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IN THE COURT OF APPEAL

CRIMINAL DIVISION

[2024] EWCA Crim 621



No. 202301394 A2:
202303315 A2

Royal Courts of Justice

Thursday, 2 May 2024

Before:

LADY JUSTICE WHIPPLE
MR JUSTICE WALL
HER HONOUR JUDGE LUCKING KC

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REX

- v -

ASHLEY HOOK
MICHAEL SIRRELL

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MR G KRIEGER appeared on behalf of the Appellant Hook.
MR S TETTEY appeared on behalf of the Applicant Sirrell.
THE RESPONDENT did not appear and was not represented.

J U D G M E N T

LADY JUSTICE WHIPPLE:

Introduction

- 1 On 31 March 2022, the appellant Hook was convicted at Nottingham Crown Court of one offence of conspiracy to supply Class A drugs – that was Count 1 – and one offence of conspiracy to transfer criminal property – that was Count 4. On the same date, the applicant Sirrell was convicted of one offence of conspiracy to supply Class A drugs – that was Count 2.
- 2 On 30 March 2023, the trial judge, HHJ Coupland, sentenced Hook to 10½ years’ imprisonment for the drugs conspiracy and 2½ years’ imprisonment for the criminal property conspiracy to be served consecutively, leading to a total sentence of 13 years’ imprisonment. Hook now appeals against that sentence with the leave of the single judge.
- 3 On the same date the same judge sentenced Sirrell to a term of 15 years’ imprisonment. Sirrell now renews his application for leave to appeal against that sentence, together with an application for an extension of time of 148 days to enable him to do so, his applications having been refused by the single judge.
- 4 Part of Sirrell’s argument, at least as it was advanced on paper, is based on disparity with certain other co-accused whose sentences can be summarised conveniently here: first, Adam Rhodes, who pleaded guilty to one count of conspiracy to supply Class A drugs – that was Count 2 – and was sentenced to 10 years’ imprisonment; Michael Kinsella, who pleaded guilty to one count of conspiracy to supply Class A drugs – that was Count 1 – and was sentenced to 12 years and 8 months’ imprisonment; Geoffrey Bradwell, who was also known as “Irwin”, who pleaded guilty to one count

of conspiracy to supply Class A drugs – that was Count 1 – and was sentenced to 11 years and 4 months’ imprisonment.

- 5 There were a number of other defendants sentenced by the judge at the same time. The transcript of sentencing remarks lists a total of 18 names. This sentencing exercise was on any view extremely complex.

Facts

- 6 In summary, the case concerns the supply of cocaine and heroin by two linked organised crime groups (“OCGs”), the Kinsella OCG and the Eastwood OCG based in Nottinghamshire, over the course of late 2019 to mid-2020. The Kinsella OCG was based in Nottingham, and Kinsella and Bradwell were the leaders of that OCG. The group obtained bulk quantities of cocaine from high-level suppliers based in other parts of the country. Sometimes the Kinsella OCG arranged the supply of bulk quantities of cocaine from upstream suppliers directly to the Eastwood OCG. Adam Rhodes was one of the leading members of the Eastwood OCG. The investigation leading to these prosecutions was known as “Operation Boodle”.
- 7 Given the limited ambit of the issues arising on this appeal and application, it is not necessary to set out the background in detail. It is necessary only to summarise the following aspects. Having been supplied with wholesale amounts of drugs by the Kinsella OCG, the Eastwood OCG supplied end users with cocaine and heroin.
- 8 In April 2020, Kinsella and Bradwell suspended their drug-dealing activity, having suffered arrests and drug seizures which disrupted their business. They put the Eastwood OCG in touch with Adam Vohra, who remains wanted, who acted as a middleman between the Eastwood OCG and the upstream suppliers in the northwest and in Luton. Sirrell worked with Mr Vohra and arranged that supply from upstream

couriers to Eastwood OCG couriers. Several of the defendants used EncroChat devices to arrange their criminal activity, however EncroChat messages were only available for the last two months of the conspiracy period.

9 Count 1 was the conspiracy to supply cocaine between 1 November 2019 and 4 May 2020 by the Kinsella OCG. Count 2 was the conspiracy to supply cocaine and heroin between 1 November 2019 and 31 May 2020 by the Eastwood OCG. Count 4 was the conspiracy to transfer criminal property between 1 February 2020 and 27 February 2020 by Hook and another.

10 Hook was a courier or driver for the upstream cocaine supplier, Jon Juniper, who was connected with the Kinsella OCG. Hook made deliveries of cocaine to Nottingham, arranged by the Kinsella OCG, on five dates. The EncroChat messages for the period 2 April 2020 to 31 May 2020 showed that each time a driver for an upstream supplier met with a customer of the upstream supplier, drugs were supplied. There was no instance in the EncroChat messages of a driver meeting a customer just to receive cash. On each of the five days when Hook travelled to Nottingham, he also travelled to Liverpool on the instructions of Juniper. Hook had an EncroChat telephone which he used to communicate with Juniper. Two further EncroChat telephones were found in the bag of old telephones in Hook's partner's car on 26 February 2020. The items found at the properties linked to Hook included two electric money-counting machines, a set of digital scales with traces of cocaine on the weighing pan, the base of an industrial press, and £7,005 in cash. A secret compartment had been fitted to the boot of the car which Hook used in the course of the offending and which was registered to him.

11 Sirrell's connection was with Mr Vohra, who was in touch with the Eastwood OCG. Vohra was organising buying cocaine and heroin on a commercial basis. He had

substantial connections to upstream suppliers and received a substantial financial benefit for his role in arranging the supply of kilo and multi-kilo quantities of and heroin to the Eastwood OCG. He was paid a fee for each supply that took place. During the period 1 April 2020 to 31 May 2020, Vohra arranged the supply of Class A drugs to the Eastwood OCG once or more each week. In some ways, Sirrell performed a similar role to that of Vohra. However, the EncroChat messages indicated that Sirrell generally took over the arrangements when Vohra was not available. On the evidence, Sirrell was only involved in the conspiracy for a short period at the end of the indictment period, from 25 May 2020 to 31 May 2020. It was the prosecution's case that Sirrell was paid for his involvement in arranging the supply of drugs to the Eastwood OCG. Sirrell used the "rustytiger" EncroChat telephone from 7 May 2020. Vohra and Sirrell arranged the supply of drugs by upstream suppliers in Liverpool and Luton. The co-location evidence showed that Sirrell travelled to Liverpool and Luton with the "rustytiger" telephone during the period of his involvement in the conspiracy. He stayed at Liverpool and Luton respectively for just a short time when he made these trips with Vohra.

Sentence

- 12 In extremely impressive sentencing remarks which we commend for their clarity and analysis, HHJ Coupland described the conspiracies. He concluded that the Kinsella drugs conspiracy, Count 1, involved multi-kilo amounts of Class A drugs and involved a very high level of trade. The quantity of drugs involved was significantly outside the range for Category 1 under the drugs guideline published by the Sentencing Council. The Eastwood drugs conspiracy, Count 2, involved the purchase of huge quantities of Class A drugs which were then split and cut down and supplied to lower-level dealers and street dealers. The quantities involved in the Eastwood conspiracy also significantly exceeded the range for Category 1. The

judge held that both conspiracies involved the use of EncroChat phones which showed sophisticated offending in the course of highly profitable drugs trades.

- 13 The judge dealt with credit for guilty plea for those defendants who had pleaded, time spent on remand, the effects of COVID, and delay.
- 14 When he came to sentence Hook, he held that Hook had a significant role. Although Hook's involvement was relatively short, taking place over a six-week period, the judge determined that the starting point was still over the 10-year starting point in Category 1 of the drugs guideline for class A. He said that Hook's position was aggravated by his involvement in the conspiracy to transfer criminal property, which had involved Hook in making several trips to Liverpool to collect money. At one point, Hook was carrying over £423,000 in his car, that cash being the product of two handovers. He put Hook's offending at the upper end of Category 4 of the money laundering guideline, which has a starting point of 5 years' custody.
- 15 The judge noted the available mitigation. Hook was then 44 years old, with no prior involvement in the supply of drugs and no offending since 2010, with a good army record and a good employment history. He had some psychiatric problems as a result of past experiences made worse by the use of drugs, explained by the available psychiatric evidence. He had helped others in the church while in custody and sought help for himself. He had contributed in other ways while in custody, achieving enhanced status. The judge made reference to Hook's personal circumstances and to his expression of remorse. He held that involvement in two separate conspiracies merited consecutive sentences, although he said that regard must be had to the overall position and totality. The judge concluded:

“On Count 1, the starting point I have chosen is 12½ years' imprisonment, reduced to 10½ years for your mitigation. On Count 4, a starting point of 5,

reduced significantly to 2½ years for mitigation and totality, but that will be consecutive. The total sentence in your case is 13 years' imprisonment."

16 He held that Sirrell had a leading role. He noted his background as a family man with no similar previous convictions. Sirrell's involvement was limited in duration to about two weeks at the end of the indictment period for Count 2, but the judge rejected Sirrell's submission that he was just a call-handler and concluded that Sirrell was involved at a far greater level, arranging meetings between the Eastwood OCG and the upstream suppliers to discuss and resolve issues, giving examples of that sort of activity during the period of Sirrell's involvement. Sirrell was trusted, experienced and fully involved, and he had the expectation of significant financial gain. Taking account of the quantities involved, the judge held (by reference to the drugs guideline) that Sirrell's offending fell in Category 1 for harm. He noted that Sirrell was 37 years old and that his family was adversely impacted by his period of custody. His father had died while he was in custody. His experience in custody had been difficult for a number of reasons, but he had made an effort to do the right thing while in custody and had made good progress. The judge concluded:

"Mr Sirrell, on Count 2, the starting point that I am satisfied is appropriate for you is 17 years' imprisonment. I reduce that to 15 years for the mitigation I have heard."

Grounds of appeal

17 In grounds of appeal drafted by Mr Krieger for Hook, it is submitted that the sentence was manifestly excessive because he fell at the lower end of the range of significant role or the upper end of lesser role, that the starting point of 12½ years was too high given that there was no basis to conclude that he had transported at least

5 kg of cocaine, but even if he had done so and the wider conspiracy could be taken into account that starting point was still too high, that there was double counting in using Hook's involvement in the conspiracy to transfer criminal property as a reason to aggravate the sentence on the drugs conspiracy as well as imposing a consecutive sentence for the transfer conspiracy, that the judge should have concluded that this was all part and parcel of the same offending so that concurrent sentences should have been imposed, and that the judge had failed to take adequate account of totality. Mr Krieger submitted that the correct starting point should have been 11 years before taking account of mitigation.

18 On Count 4, Mr Krieger argued that Hook's culpability was limited to using an encrypted handset to facilitate delivery of large amounts of cash at someone else's direction for limited financial gain, so that a starting point lower than 5 years was justified.

19 In grounds of appeal supported by a skeleton argument drafted by Mr Tetley, it is submitted on Sirrell's behalf that his sentence was unjust in all the circumstances, was manifestly excessive, involved a misapplication of the drugs guideline, and failed to achieve parity as between Sirrell and his other co-defendants, specifically Rhodes, Kinsella and Bradwell. It was submitted that Sirrell's role was very different from roles played by others identified by the judge as leaders.

20 We thank both counsel for their clear and focused written and oral submissions.

Conclusion: Hook

21 In Hook's appeal, there is, in our judgment, merit in the submission that the sentence imposed appears to contain some double counting. The judge referred to Hook's position being "aggravated" by his involvement in the conspiracy to transfer criminal

property and assessed Hook's role in the drugs conspiracy as significant on the basis that his visits to the local area were for the purposes both of delivering drugs and collecting money. The judge then imposed consecutive sentences to reflect the two conspiracies (drugs and transfer of criminal property). The criminal property, which was the subject of the second conspiracy, was, to all intents and purposes, the cash received for the supply of drugs as part of the first conspiracy. The two conspiracies were very closely linked.

- 22 We accept Mr Krieger's submission that the two conspiracies should, for sentencing purposes, be considered as "part and parcel" of the same offending. Applying the approach set out in the Sentencing Council's guideline on totality, reflected in *R v Cooper, Park and Fletcher* [2023] EWCA Crim 945, [2024] 1 Cr. App. R. (S.) 14, paragraphs [8]-[12] in particular, we consider this to be a case where concurrent sentences were warranted. To impose a consecutive sentence, albeit one that was reduced for totality, has led to an outcome which, overall, is disproportionate.
- 23 The judge was entitled to conclude that Hook played a significant role and to place him outside the top of the range, in particular taking account of the very substantial quantities of drugs involved. The period of involvement was short but not fleeting, a period of some weeks during which time large volumes of drugs were traded and large amounts of money were transferred. The starting point of 12½ years was justified on Count 1. The judge reduced that by 2 years for personal mitigation. There was a lot to be said in the appellant's favour and we would not interfere with the judge's assessment of the reduction for personal mitigation. The only alteration which is necessary in order fully to reflect totality is to make the sentence on Count 4 for the conspiracy to transfer criminal property concurrent instead of consecutive. For that reason and to that extent, Hook's appeal is allowed.

Conclusion: Sirrell

- 24 We turn to Sirrell's case. The judge found that Sirrell had a leading role. His reasons for reaching that conclusion were set out: Sirrell was more than a call handler, he was involved in making arrangements for the Eastwood OCG, this was a form of directing or organising. The judge was justified in framing this as a leading role. This is the point on which Mr Tettey has focused in his submissions, but we are not persuaded. We do not interfere with the judge's evaluation of the role played by Sirrell, particularly given the judge's clear view of the evidence having presided over the trial. His reasons are compelling, and the conclusion is justified.
- 25 Although it was not pressed before us in oral submissions, we deal briefly with the point about disparity. We are not persuaded that there is merit in the comparison with the other defendants. The starting points for Kinsella and Bradwell were in any event significantly higher, reflecting their particular roles at the top of the pyramid. It may be that Rhodes occupied a different sort of leading position, but that does not make Sirrell's sentence wrong in principle or manifestly excessive. Further, the judge was aware of the comparatively short duration of Sirrell's involvement and took account of that, but the point the judge noted was that Sirrell's involvement only came right at the end of the conspiracy period and he had intended to make further similar supplies. The sentence was not even arguably manifestly excessive or wrong in principle.
- 26 In those circumstances, there is no point in extending time and we refuse Sirrell's applications.

CERTIFICATE

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