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[2024] EWCA Crim 400  
IN THE COURT OF APPEAL  
CRIMINAL DIVISION



Case No: 2023/02256/A5

Swansea Crown Court  
The Law Courts  
St Helen's Road  
Swansea  
West Glamorgan  
SA1 4PF

Thursday 14<sup>th</sup> March 2024

**B e f o r e:**

**THE LADY CHIEF JUSTICE OF ENGLAND AND WALES**  
**(Lady Carr of Walton-on-the-Hill)**

**MRS JUSTICE THORNTON DBE**

**MR JUSTICE GRIFFITHS**

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**R E X**

**- v -**

**PIOTR WOJCIECHOWSKI**

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**Mr A Kerr** appeared on behalf of the Applicant

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**APPROVED JUDGMENT**

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Thursday 14<sup>th</sup> March 2024

**THE LADY CHIEF JUSTICE:** I shall ask Mr Justice Griffiths to give the judgment of the court.

**MR JUSTICE GRIFFITHS:**

1. This is a renewed application for an extension of time and for leave to appeal against sentence, following refusal of both by the single judge.
2. On 17<sup>th</sup> March 2023, following a trial in the Crown Court at Kingston Upon Thames before Her Honour Judge Kent and a jury, the applicant was convicted of conspiracy to supply Class A drugs (cocaine, count 1), and possessing criminal property (count 2).
3. On 19<sup>th</sup> May 2023, he was sentenced by the trial judge to 15 years' imprisonment on count 1 and to two years' imprisonment, to be served concurrently, on count 2.
4. The applicant is represented before us by Mr Kerr of counsel, who relies on grounds settled by Mr Goscimski of counsel. Mr Kerr has also submitted a helpful written skeleton argument, which has been supplemented by concise, on-point oral submissions. We are grateful for all of the written and oral submissions.
5. On 15<sup>th</sup> September 2022, the applicant was observed in Bicester to meet David Fox, who had driven there from his home. The applicant had parked his lorry on Lakeview Drive. The applicant was a long-distance lorry driver who had collected drugs from Europe to deliver to Fox. The applicant was seen to pass two heavy holdalls to Fox, who put them into the boot of his motor vehicle and drove away. Fox was stopped by police shortly afterwards and his vehicle was searched. The two holdalls were found to contain 32 kilogram blocks of cocaine, with a purity of 90 per cent. The wholesale value of the drugs was between £762,000 and £889,000. There was also £11,000 of cash in Fox's vehicle. A further 2 kilograms of cocaine were found at Fox's home address, as well as more cash. When officers stopped the applicant's lorry, they found approximately £11,465 in various places in the cab of the lorry.
6. Phone messages sent between Fox and the applicant indicated that the money was his payment for delivery of the drugs. The messages also showed that the applicant had performed this function on several occasions. The applicant used his legitimate employment as a long distance lorry driver to bring large quantities of drugs into the United Kingdom. He was involved in discussions of where drop offs should take place and he was aware of the methods used to avoid detection. The applicant and Fox used unregistered mobile telephones to communicate and were both given a password so that they would recognise one another.
7. The first ground of appeal is that the starting point was too high.
8. It is conceded that the applicant performed a "significant role" within the meaning of the guideline, and that harm was category A. However, the "significant role" concession is made only on the basis that the applicant expected, and indeed received, significant financial gain. The applicant argues that he acted as a delivery driver, that he lacked other potential features of a significant role, and that he did not perform

other functions such as cutting or adulterating. On that basis, Mr Kerr argues that the applicant was at the lower end of significant role category 1, and that therefore the starting point should have been nine years' custody, not ten years.

9. The second ground of appeal is that the judge's uplift from ten years to the final 15 years was not justified by the weight of the drugs alone.
10. It is recognised in the submissions on behalf of the applicant that the guideline for a "significant role" category 1 case is based on an indicative quantity of 5 kilograms of cocaine, whereas the holdalls contained 32 kilograms of cocaine. It is also recognised that the guideline indicates that sentences of 20 years and above may be appropriate when the quantity is significantly higher. However, it is suggested that such a sentence should only be for importations well over 100 kilograms. It is argued that the judge failed to justify her uplift to 15 years.
11. We have been referred to two cases. The facts in *R v Lewis* [2012] EWCA Crim 1414 are relied upon, where a lorry driver, convicted after a trial of importing just under 100 kilograms of powder containing a little over 68 kilograms of 100 per cent pure heroin, secreted in a purpose built cavity lined with lead and coffee, had his sentence increased, on an Attorney General's Reference, to 13 years' imprisonment. This is contrasted with the sentence of 15 years' imprisonment passed on the applicant. We were also referred to *R v Clarke* [2023] EWCA Crim 933, in which a lorry driver delivering 150 kilograms of Class A drugs, and using EncroChat, was sentenced, following a trial, from a starting point of nine years' custody, with an uplift for quantity to 14 years, before reduction for mitigation and credit for the guilty plea. On a Reference by the Attorney General, leave to refer was given, but the judge's uplift to 14 years, rather than to 18 years (as argued on the Reference by the Attorney General), was held not to be unduly lenient.
12. As to ground 1, the trial judge's sentencing remarks show that the applicant was not merely a delivery driver. He was using the cloak of his legitimate job as a long distance lorry driver to bring the drugs into the United Kingdom from Europe. He was the importer. From other materials before the sentencing judge, it appears that the applicant's home was in Poland. Moreover, looking at the indicators of role in the guideline, the applicant had an expectation of, and indeed received, significant financial gain. This is conceded. He also had some awareness and understanding of the scale of the operation. This was demonstrated by the quantity of drugs. He also had an operational or management function within a chain. He did not just go where he was told. He was involved in suggesting where drop offs should take place. Messages between him and Fox showed that this was a planned operation, with methods in place to avoid detection, including coded language, unregistered phones, and the password by which they could recognise each other.
13. All of these points were made by the sentencing judge. The sentencing remarks therefore rightly noted that there were three indicators of "significant role" in the case of each defendant.
14. The judge's starting point of ten years' imprisonment was exactly the starting point in the guideline for a "significant role" (which is ten years, in a range of nine to 12 years). We do not consider it arguable that the nature of the applicant's significant role required a lower starting point.
15. As to ground 2, the sentencing guideline says this:

"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."

16. The 32 kilogram quantity of drugs in this case was significantly higher than the indicative category 1 quantity, of 5 kilograms. The judge's uplift was from ten years to only 15 years, not 20 years or above. That no doubt reflected the applicant's "significant", rather than "leading" role. It is not arguable that this uplift resulted in a sentence which was manifestly excessive, although in other cases even greater quantities may be involved.
17. So far as the cases of *Lewis* and *Clarke* are concerned, we observe (as this court has said on previous occasions), that where, as here, there is a sentencing guideline, reference to other cases as factual comparators is not usually appropriate. Other cases should only be cited for points of principle, not example. The fact that a particular sentence was upheld on appeal, or reached after reduction from a manifestly excessive sentence, or increased on an Attorney General's Reference following an unduly lenient sentence, does not mean that a higher sentence on what may be said to be comparable facts is manifestly excessive. In any event, the facts of cases invariably differ. It is neither useful nor reliable to assess relevant differences for the purposes of comparison from a previous case decided on its own facts.
18. Looking, nevertheless, at the two cases, we note that in *Lewis* the Court of Appeal said that a sentence of "at least" 13 years' custody should be imposed (as the single judge, when refusing leave in the present case, pointed out). In *Clarke*, the sentence was described as "merciful", and leave was given for the Attorney General to refer the sentence to the Court of Appeal, although the sentence was not increased.
19. We are not persuaded by either of these cases, or by the other arguments that we have examined, that the sentence imposed upon the applicant of 15 years' imprisonment, following a trial, was manifestly excessive. On the facts of his case, it was squarely in accordance with the guideline and with principle.
20. Since the proposed appeal lacks merit, it would not be appropriate to grant the required extension of time. However, we will make this observation on the application for an extension of time. The applicant was legally represented at the trial and did not instruct his new solicitors to advise on an appeal against sentence until after the time limit for appealing had already expired. Therefore, the application for an extension of time was not, on its face, a very strong one. We have, however, considered the application and found it to be lacking in merit. It is, for that reason, not appropriate to grant the required extension of time in any event.
21. For these reasons, the renewed applications for leave to appeal and for an extension of time are refused.

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