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IN THE COURT OF APPEAL  
(CRIMINAL DIVISION)

[2024] EWCA Crim 690



No. 202301196A3  
202301277A3

Royal Courts of Justice  
Strand  
London, WC2A 2LL

Friday, 17 May 2024

Before:

LORD JUSTICE POPPLEWELL

MR JUSTICE PEPPERALL

MR JUSTICE COTTER

B E T W E E N :

REX

- v -

RICHARD WEILD  
and  
JOHN MORRIS

Applicant

Appellant

THE CROWN was not represented.

MR M BUCKLAND appeared *pro bono* on behalf of the Applicant and Appellant.

J U D G M E N T

LORD JUSTICE POPPLEWELL:

- 1 The applicant Weild renews his application for an extension of time for leave to appeal against sentence, following refusal by the single judge. The appellant Morris appeals against sentence with leave of the single judge.
- 2 Having entered guilty pleas, both were sentenced by HHJ Aubery KC, sitting in the Crown Court at Liverpool on 16 March 2023. Weild's total sentence was 19 and a half years' imprisonment. Morris' total sentence was 10 years' imprisonment. The individual sentences, all to run concurrently, were as follows:  
  
Count 1, conspiracy to supply cocaine: Weild 19½ years, Morris 10 years.  
Count 2, conspiracy to supply heroin: Weild 8 years.  
Count 3, conspiracy to supply 2-CB: Weild 8 years.  
Count 4, conspiracy to supply MDMA: Weild 8 years.  
Count 5, conspiracy to supply cannabis: Weild 5 years.  
Count 6, conspiracy to transfer criminal property: Weild 6 years.  
Count 7, possession of criminal property: Weild 4 years.  
Count 8, possession of 2-CB with intent to supply: Morris 4 years.  
Count 9, possession of cannabis with intent to supply: Morris 2 years.
- 3 The prosecution arose from Operation Venetic, when police were handed a large amount of messaging material from encrypted EncroChat devices. Data was captured in relation to the handle "Blacklabel", which was attributed to Weild, for the eleven week period of 22 March to 6 June 2020. During that time "Blacklabel" communicated with fifty-four separate EncroChat handles, indicating a widespread network of criminal dealings.
- 4 A review of those conversations showed that Weild was involved in the supply and in the adulteration of very large quantities of Class A and Class B drugs. Within those messages he told people that he had been in that business for a number of years. He had a number of different people working for him. He used a series of different couriers to transport those drugs and cash around the country, with buyers located not just in the north-west and around Liverpool but also in Manchester, Southampton, Plymouth and Devon. He made reference within those messages to his making a profit of around £30,000 a week from the supply of drugs. There was also reference to one of his couriers transporting over £260,000 in cash to London on one trip. There were references within various different message chains to being careful to avoid detection and to protecting themselves as much as possible by using vehicles which had hide or stash areas within them, in which the drugs or cash could be concealed.
- 5 In relation to one chain of communication with a customer, who was referred to as a "regular", Weild spoke about that customer having purchased 2kg of cocaine a week from him and suggested that the customer had been doing that for four to five years.
- 6 In relation to the Class B conspiracy (Count 5), some of the messages spoke about Weild obtaining 41.5kg on one occasion from an associate in Canada and having been able to sell it on for about £240,000. He talked about that supplier being someone who could provide him with as much as 1,000kg in the future, although there was no evidence of that quantity

actually being supplied. It was the prosecution case that Weild had been involved in the supply of at least 200kg of cannabis.

- 7 Returning to the cocaine charge, in addition to the supply business, Weild was involved in the adulteration and repackaging of cocaine in 1kg blocks for other organised crime groups, colloquially referred to as “bashing”. This involved breaking down the 1kg package, mixing it with adulterant and re-pressing and repacking it into a larger number of new 1kg blocks with new stamps. Within the messages there were many details provided to others showing a knowledge of that side of the business, with different adulterants being used and with Weild explaining how he ensured that it looked as professional as possible. Weild explained in the messages in some detail how he could mix and repackage a kilogram in forty-five minutes to an hour. There were a series of photographs sent out promoting the design of the finished product and messages indicating the sort of quantities involved, one saying:

“I made 12 to 15 for these kids in 2 to 3, making another 4 to 5 tomorrow, making the 5 will take me 4 hours.”

Messages in March, April and May spoke about having done it for about ten months and making £5-10,000 per week.

- 8 In relation to Count 2 (heroin) there was reference to the actual supply of 2kg of heroin during the capture period of the EncroChat messages. It was the prosecution case that the supply by Weild of approximately 5kg could be inferred over the indictment period.
- 9 At Weild’s home address, there were found various items of designer clothing, shoes, sunglasses, a Rolex watch, approximately £5,500 in cash and a car, which were the subject matter of Count 7. The value put on these items was of the order of £20,000.
- 10 In respect of the money laundering count (Count 6), there was reference to the movement of somewhere in the region of £800,000 in cash during the period of the EncroChat messages.
- 11 In terms of the scale of the criminality on Count 1 (the cocaine charge), over the eleven week capture period of the EncroChat messages there was reference to the supply of 14.75kg of cocaine and to adulteration of a further 62kg of cocaine. Weild’s basis of plea stated that for the indictment period it was appropriate to assume 30kg of cocaine for direct supply and 146kg for adulteration quantity.
- 12 So far as Morris is concerned, it was clear that Weild had employed him for his home to be used both as a storage facility, in respect of the Class A and Class B drugs, and as a location for the adulteration operation. The police searched Morris’ home address on 9 November 2021. They found three different adulterants, in quantities totalling over 20kg. There were also two individual 1kg blocks of cocaine and a further 214g of cocaine separately. There were also sealed plastic bags containing 3,171 tablets of 2-CB (Counts 3 and 8), 35.4g of ecstasy and 1 ecstasy tablet (Count 4). In the loft were 17kg of cannabis in big holdall bags (Count 5, in part, and Count 9), a tick list and £2,800 in cash.
- 13 Morris’ involvement covered the EncroChat capture period, although was not limited to it, and was therefore in relation to at least 76kg of cocaine, of which about 14kg was by way of direct supply and the remainder by way of the adulteration operation.

14 Both defendants gave “no comment” interviews. Weild pleaded guilty at the PTPH and was given 22 per cent credit. No complaint is made about that. Morris pleaded not guilty at the PTPH but that was only because he instructed new solicitors on the day of the hearing. He had indicated unequivocal guilty pleas at the Magistrates’ Court and the judge gave him the benefit of a full one-third discount for his plea.

15 There was a basis of plea for both Weild and Morris. In Weild’s case, it went through a number of iterations before it was deemed acceptable to the Crown. In its final form it addressed the relevant quantities and role in relation to the cocaine charge (Count 1). No issue was taken with the prosecution case on the other counts, which it did not address. It provided as follows:

“(1) The defendant accepts that the total figure for his involvement is properly assessed at 176kg.

(2) The defendant was concerned in playing two roles: (i) he diluted (bashed) high purity drugs on behalf of others; (ii) he sold drugs directly to others.

(3) The drugs that were bashed belonged to others and the defendant was paid a fee for doing so.

(4) The defendant accepts it is appropriate to allow 30kg for direct supply and 146kg for bashing.

(5) It is the defendant’s case that:

(i) the bashing element of his involvement means he played a significant role in that he was an important and trusted function in the chain for financial gain.

(ii) the fee would have been up to £1500 but frequently less. The figure of £1500 he provides per kilo was given in the course of a discussion where it may have been in the defendant’s interests to talk up his profit.

(6) It is not believed that the Crown take issue with any of this but both parties agree that these assessments remain a matter for the court.”

16 In Morris’ case, the basis of plea was in the following terms:

“(1) The defendant pleads guilty on the following basis:

(i) from a date around the end of March 2020, the defendant agreed that his premises could be used by others to store and adulterate drugs.

(ii) he was paid, in colloquial terms, to allow his premises to become a bash house.

(iii) drugs and adulterants were stored in the premises.

(iv) a key was given to allow workers access to the premises.

(v) the defendant was not actively involved in adulterating the drug but did often clean up after the work had been done.”

17 So far as (v) was concerned, the prosecution did not accept the suggestion in the basis of plea that the defendant was not actively involved and played a merely passive role. The prosecution relied upon a message, to which I will come in due course, suggesting more active involvement. On behalf of Morris, it was accepted that there would be no need for a Newton hearing and that his basis of plea would be modified to the extent that the Crown

would be entitled to rely on, and the judge would be entitled to take into account, the message to which I refer, in determining the nature of his involvement.

- 18 Weild, aged 38, had nineteen convictions for thirty-nine offences, including a number for simple possession of drugs, but no convictions for the supply of drugs. Morris, aged 49, had no previous convictions, nor indeed any reprimands, cautions or warnings.
- 19 There were no pre-sentence reports but each of Weild and Morris put forward material by way of personal mitigation. That of Weild relied on the effect the sentence would have on his partner and his children, aged fifteen and eighteen, and upon his father's ill health. In Morris' case it was to the effect that he was remorseful and ashamed of the damage which his offences, and their inevitable punishment, had caused to his wife and parents, to his having put his time awaiting trial to good use in gaining qualifications and, so it was said, that he was plagued by addiction to alcohol and cocaine at the time of the offences.
- 20 In full and careful sentencing remarks, the judge identified that he would pass a sentence on Count 1 which reflected the overall criminality on the indictment for each of Morris and Weild, and pass shorter concurrent sentences on the other counts. He referred to the Sentencing Council Guidelines, which treats the starting point in the highest category as based on a quantity of 5kg of cocaine and to the rubric 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.”
- 21 He reminded himself of a number of the relevant authorities. As a judge with very considerable experience in this area, he can be taken to have been familiar with all the relevant authorities.
- 22 In relation to Weild, the judge identified that he was involved in the supply of Class A and Class B on his own account, as well as adulteration and onward supply. Both were on a commercial scale. The judge said that he would be true to the basis of plea so far as the quantities of cocaine were concerned. In relation to Weild's own supply business, he employed others to work for him to transport the cash and drugs around the country on his behalf. There was no doubt that he fell within the “leading role” category of someone directing and organising the buying and selling of drugs on a commercial scale.
- 23 In relation to the adulteration business, the judge described this as another aspect of maximising profit in the business which he was operating on a commercial scale. Weild was involved with other organised crime groups in full knowledge of the vast scale of the operation (a significant role factor) but also with substantial links to others in the supply chain (a leading role factor). There were thus, the judge said, elements of leading role and significant role in relation to this aspect of the business.
- 24 The judge referred to the letters put before him on behalf of Weild as to the effect which a sentence would have on his family, saying that he took them into account whilst reminding himself of what was said in *R v Welch* [2014] EWCA Crim 1027 (at para.18), that the interests and effect on families of defendants can be of little significant mitigation at the

most serious levels of criminality in this kind of case. The judge also took account of the progress Weild had been making in prison and, he said, for both defendants, of any time when the prison environment was harsher in consequence of Covid and, indeed, the current state of prison conditions.

- 25 The judge determined that an appropriate sentence after trial would have been one of 25 years, reducing it to 19 and a half years with credit for the guilty plea.
- 26 In relation to Morris, the judge reflected that he was paid a fee for his premises to be used for storing drugs and adulterating them. The judge said that, on the basis of plea proffered, he was not actively involved in adulterating the drugs but often involved in cleaning up. He was, the judge said, involved from March 2020 to November 2021, a length of time which the judge treated as significant. The quantity of cocaine involved would be treated as 76kg, which defence counsel did not seek to challenge. He was employed for a fee as a “foot soldier” but nonetheless was an extremely important cog in the wheel, knowing full well the scale of Weild’s business and operation. Consistently with his basis of plea, he must have been aware that the repackaging and stamping of the drugs was taking place in his premises. His fee, although unidentified, was sufficient, at least by way of contribution, to enable him to make a number of trips to Indonesia. He played a significant role. The judge also bore in mind that he was to be sentenced for three other counts on the indictment, in respect of MDMA (Count 4), a conspiracy charge; possession with intent to supply the 2-CB tablets numbering over 3,000 (Count 8 ); and possession with intent to supply cannabis in respect of which the relevant quantity was 17kg (Count 9).
- 27 The judge took into account as mitigation his lack of previous convictions, his asserted addiction at the time and his personal mitigation, whilst reiterating in his case that the effect on his family was an inevitable result of his offending and that he should have thought of that before embarking on the offences.
- 28 The judge determined that in his case the sentence, after a trial, would have been 15 years and, giving full credit for his guilty pleas, imposed a sentence of 10 years.

### **Weild’s application**

- 29 Weild advanced written grounds of appeal. Mr Buckland, who has appeared pro bono on his behalf, expanded upon them to some extent in his oral submissions to us. It was accepted that the quantities involved meant that a sentence after trial would have to be in excess of 20 years. The primary submission was that for the vast majority of the quantities of cocaine, namely those being adulterated, he was acting in a secondary role on behalf of the true owner of the drugs and that this was not a leading role but should have been characterised merely as a significant role.
- 30 The subsidiary submission was that insufficient weight was given to his personal mitigation, being the effect on his family, his progress in prison, his involvement in drugs having arisen out of a gambling addiction, and his remorse.
- 31 We see no merit in these submissions. As to his role, he had a leading role in relation to the direct supply of 30kg of cocaine which put the case above the range for Category 1. On that basis alone, a sentence in excess of 20 years was required. The judge cannot properly be criticised for his assessment that the adulteration offending had elements of leading role in his substantial links to and influence on others in the chain. He was playing a major role in

assisting in the operation which was being undertaken by organised crime groups of their supply of vast quantities of cocaine in this illicit market, and by his participation was lending considerable support to their operation. This was a conspiracy charge. As was emphasised in *R v Khan & ors* [2013] EWCA Crim 800, [2014] 1 Cr App R (S) 10 at [34-35], whilst a sentencing judge should have regard to those factors which limit an individual's part relative to the whole conspiracy and to reflect that in the sentence, the court is entitled, as a balancing factor, to reflect the fact that the offender has been part of a wider course of criminal activity. Involvement in a conspiracy is an aggravating feature since each conspirator playing his part gives comfort and assistance to others, knowing that he is doing so.

- 32 In addition, the sentence on Weild had to take account of the aggravating features of the other offences, which included at least 5kg of heroin and 200kg of cannabis, as well as the 2-CB and MDMA.
- 33 As to mitigation, the judge took account of his personal mitigation which, for the reasons he gave, was of very limited weight in criminality as serious as this.
- 34 We can detect no error of principle in the judge's approach and the sentence at which he arrived was justified. Weild's application will therefore be dismissed.

### **Morris' appeal**

- 35 Mr Buckland's arguments on behalf of Morris can be summarised as follows. First, his role was limited to that identified in his basis of plea, subject to the proviso I have identified. As such it had elements of significant role but it also had elements of lesser role, the latter being indicated by his performing a limited role under direction. Secondly, his benefit was modest. Thirdly, that although some scaling up from the guideline was required for the quantity of drugs involved, a sentence after trial of 15 years was manifestly excessive, given his limited role and his good character and other personal mitigation.
- 36 We are not persuaded by these arguments. As to the size of his benefit, this was not disclosed in his basis of plea, which simply said that he was paid for allowing his premises, which were indeed his home, to become a bash house without, at that stage, any suggestion that the fee was modest. Mr Buckland told us that it was of the order of £100-£200 per kilo, which on the accepted quantity of 76kg, would put it between something of the order of £7,500 and £15,000.
- 37 The message, to which I have earlier referred, which was relied on by the prosecution in relation to whether Mr Morris' involvement could be said to be entirely passive, was in the following terms. It was sent by Weild to one of his organised crime adulteration customers, and it was referring to Morris:

“Give the lad who helps me £500. He knows the graft with me now ... This is big cash for him and give him as much Charlie as he wants too. He's sick. He makes the stamps. He can make any stamp you want.”

This might lend some support to the suggestion that the fee could be described as modest, not in absolute terms but at least in the context of the scale of the operation. The message also shows, however, that his role was far from being merely a passive one of allowing others to use his home. He was living there and he participated by way of assistance not

only in clean up but in his active role in the adulteration operation of being prepared to devise stamps for the re-stamping which was applied on the packaging. Importantly, the message also reveals that he was trusted to have contact with the organised crime group customers in relation to the adulteration business and to discuss it with them, because he “knew the graft”. This indicated that he was familiar with the detail of the adulteration operation and how it worked, as also evidenced by the three different adulterants in quantities of over 20kg which were found in his home.

38 He played his part in this way for over eighteen months in relation to what he knew, on the 76kg quantity accepted by him, was a huge commercial drugs operation. His active participation, taken together with his awareness of the scale of the operation, puts his involvement squarely within the “significant role” category, not, as was submitted, at the lower end of it because of elements of a lesser role. It was performed over a significant period of time. The quantities with which he himself was concerned took this significantly above the Category 1 guideline figures and into the territory in which a leading role would attract a sentence of more than 20 years. Moreover, in his case there had to be taken into account the other supply offences for which he was to be sentenced, including in particular those relating to the cannabis, involving quantities of 17kg, and 2-CB involving over 3,000 tablets.

39 It is important to keep in mind again that this was a conspiracy charge. We have already referred to the fact that, whilst the sentencing judge should have regard to those factors which limit an individual’s part relative to the whole conspiracy and to reflect that in the sentence, the court is entitled, as a balancing factor, to reflect the fact that the offender has been part of a wider course of criminal activity.

40 In *R v Wilson* [2024] EWCA Crim 124, this court said, at para. 27:

“There are several differences between the approach to sentencing a defendant for a substantive offence and sentencing him for the criminality involved in a conspiracy. A defendant who takes part in a conspiracy supports the overall enterprise. The amount with which that defendant is personally and directly involved is of lesser relevance. The assessment of harm must also take account not only of the quantities with which the conspirator actually dealt but also of what the conspirators intended or foresaw. That is particularly significant when a conspiracy is brought to an end by police action. Such a conspiracy is usually intended to continue into the future. See *Pitts* [2014] EWCA Crim 1615; *Smith* [2020] EWCA Crim 994; and *Cavanagh* [2021] EWCA Crim 1584.”

These principles, including those involved in *R v Khan*, were recently endorsed in the decision of this court in a case presided over by the Lady Chief Justice in *R v Mason and Khan* [2024] EWCA Crim 402.

41 This very experienced judge took account of all these matters in his meticulous sentencing exercise. He took into account Morris’ good character and personal mitigation, such as it was. In the face of this level of criminality, he was right to treat that mitigation as having very limited weight. The judge’s reasoning and conclusion involved no error of principle and a notional sentence of 15 years after a trial was justified.



42 We therefore dismiss Morris' appeal, subject to one further matter which we must mention, which we are grateful to the Criminal Appeal Office for bringing to our attention. In passing sentence on Morris, the judge announced that he was imposing concurrent sentences on Counts 3 and 5, of 5 years and 3 years respectively. In fact, those counts had been ordered to lie on the file as against Morris when he had pleaded guilty to the other count. When the sentences were recorded, the correct position was reflected, and no sentences were recorded against him on those counts. However, it is the sentence which is announced by the judge in open court which is effective to impose the sentence, not that which is recorded administratively: see *R v Kent* [1983] 77 Cr App R 120 at [124-5]. Accordingly, we formally quash the concurrent sentences announced on Counts 3 and 5 in Morris' case to leave the position as correctly identified in the record. That has no effect on the total sentence of 10 years. Save to that technical and inconsequential extent, the appeal of Morris is dismissed.

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This transcript has been approved by the Judge.