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NCN: [2024] EWCA Crim 768  
IN THE COURT OF APPEAL  
CRIMINAL DIVISION  
ON APPEAL FROM THE CROWN COURT  
NORWICH  
HHJ SHAW 36CJ2404122  
CASE NO 202301915/A3



Royal Courts of Justice  
Strand  
London  
WC2A 2LL

Friday 21 June 2024

Before:

LADY JUSTICE MACUR

MRS JUSTICE COCKERILL

MRS JUSTICE TIPPLES

REX

V

DANIEL FORDHAM

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MR A OLIVER appeared on behalf of the Appellant.

**J U D G M E N T**

## **MRS JUSTICE COCKERILL:**

1. This is an appeal against sentence brought with the leave of the single judge. On 7 February 2023, in the Crown Court at Norwich, the appellant pleaded guilty to a single count of Conspiracy to supply controlled drugs of Class A, contrary to section 1(1) of the Criminal Law Act 1977. On 25 May 2023, before HHJ Shaw, the appellant was sentenced to 10 years' imprisonment.

## **THE FACTS**

2. The background to this case involved the activities of the appellant's co-defendant, Axel Ritter-Cruz. He was sentenced on a separate indictment, having pleaded guilty on 2 December 2022, to 16 years' imprisonment as follows.
  - a. Count 4, fraudulent evasion of a prohibition (methamphetamine), 16 years' imprisonment;
  - b. Count 1, fraudulent evasion of a prohibition (cocaine), 8 years' imprisonment;
  - c. Count 2, possessing a controlled drug of Class A, 6 years' imprisonment concurrent;
  - d. Count 3, possessing a controlled drug of Class A with intent, 12 months' imprisonment concurrent, making a total of 16 years.
3. It was pursuit of Mr Ritter-Cruz's activities which led to the discovery of the appellant's involvement in conspiracy to supply methamphetamine. This began when, on 12 October 2022, the UK Border Force intercepted a consignment originating from Columbia purporting to contain a metallic cycle support. On examination it was in fact found to contain 921 grams of cocaine at 76 per cent purity. A "dummy" package was delivered to

the consignment address. It was received by the co-defendant, Axel Ritter-Cruz. He was arrested shortly after the parcel was delivered and a subsequent search of the property uncovered drugs and equipment associated with their supply.

4. During the course of that search 13 packages were found in a black rucksack. They were found to contain a total of 11.359 kilos of methamphetamine with a wholesale value of around £211,500 and a street value of about £1.5 million. Access was gained to one of the phones recovered at the property. This revealed contact with a Mexican phone number where Mr Ritter-Cruz discussed (in Spanish) prices, delivery destinations and other arrangements. There was detailed discussion of the consignment, a purchase order which contained invoices, shipping details and Customs paperwork.
5. From 30 August 2022 onwards, Mr Ritter-Cruz was in contact with two associates who were involved in engineering businesses. The intention was to use one or other of the businesses as a front to give an assemblance of respectability to the methamphetamine importation. Messaging showed that on 20 September 2022, the consignment was delivered to the business premises of one of the associates. It comprised a large metal item described as a “boat redactor”. On 20 September 2022, Ritter-Cruz contacted his engineering associate to ask for help in gaining access to the interior of the redactor and eventually he was given advice as to how access could be gained to the inside of this item.
6. In the meantime, messages showed that Mr Ritter-Cruz had been in contact with the appellant since 26 August 2022. The two had known each other before that date and

were social friends. In August 2022, there were messages from the appellant saying he was short of money and reference to his expectation that he would be paid £15,000 for his involvement in Mr Ritter-Cruz's enterprise. Originally he was recruited to accompany Mr Ritter-Cruz as a "minder" when Mr Ritter-Cruz collected the consignments of methamphetamine but on 21 September the appellant assisted in the conveyance of the consignment, still within the boat redactor to Norwich, from the business premises where it had been delivered the previous day.

7. On 24 September, the appellant was tasked with gaining access to the redactor following the advice given by the engineering associate. Images of him doing this were recovered from Mr Ritter-Cruz's phone. They showed that the work had been done and the packages removed from the metal item using an angle grinder. Once removed, the packages were taken up to Mr Ritter-Cruz's flat and an image was taken showing the packages spread out on a table in the flat. It showed the image of round 19 packages. References in the messaging implied that the total importation was in fact 20 kilograms.
8. A few days later, at the beginning of October, the entire consignment was taken by the appellant to his home address. Once the drugs had been moved, Mr Ritter-Cruz asked the appellant for photographic evidence of the shipment to show to prospective purchasers. The Appellant took three videos on 5, 6 and 9 October.
9. In relation to the calculation of the total weight of drugs in the consignment there was reference in the messaging to attempts for the "whole 20" to be disposed of through a route in Belgium. Police expert investigations concluded that somewhere between 7 to 9

kilograms of methamphetamine had been disposed of one way or the other between the date of importation and the date of the police visit. On 10 October the drugs were brought back to Mr Ritter-Cruz's address from where they were subsequently recovered in the police search.

10. Messaging on Mr Ritter-Cruz's phone showed that messages from the appellant expressing his anxiety as to the whereabouts of his money. He was expecting to be paid £15,000 for his participation but the money did not appear to have been paid to him. He was kept advised as to the progress of the attempts to distribute the drugs by Mr Ritter-Cruz and an associate of his known as "Beto". Various outlets were discussed including Amsterdam and Belgium. It was suggested the appellant go to Amsterdam on the understanding he would get paid £2,000 to do that. Possible disposals in London and Cambridge were also discussed by Mr Ritter-Cruz.

11. The appellant was arrested at his home address on 8 December 2022. The phone used for his communications with Mr Ritter-Cruz was recovered. That phone showed messages between the appellant and the man known as Beto between 19 and 22 October and again on 7 November. These messages discussed the implications for them of Mr Ritter-Cruz's arrest and how they might assist each other.

12. The appellant gave full and frank responses in interview. He said he had known Mr Ritter-Cruz for about 2 years, that he had been short of money and that he was recruited initially to act as a minder to collect the package from Heathrow Airport. He deduced that this would be drug related. He described his expectation of being paid

£15,000 as “life changing”. He said that Mr Ritter-Cruz told him the value of the drugs involved was £600,000. He said he had cut open the container and Ritter-Cruz (not him) had bagged the contents, that he had looked after the drugs for a week and taken the videos as requested. He said he had not done the original minding job for which he had been recruited but he had attended a meeting in London between Mr Ritter-Cruz and Beto. He had become increasingly frustrated with Mr Ritter-Cruz because he had not been paid and that he had made a total of £350 from Mr Ritter-Cruz and Beto which had been largely used to cover his fuel expenses.

## **SENTENCE**

13. The appellant was sentenced at the same time as his co-accused. The sentencing remarks run to 17 pages but understandably the majority of that concerns Mr Ritter-Cruz. Having rehearsed the facts up to the appellant’s introduction to the scheme and considered the appellant’s role, saying “*there are some features it might be said of lesser role but equally there are features of significant role*”. At 4E the judge indicated he was sure this was not a one-off but the appellant’s involvement would have continued because of the financial rewards.
14. The judge then went on to outline further the details of the deal in which the appellant was involved. At page 6, he considered the appellant’s rewards to date, expectations and involvement in the business, including knowledge of the other participants (Mr Beto). The appellant’s frankness in contrast to Mr Ritter-Cruz’s lies was remarked upon. At page 7D, the appellant’s lack of convictions was noted as a mitigating feature. At page 9, the judge returned to the appellant, reiterating the arguments and his conclusion on

categorisation. At the same time, he accepted that “*he had to be told what to do at every stage, that he had no influence on anyone else in the chain*”. The judge noted and accepted the appellant’s very obvious remorse and his “quite substantial” personal mitigation, as well as his poor mental health and good progress while on remand in prison. The impact on his wife and very young daughter were accepted, as were the facts that “*this is utterly out of character and upon his release it is likely he will be assessed as posing a low risk of reoffending.*” The judge concluded, as he had indicated earlier, this was a case of category 1 “*significant role with also some features of lesser role*”. While dealing with Mr Ritter-Cruz the judge noted a need for uplift for quantities. As regards the appellant, the dispositive part of his remarks was brief, saying:

“In the case of Mr Fordham, I consider that his significant role in a category 1 case does, of course, have some features of lesser role as I have said. The starting point for a significant role, category 1, is 10 years’ imprisonment, the range of sentence, nine to 12. For lesser role, it is eight years’ imprisonment, the range of sentence six to nine years. He was involved in the importation of 20 kilograms of crystal meth and he conspired with Mr Ritter-Cruz to supply that.

I have concluded in his case that had he been convicted after a trial, the least sentence that the court could have imposed would have been 15 years’ imprisonment. I reduce that by one third to arrive at a sentence of 10 years’ imprisonment and that is the sentence in the case of Mr Fordham....”

15. It is contended for the appellant by Mr Oliver, who appeared below and for whose clear and helpful submissions we are most grateful, that the sentence imposed was manifestly excessive. The following grounds of appeal were identified:

- a. the judge incorrectly categorised the case on the Guidelines;

- b. the judge increased the starting point too much for the weight of the drugs;
- c. the judge reached wrong conclusions which were not supported by the evidence and were not part of the prosecution case;
- d. the judge failed to distinguish between Ritter-Cruz and the appellant sufficiently.

We note no permission was given on this ground and the application for leave was rightly not renewed before us,

- e. it is said the judge failed to give sufficient or any credit for personal mitigation.

16. Orally before us, Mr Oliver has reiterated the core of those points and emphasised also that, while not actually pursuing a disparity argument, the extent to which the uplift was too great, as he says in the case of the appellant, is highlighted by looking at the position in relation to sentencing of Mr Ritter-Cruz, who was sentenced for a greater range of criminality, a greater role, whilst on bail, and yet received a sentence of 16 years.

## **DISCUSSION**

17. We do find those submissions persuasive, at least in part. We do not concur with the submission that the judge erred in categorisation. The categorisation of "*significant with features of lesser*" is, as Mr Oliver frankly accepted this morning, hardly different at all to the categorisation urged for the defence of "*lesser with some features of significant*". It is, as he put it, "*dancing on the head of a pin.*" In either event, we consider that the appropriate starting point was the 9 years which represents the bottom of the higher category and the top of the lower one.



18. Where we are driven to conclude the judge did fall into error however is in the conclusion that *“had he been convicted after a trial the least sentence that the court could have imposed would have been 15 years’ imprisonment.”*
19. The judge gave no assistance to the appellant or to us in understanding how that figure was reached other than via references to, firstly, in the context of the Ritter-Cruz sentencing exercise, which concerned more counts and more drugs overall, to the substantial upwards adjustment and *“more than double the indicative quantity calls for significant upwards adjustment and potentially to go outside the range.”* The judge also referred to the potential for starting points of 20 years by reference to the relevant authority. The judge referred to mitigation and, during the course of the sentencing remarks, referenced in turn, lack of previous convictions, frankness in interview, remorse, steps taken to address behaviour, community service background, to an extent the exploitation of his vulnerability and to the extent permissible impact on the young child.
20. Bearing in mind this balance, this suggests that to get to the 15 years before reduction for plea, the judge was uplifting the starting point by close to 100 per cent. That, we consider, would be an error. The reference in the guideline *R v Johnson & Ors* [2022] EWCA Crim 1575, to a sentence of 20 years was for someone who was squarely a significant role for a conspiracy which was a raw weight of 22 kilograms and was conducted from in prison. That was not an error. That is very different from the present case. We accept Mr Oliver’s submission that the uplift in this case was far too great because this was such a very different case. While an uplift for the amount was plainly called for, we consider the amount of uplift appropriate would, in this case, be equalled

by the mitigating factors.

21. For the reasons given, we have concluded that the judge imposed a sentence which was too long and on a basis which justifies the intervention of this Court. In all the circumstances, we conclude the appropriate figure, before credit for plea, was 9 years; after credit the sentence is 6 years' imprisonment.

22. Accordingly, we quash the sentence imposed and substitute a sentence of 6 years' imprisonment and, as you have heard, the time spent on remand awaiting trial of 167 days will be credited.

23. Mr Fordham, your counsel will explain the effect of this sentence to you but, in brief, you will be released no later than halfway through the sentence, namely after 3 years. The remainder of the sentence will be served on licence in the community. You must comply with all the conditions of your licence failing which you will be at risk of recall to prison to serve the remainder of the term in custody.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

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