was substantially below that of Ghafour as a result of his personal mitigation and plea. It was also submitted by Mr King that there may be a sense in which the learned

judge, with respect, was excessively influenced by the overall scale of the criminality involved in the conspiracy, which principally was the criminality of others. The submission was that the sentence in the case of Kadar was insufficiently tailored to his individual circumstances.

21. Again, we do not accept that submission. In our judgment, the learned judge, with each of these appellants, conducted a careful assessment of their individual roles and responsibilities and as a result the seriousness of their particular offending behaviour. We also, with respect, do not accept the submission that the learned judge sentenced otherwise than on the basis on which Kadar pleaded. We have noted already that he properly characterised Kadar as a trusted assistant. He noted, and expressly took into account, what the basis of plea said about how Jalal got Kadar to participate and reasonably concluded that he *“still played a significant operational role in this agreement [and] understood the scale of the operation”*.

22. Considering the factors mentioned in *Le and Stark* and the two Attorney-General’s Reference cases, Kadar was guilty of repeat offending as a conspirator in what was intended to be an ongoing illegal business. He was facilitating entry of strangers to whom he had no connection. He had, in part, a financial motivation, the promised bonus and favourable treatment, although that can be tempered somewhat by the implicit threat of harm if he refused to take part. But we do not think it right to say it is tempered further by the fact that, as Kadar explained in his letter of remorse, he was acting at the time in part out of humanitarian concerns for fellow Kurds that were genuine on his part, as those concerns were, as he now accepts, misguided. That insight on his part is though one element of the mitigation due to him in the light of his letter of remorse. There was a high degree of planning, organisation and sophistication in the operation but, for the most part,



not by Kadar himself. We say ‘for the most part’ because he did play an important co-ordinating role in the final mission. Kadar’s offending was not extended over a very lengthy period, but it did span several months, and it is true to say that it did not in the event involve, in so far as his own participation was concerned, large numbers of illegal entrants. He had nothing similar on his record, indeed he was of effective good character. He had not recruited others or exploited or put pressure on anyone but, as the judge noted, his involvement had increased over time, and, as we have said, a number of times, by the end he had taken on a significant operation role.

23. Assuming that the learned judge made a substantial downwards adjustment for Kadar’s personal mitigation other than his plea, as we think he was properly bound to do, he must have had in mind a starting point of at least 6½ years. We acknowledge, as this court has done previously, that there can be greater difficulty in pitching the sentence correctly without an offence-specific guideline and that a wider spread may perhaps exist in those circumstances in the custodial terms that sentencing courts might not unreasonably consider to be proportionate to the seriousness of the case at hand. Allowing for the imprecision of the room that exists for differing equally reasonable views, we are unable to say that sentencing at or approaching 50% of the maximum sentence for this offence manifestly treated Kadar’s offending as significantly more serious than it was. A sentence of 6½ years, had there been no material personal mitigation and no guilty plea, would not have been manifestly excessive.

24. There was, as we have indicated, substantial mitigation other than plea. In that regard, Kadar was not only of effective good character, but he had also demonstrated exemplary conduct having spent several years devoting his spare time to helping vulnerable people in the community, attested to by character references. He had secured lawful employment

away from the influence of Jalal in the period since the offending occurred, his letter to the court evidenced genuine remorse and some real insight into the societal impact of his offending. His wife suffers from PTSD, which was confirmed by medical evidence, such that the impact of whatever period of time he was going to have to spend in custody was going to be particularly hard for her and their daughters. There was some indication of threats to his family because his guilty plea had assisted the prosecution case against those defendants who had pleaded not guilty. A reduction in sentence of a full year prior to credit for plea was, in our view, undoubtedly warranted but it could not be argued to be manifestly insufficient.

25. We have considered, but do not accept, a submission in writing by Mr King that there should have been a greater percentage reduction for plea than that allowed by the judge. The result overall is that having carefully considered all that has been said in support of the appeal, we do not consider that the final sentence of 4½ years was manifestly excessive; 6½ years prior to personal mitigation, reduced to 5½ years for that mitigation, and reduced again to give credit for plea, resulted in a significant but justified sentence of 4½ years' imprisonment. The appeal by Kadar is therefore dismissed.
26. We turn to the appeal by Mustafa.
27. Mr Brewer contends that 2½ years is a manifestly excessive term after allowing for personal mitigation, considering the role played by Mustafa in the one operation in which he was involved. He draws attention to the sentences imposed in *Nogib Ali* but we have already indicated why, in our view, that does not assist. He argues that greater allowance should have been made for the impact of delay, Mustafa having been apprehended during the commission of the offence back in March 2019.

28. Mr Brewer, like Mr King, helpfully and concisely elaborated those grounds in oral argument, contending ultimately that, if the court was persuaded that a 2½ year term was excessive, the proper term ought to have been one that would have raised the possibility of suspending the sentence and that, in all the circumstances of this case, all factors, properly applying the applicable guideline in relation to the Imposition of Community and Custodial Sentences, would have justified a suspended sentence.
29. Mustafa played in fact, in our judgment, a key role in the final operation to bring the two Kurdish teenagers into this country illegally. His defence of ignorance as to what was going on was not credible. He was part of a complex, carefully choreographed movement of multiple vehicles that the prosecution was able to evidence from the surveillance operation. He was in communication with Jalal, Kadar and the teenagers. The teenagers had no family or other connection to Mustafa or, so far as he will have been aware, to anyone else involved in the operation. Mustafa's motivations remain unclear. A finding of financial motive was not made, and we do not think there was evidence on which a court could be sure of such a motive. On the other hand, there was no suggestion of pressure expressed or implicit whether directly or indirectly by or on behalf of Jalal or anyone else. In Mustafa's case, there was of course no repeat offending, and his involvement did not cause him to be participating in the direction of anyone else over what they were to do.
30. Prior to allowing for personal mitigation - there was for Mustafa no question of credit for a guilty plea - we consider, with respect, that a sentence of 3 years would not have been excessive. There was personal mitigation, although not as powerful as in the case of Kadar. The learned judge summarised it fairly in these terms:

“He has a family who have been financially and emotionally and practically dependent upon him. There are character references ... [which] all speak of the positive aspects of his character. He provides important care for his wife and, again, as someone who speaks only English [sic., only limited English] prison life will be more onerous than might be the case for others where it is already very difficult.”

31. As regards delay in the proceedings, the learned judge acknowledged that the offences were committed some 4 years ago but he considered that the resulting delay was principally a consequence of the scale of the investigation and he noted that proceedings were underway by October 2021 and that the delay thereafter was the consequence of defendants (other than Kadar of course) not pleading guilty so that a trial (we would add quite a substantial and complex trial) was required.

32. We do not accept Mr Brewer’s submission that the learned judge was not entitled to conclude, as he did, that delay in the proceedings afforded only limited mitigation in Mustafa’s case, bearing in mind in particular the most recent observations of this court in relation to matters of this kind in *R v Timpson* [2023] EWCA Crim 453. Overall, we do not think it can be said that a reduction in sentence of 6 months would manifestly fail to afford appropriate weight to Mustafa’s personal mitigation. The result is that while 2½ years’ imprisonment is certainly not a lenient sentence in Mustafa’s case, in our judgment, neither is it manifestly excessive. We therefore dismiss also the appeal by Mustafa.

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

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