Neutral Citation Number:
[2024] EWCA Crim 1195

IN THE COURT OF APPEAL
CRIMINAL DIVISION
ON APPEAL FROM THE CROWN COURT
AT MANCHESTER
HIS HONOUR JUDGE DEAN T20207583

CASE NO: 2023 04100 A5

Royal Courts of Justice
Strand
London
WC2A 2LL

Thursday 11 July 2024

Before:

LORD JUSTICE DINGEMANS

MR JUSTICE KERR

MR JUSTICE HILLIARD

REX

v

ATIF ARIF

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MR PAUL CRAMPIN appeared on behalf of the Applicant

J U D G M E N T

MR JUSTICE HILLIARD:

1. On 26 September 2023, in the Crown Court at Manchester, the applicant (then aged 49) pleaded guilty on re-arraignment to two offences of conspiracy to supply a controlled drug of Class A and to three offences of conspiracy to supply a controlled drug of Class B.
2. On 27 October 2023, he was sentenced to concurrent terms of 10-years-and-3-months' imprisonment on each Class A conspiracy, with no separate penalty on the other three counts.
3. His co-accused Tayyab Sharif pleaded guilty to the same five counts and was sentenced to 9-years-and-6-months' imprisonment.
4. The applicant now renews his application for leave to appeal against sentence and for a representation order after refusal by the Single Judge.
5. The facts of the case can be shortly stated. Between 1 April and 16 December 2020, the applicant and Mr Sharif were involved in conspiracies to supply cocaine and heroin, and ketamine, cannabis and amphetamine. The applicant and Mr Sharif jointly operated an encrypted EncroChat mobile device. During the period of the conspiracies, the mobile was used to agree the supply of 1.25 kg of cocaine, 2 kgs of heroin, 6 kgs of amphetamine, 4 kgs of ketamine and 20 kgs of cannabis.
6. The applicant had been sentenced to 7 years' imprisonment in 2005 for possessing a handgun and ammunition, and to 12-and-a-half years' imprisonment in July 2011 for other firearms offences. The applicant had been released on licence in October2017 but was recalled to custody after his arrest on 16 December 2020. As a result of his recall, he served a further 34 months' imprisonment.
7. There was no pre-sentence report. None was necessary then or now. There was, however, a letter from probation, which said that the applicant had engaged with supervision sessions whilst on licence and that his progress had been of a sufficient standard; although he had, of course, committed these offences. There were also some letters provided to the judge which spoke to a better side of the applicant.
8. When he passed sentence, the judge said that the applicant's dealing in Class A drugs fell

into category 2 for harm of the applicable sentencing guidelines where the indicative amount was 1 kg. The judge assessed his role as being at the high end of significant. A category 2 significant role offence for Class A drugs has a starting point of 8 years' custody and a range extending up to 10 years. The judge said that it was not possible to distinguish between the applicant and Mr Sharif as regards what each of them had actually done. They had shared the use of the EncroChat phone and appeared to have taken a broadly equal role in operating the phone and in the business they were conducting. The aggravating features, he said, were the same for each of them. Each of them had relevant and serious previous convictions.

9. The judge took a starting point of 9-and-a-half years' imprisonment. He increased that figure by 2 years to take account of the conspiracies to supply Class B drugs and by 1 year to reflect the applicant's previous record. That resulted in a sentence of 12-and-a-half years' imprisonment. The judge reduced that figure by 6 months for each defendant to take account of what he described as the good sides of their characters. He then allowed 15 per cent credit for the applicant's pleas of guilty, entered at a relatively late stage and later than for Mr Sharif, leaving a final sentence of 10-years-and-3-months' imprisonment.

10. It is now argued on the applicant's behalf by Mr Crampin that the judge should not have added 1 year to the applicant's sentence because of his previous convictions. It is argued that the judge was wrong to refuse to reduce the sentence to take account of delays in the proceedings whilst the applicant was subject to recall on licence. It is said that the judge did not give sufficient consideration to the totality principle; that adding 2 years to the sentence for the Class B offences was excessive; and that the judge should have drawn a distinction between the part played by the applicant and the part played by Mr Sharif. We have given these submissions careful consideration. They have been advanced to best effect by Mr Crampin, and we are grateful to him for his assistance.

11. In our judgment, the judge was entitled to take a starting point of 9-and-a-half years' custody in the applicant's case. The 8-year starting point in the guidelines is based on an indicative amount of 1 kg of Class A drugs. The applicant was responsible for the supply of over three

times that amount. Some increase was inevitable for this factor, and it is not arguable that the figure taken by the judge was wrong. The applicant's previous convictions were a statutory aggravating feature. He had received long sentences of imprisonment in 2005 and 2011 for firearms offences. He had not been deterred by those sentences from involving himself again in serious crime and he had been on licence when he did so. It is not arguable that the increase made by the judge for this factor was excessive.

12. The conspiracies to supply Class B drugs represented additional offending which had resulted in additional harm. Large quantities of drugs were supplied. The amphetamine and cannabis offences would each have had a 4-year starting point. The ketamine offence would have had a 5-and-a-half year starting point. It is unarguable that an increase of 2 years for all this further offending was in any way wrong; on the contrary, it was modest. The judge had plainly had very considerable regard to totality.

13. Reliance is placed on a report obtained by the defence which had analysed the EncroChat messages. The principal purpose of the examination had been to identify the quantities of different drugs involved. But the report had also sought to identify which of the applicant and Mr Sharif had been sending particular messages. The conclusion was that the applicant was involved in fewer messages than Mr Sharif and the judge appears to have overlooked that. However - to state the obvious - these conspiracies required more than messaging to be put into effect. The amount of messaging was not determinative of the part played. No reference was made to the number of messages during mitigation for the applicant. It was accepted that he had had a significant role and his sentence was determined on that basis. We can see no arguable basis or proper foundation for saying that Mr Sharif ought to have received a longer sentence, or the applicant a shorter sentence, on account of the report, which went only to one aspect of the conspiracies as operated.

14. Finally we turn to the applicant's release on licence. There were undoubtedly some delays in the case. It is also right to say that the applicant's pleas of guilty were a long time in coming. Some of the delays, for example as to Covid and as to the CBA action that was being taken at the time, were happening at the same time as delay that was specifically

sought on the applicant's behalf so as to await the outcome of other proceedings where the admissibility of EncroChat evidence was being considered. It is clear from ***Kerrigan*** [2014] EWCA Crim 2348 that an offender is not entitled to any automatic reduction if time on remand will not count towards a sentence because the offender has been recalled to custody to serve the balance of an existing sentence. However, a judge has a general discretion to do justice, and that includes the power to make some adjustment to a subsequent sentence if that is required. We can see no necessity for any adjustment in this case where a significant reason for delay was the desire to await the outcome of legal arguments in other cases. The applicant was entitled to wait to see how matters turned out, if that was his choice, rather than admit his guilt at an earlier stage. But one consequence of that was that he would spend further time in custody, which would not count towards any sentence if he was eventually convicted or pleaded guilty. In all the circumstances here the judge was not obliged to make any allowance.

15. Having examined all the arguments which have been put forward and notwithstanding Mr Crampin's helpful submissions, we are satisfied that there are no arguable grounds for an appeal against sentence and this application must be refused.