

No: 201801424/01425/A1
IN THE COURT OF APPEAL
CRIMINAL DIVISION

NEUTRAL CITATION NUMBER:
[2018] EWCA Crim 1640

Royal Courts of Justice
Strand
London, WC2A 2LL

Tuesday, 19 June 2018

B e f o r e:
LORD JUSTICE TREACY

MR JUSTICE POPPLEWELL

THE RECORDER OF MANCHESTER
HIS HONOUR JUDGE STOCKWELL QC

REFERENCE BY THE ATTORNEY GENERAL UNDER
S.36 OF THE CRIMINAL JUSTICE ACT 1988

R E G I N A
v
EVERTON BAILEY
DAVID REECE

MS D HERR appeared on behalf of the **Attorney General**

MR SIMON MOLYNEUX appeared on behalf of the **Offender Bailey**
MR JOHN KEITH HARRISON appeared on behalf of the **Offender Reece**

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J U D G M E N T
(As approved)

LORD JUSTICE TREACY:

1. This is an Attorney General's Reference of sentences which he considers to be unduly lenient. The two offenders before this court, David Reece and Everton Bailey, were involved with others in substantial drug importation and supply conspiracies over a period of about ten months in 2016/17. They were convicted after a trial at Preston Crown Court and sentenced on 9th March 2018. Each received a sixteen-year sentence of imprisonment concurrent on the four counts on which they had been convicted. Each of those four counts alleged a conspiracy. Counts 1 and 2 related to the importation of cocaine and heroin respectively. Counts 3 and 4 were mirror conspiracies involving supply within this jurisdiction of those drugs.
2. These offenders were not only the individuals sentenced. Julian Solomon was also convicted of counts 1-4 and sentenced to 25 years. Jason Starmer pleaded guilty during the course of his evidence to counts 1, 2 and 4, and received concurrent terms of nineteen years' imprisonment, with two years' imprisonment imposed consecutively for offences involving possession of a converted firearm (a sawn-off shotgun) and possession of ammunition without a certificate. Accordingly, he was sentenced to a total of 21 years. Other defendants, Rawling, Young and Newhall, were sentenced to lesser terms representing lesser participation in the offending and are not relevant to this reference. In addition, a major figure, Francis Eaton, was extradited from Belgium too late for inclusion in the trial. He pleaded guilty in due course and was sentenced to seventeen years' imprisonment, which reflects a term of 26 years after trial prior to credit for guilty plea and deduction for time spent in custody awaiting extradition.
3. The evidence showed a conspiracy to import and supply truly massive quantities of cocaine and heroin over a ten-month period. On 17th May 2017 (towards the end of the

period) a consignment of 142.5 kgs of high purity Class A drugs was seized at Hull. The drugs had been concealed in agricultural equipment and within a specially modified flat-bed trailer which had arrived from Belgium via Rotterdam. This was the only importation which was seized. However, the evidence showed that there had been 38 previous trips and that some of them had involved other similar drug importations. After importation, the drugs were then distributed wholesale to gangs in the Midlands and the North West of England. Of the consignments seized, the cocaine was at an average purity of 85% and the heroin at 55%. The wholesale value of this consignment was estimated at £4.5 million, with a potential street value in excess of £65 million. A transport company based in Belgium had been employed to bring the drugs into this country on each occasion.

4. Documentation found on the day of seizure showed that the cargo was destined for an address in Foston, Derbyshire, which was the address of premises leased by Eaton in the autumn of 2016. Those premises were an isolated bungalow set in an industrial park on an old airfield. The Crown alleged that it was here that drugs were removed from the concealment for onward distribution.
5. On the day in question, Eaton was under surveillance in Derbyshire; and it was apparent that he and other conspirators realised that something had gone wrong. Eaton contacted Reece by mobile phone. Cell site evidence showed that Reece was at or close to the bungalow premises at the time. Following this call, most of the conspirators stopped using their current mobile phones.
6. On the day following the seizure, Eaton, Solomon and Starmer travelled to Belgium in an effort to find out what had happened to the seized consignment. Solomon was arrested on his return to the UK for breach of licence conditions which had prevented him leaving the UK. Three days later, Starmer visited him in custody, following which he received

a call on an encrypted phone from an unidentifiable number clearly related to the conspiracies.

7. On 1st June 2017 Starmer was stopped by police driving a car in which a kilo of cocaine at 83% purity was found together with a large quantity of money and a number of mobile phones. There was also paperwork connecting him to Eaton. A search of his home revealed more drugs, cash and drug paraphernalia, along with the sawn-off shotgun and live ammunition.
8. As to the previous trips, there were fifteen occasions when lorries had followed a route to Foston and thirteen occasions when a lorry had entered the country via Hull but left via Dover. On a number of occasions, the same trailer which had been intercepted on 17th May was used.
9. Telephone evidence showed almost daily contact between Eaton and Bailey, being particularly frequent when a delivery was due. A pattern of contacts between the conspirators, including Solomon, Starmer and Reece, also emerged at times surrounding deliveries. There was evidence that Bailey was in regular contact from February 2017 onwards with the number referred to as "Unknown Coventry". From the following month, both Bailey and that number were in direct contact with the Belgian conspirators. The Crown's case was that this was to do with the supply of the imported drugs to the Midlands.
10. After a lengthy trial the judge was well placed to form an assessment of the hierarchy in this case. He found that there were two criminal gangs involved in the UK end of the conspiracies. Eaton was at the head of the Midlands gang which included Reece and Bailey. Starmer was also involved with the Midlands gang but was also connected to the North West gang and acted as a vital bridge between them. Solomon was the head of the

North West gang. Eaton was the major conspirator who was in direct contact with Belgian conspirators and rented the premises to which drugs were delivered for onward distribution. After the interception in May 2017 he travelled to Belgium with others to find out what had happened.

11. Solomon was described as a leading light in the overall conspiracies. The judge said he 'called the shots' and 'ruled the roost'. The judge assessed him as being at a slightly less elevated level than Eaton; but of the defendants sentenced after the trial he was the 'boss of bosses', with a very high leading role in the overall conspiracies.
12. Starmer was assessed as being in a leading role but subordinate to Eaton and Solomon. He had travelled to Belgium after the seizure of the drugs and had visited Solomon in prison after his arrest - clearly in furtherance of the conspiracy. Unlike Solomon and Eaton, he had no previous convictions.
13. In 2011 Eaton along with Reece was convicted in Belgium of attempting to cross the Dutch-Belgian border in a delivery vehicle containing 16 kgs of cannabis and 7.3 kgs of cocaine. Both were sentenced to two years' imprisonment. Solomon had previous convictions for violence and possession of weapons. In 2004 he was convicted of possession of cocaine and ecstasy with intent and sentenced to four years' imprisonment.
14. We turn next to the role and antecedents of these two offenders. The judge described them as second tier offenders. He said that Reece enjoyed a very high level of connection to Eaton and that he was his trusted right-hand man on the ground. He had been trusted with access alone to Eaton's premises and with his bank card and PIN. He was more than a useful pair of hands. Although his role was different from Bailey's, it was very significant or "at the top end of the significant role".
15. Bailey was ranked in the same way. He was described as a long term and trusted ally of

Eaton, who had played an important role in facilitating the conspiracies. He was in regular phone call with Eaton at the time of deliveries; he was involved in with the onward distribution of drugs to the Midlands, and had had face-to-face meetings with a Belgian conspirator who regularly acted as a driver.

16. As to previous convictions, we have pointed out that Reece had been convicted in other drug trafficking with Eaton in 2011. Bailey had been sentenced to nine years' imprisonment in 1999 for being concerned in the importation of Class A drugs.

17. On behalf of the Attorney General the sentences imposed on Reece and Bailey are challenged as unduly lenient. It is submitted that the quantity of drugs involved exceeded by a huge margin the 5 kg indicative amount in category 1 of the Sentencing Council's Drug Importation Guideline. That guideline 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 role of the offender."

18. Both offenders were assessed as falling at the top end of a significant role and in each case their offending was aggravating by the high purity of the drugs and their previous convictions for drug trafficking offences. Accordingly, it was argued that the sentences imposed failed adequately to reflect the harm inherent in the quantity of drugs, the offender's culpability and the serious aggravating feature of their previous convictions.

19. Counsel for the offenders have resisted the application. They submit that the sentences imposed adequately reflected the circumstances of their clients' offending and that they were not unduly lenient. They point to the judge having conducted the trial over a number of weeks and thus being in a good position to assess the offenders' positions. Sentences of sixteen years represent a sufficient uplift from the term of twelve years, which is at the

top end of the range for a category 1 'significant role' offence based on an indicative quantity of 5 kgs.

20. This court has previously considered the question of sentencing where the quantity of drugs involved significantly exceeds Category 1 levels. We have considered Attorney-General's Reference Nos 15, 16 and 17 of 2012 (Lewis and others) [2013] 1 Cr App R (S) 52 at paragraphs 16-18; R v Jaramillo [2013] 1 Cr App R (S) 110 at paragraph 16; R v Welsh and others [2014] EWCA Crim 1027 at paragraph 12; and Attorney-General's Reference Nos 82 and 90 of 2014 (Ebanks) [2015] 2 Cr App R (S) 1 at paragraphs 35-38.
21. The decisions we have cited on the approach to sentencing very large-scale commercial operations involving very large quantities of drugs show that the ultimate sentence will largely be driven by an assessment both of quantities of drugs involved and the role of an individual offender. Each case is, of course, fact-sensitive. Courts will readily recognise the sort of operation which will trigger consideration of levels of sentencing outside the guideline tables by reason of quantity and sophisticated organisation. The role of the offender will clearly also be a highly material consideration. It may be that where there are several offenders to be dealt with at the higher levels some levels of bunching may result, as Welsh predicts. It is clear from the authorities that uplift for this class of case is not confined to offenders acting in a leading role. A judge must scale up sentences having regard to roles at every level. In this case these offenders, although not in a leading role, were each assessed as being at the top of a significant role. We see no reason to go behind the judge's assessment in that respect. We note that in some of the cases cited, this court held that such a finding did not preclude a 20-year starting point.
22. We have not lost sight of the fact that Starmer, who received nineteen years for the

conspiracy having been given no credit for an extremely late guilty plea, had been assessed as being in a leading role albeit at a lower level than Eaton and Solomon. There were, however, two important factors which bore on that sentence. First, since the judge was sentencing for another matter, he expressly took account of totality. Secondly, Starmer had no previous convictions, whereas these two offenders have previously been convicted for significant drug trafficking offences. Those previous convictions represent a substantial aggravating factor in each case.

23. Given the huge quantities of drugs involved over multiple importations with a view to onward distribution in this country and given the seniority of the roles occupied by these offenders, we are satisfied that the judge should have been considering a term of at least twenty years. We therefore consider that the sentences imposed were unduly lenient and grant leave. We consider it appropriate to increase these sentences but, in doing so, think it right to have regard to the fact that the Attorney General has not challenged the sentences imposed on Starmer and those above him in this enterprise. We have regard to that in coming to the conclusion that the least sentence to be imposed on these offenders is a term of nineteen years in each case in substitution for the term imposed below. We so order.
24. By way of footnote, we wish to comment on the practice of the Registrar of writing to judges whose sentences are to come before the court on an Attorney General's Reference. The standard letter makes plain that it is not for the judge to comment generally on the Attorney General's application. It invites the sentencing judge to provide any information which will not be apparent from the papers and the transcript. One example might be where a 'text' has been placed before the judge. The Registrar will then consider whether any further such information needs to be placed before the court and counsel. The letter

makes clear that it is not permissible for a judge to add to his sentencing remarks.

Assistance sought is limited to information of which the judge was aware but which is not before the court. In this case the judge responded but in a way which commented more generally. The Registrar has become conscious that some judges have been responding in terms beyond the ambit set out in his letter. We wish to remind judges of the very limited nature of the enquiry made by the Registrar's letter.