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IN THE COURT OF APPEAL

CRIMINAL DIVISION

ON APPEAL FROM THE CROWN COURT AT BASILDON

HHJ SAMANTHA COHEN T20227065

CASE NO 202303706/A1

[2024] EWCA Crim 1347

Royal Courts of Justice
Strand
London
WC2A 2LL

Tuesday 22 October 2024

Before:

LORD JUSTICE HOLGATE

MRS JUSTICE STACEY

SIR NIGEL DAVIS

REX

V

DAVID GLOVER

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MR P JACKSON appeared on behalf of the Applicant.

J U D G M E N T

MRS JUSTICE STACEY:

1. This is the renewed oral application for leave to appeal against sentence following refusal by the single judge.
2. In the Crown Court at Basildon, the applicant pleaded to a total of seven offences in a multi-count and multiple-defendant indictment relating to Class A cocaine and Class B cannabis drugs and firearms. He was acquitted at trial of four further counts on the indictment.
3. On 27 September 2023, he was sentenced to a total of 23 years and 8 months' imprisonment by the trial judge, HHJ Cohen. The sentence was made up of five concurrent sentences for counts of being concerned in the supply of Class A drugs (cocaine) for which he received a sentence of 18 years and 8 months (count 1); for being concerned in the supply of Class B drugs (cannabis), receiving a concurrent sentence of 4 years and 8 months; for conspiracy to supply Class A drugs, receiving a concurrent sentence of 18 years and 18 months; for conspiracy to supply Class B drugs, he received a concurrent sentence of 4 years and 8 months; and, for possession of criminal property, contrary to section 329(1) (c) of the Proceeds of Crime Act 2002, he received a concurrent sentence of 4 years and 8 months. He also received a consecutive sentence of 5 years for possessing prohibited weapons, contrary to section 5(1)(aba) of the Firearms Act (count 16) and a concurrent sentence for possessing ammunition without a firearms certificate.
4. No pre-sentence report was obtained prior to sentence and none was necessary then nor

now, pursuant to section 33 of the Sentencing Act 2020.

5. In careful and meticulous sentencing remarks the judge found that the applicant performed a *leading role* in a very substantial cocaine conspiracy. He was very close to the source of importation of multiple kilo amounts of drugs and sold it to a wide network of very busy dealers in quantities ranging from a quarter to a kilogram of very pure quality cocaine. Over the 10-month indictment period, he had sold around 4 kilograms per week and the judge was satisfied, to the criminal standard, that he had sold at least 40 kilograms of cocaine.

6. £750,000 cash, which was the proceeds of crime, was found at one of his properties. He employed a small gang of runners to do his bidding who, at a moment's notice, delivered drugs, collected cash and acted as an early warning system. He had significant security arrangements in place at his two properties in an attempt to protect himself from the police and rival criminals. The judge found that the applicant had protected his drugs and cash with at least four prohibited firearms, two of which were loaded. She rejected his evidence that he only ever carried unloaded firearms when delivering money to a drugs supplier.

7. The applicant had not accepted the prosecution assessment of the scale of his drugs supply operation but his basis of plea that his involvement had amounted to no more than a total of 20 kilograms was rejected by the prosecution. His evidence at trial, along the lines of his basis of plea, was treated as a *Newton* hearing and was rejected as untruthful by the judge. He had lied in court and dramatically understated the quantity of cocaine

that he had sold. She therefore reduced the amount of credit that he would otherwise have been entitled to for the cocaine counts to 15 per cent pursuant to *R v Underwood* [2004] EWCA Crim 2056. The judge noted the Sentencing Guideline category 1A *leading role* supply of Class A drugs, with a weight of 5 kilograms, gives a starting point of 14 years and a range of 12 to 16 years. The guideline also states 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 offender's role. She noted the case law such as *Sanghera*, *Rait*, *Cuni* in *Jahuri* and *Lordan* and others have upheld sentences well in excess of 20 years for supply and conspiracy offences of 40 kilograms up to more than 100 kilograms.

8. In addition to the quantity of drugs involved in the supply and the ambition of the conspiracy, there were a number of other aggravating features. The high purity of the cocaine, the proximity to the importation source, the attempts to conceal evidence, a previous conviction for drug dealing in 2016, the deliberate destruction of his telephone and other methods of destroying evidence such as the burn bag found at his premises and the storing of the cocaine in the flat where his children lived.
9. For the firearm offences the judge found that, if the applicant had been found guilty after trial, he would have received a sentence 10 years for the firearms possession offence. She gave full credit for his early guilty plea, reducing the nominal sentence to 6 years 8 months and then deducted a further 1 year 8 months to reach a sentence of 5 years, which is also the minimum sentence applicable to an offence under section 5(1)(aba) of the Firearms Act 1968.

10. Turning to each of the grounds of appeal.

Ground 1: for the reasons that the judge explained she was entitled to conclude that, after trial, the appropriate final sentence for the possession of the firearms offence (count 16) would have been 10 years. This is reflected by the fact that there were four firearms, two of which were loaded, that the applicant intended to use them for a criminal purpose, to produce them in public and, at the very least, to cause fear of violence to people who may want to steal from him. She was also satisfied and entitled to be satisfied that it gave rise to a high risk of serious physical harm.

Ground 2: the judge correctly applied the guidelines for the reduction for a guilty plea and made a significant downward adjustment for totality for the firearms offence to arrive at a sentence of 5 years, which, as already stated is the minimum. She correctly applied and followed totality principles by ordering the sentence to be served consecutively to the drug offences in accordance with the case law. She fairly and properly ordered the ammunition offence to be served concurrently to the firearms possession offence.

11. Standing back and looking at the overall sentence, sufficient account for totality had been made in light of the extent of the offending in counts for which the applicant fell to be sentenced. It is a false analogy to compare the reduction for the guilty pleas of the co-defendants, Vella, Phelan and Fuller, for totality in their count 7 with the applicant's offence in count 16. For the reasons the judge gave, she was entitled to adjust the co-defendants' sentences for conspiracy to transfer prohibited weapons downwards for totality by 3 years but not reach the same conclusions in relation to the applicant. It

therefore follows that the sentence for count 16 was not manifestly excessive because either the starting point was too high or insufficient account was taken for totality.

12. In ground 3, the drugs offences, the applicant does not challenge the judge's assessment that, after trial, the offences of being concerned in the supply of cocaine, contrary to section 4(3)(b) of the Misuse of Drugs Act 1971 and conspiracy to supply cocaine at 1A would justify a sentence of 22 years but challenges the level of discount when guilty pleas were indicated at the Magistrates' Court.
13. However, the judge cannot be criticised for reducing the discount by 18 per cent because of the lies the applicant told in court in his unsuccessful *Newton* evidence. He had tried to mislead the court and minimise the scale of his operation by half of its true extent. The judge took into account all his mitigation and also totality in arriving at the pre-guilty plea reduction of sentence of 22 years. The other drugs offences and possession of criminal property count were made concurrent in accordance with the totality principle. Comparison is made with the case of *Sanghera*, and the recognition in that case that Mr Sanghera had, like the applicant in this case, been the first to indicate a guilty plea to some matters and to break ranks. However, all cases are fact sensitive.
14. The point now raised about provision of information does not appear to have been mentioned in the defence Sentencing Note of 9 June 2023. In any event, the information provided involved using material already in police possession and did not involve the applicant putting his safety at risk. Credit for plea was a matter for the discretion of the judge who had heard the applicant giving evidence at trial over 2½ days. Nor has it been

shown that the co-defendants, Vella and Phelan's guilty pleas to similar drug counts on first arraignment at the Crown Court were encouraged by the applicant's earlier indication of plea in the Magistrates' Court.

15. In the final ground of appeal (ground 4) the applicant relies on an unacceptably wide disparity of sentence as between himself and his co-accused and co-conspirators, which is said to lead to the conclusion that the applicant's sentence is manifestly excessive. As acknowledged in the grounds of appeal, the test is whether right-thinking members of the public would consider that the administration of justice has gone wrong. However, the differences and the reasons for each of the co-defendants' respective sentences was fully explained by the judge and she took careful account of their different roles, different levels of culpability and harm, the different offences that they had each committed and the timing of guilty pleas to the offences they admitted. None of the co-defendants' guilty pleas required a *Newton* hearing.

16. The applicant's role in the drugs conspiracies and supply offences was considerably greater than that of any of the co-defendants. The trial judge was best placed to understand each of the co-defendants' respective roles and set out the distinguishing features clearly in her sentencing remarks. Leave to appeal against sentence is refused.

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