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IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
Strand
London, WC2A 2LL

Thursday, 14 February 2019

B e f o r e:

LORD JUSTICE LEGGATT

MRS JUSTICE McGOWAN DBE

HIS HONOUR JUDGE WALL QC
(Sitting as a Judge of the CACD)

R E G I N A
v
DECLAN CRAIG WILLIAMS
JONATHAN P ATRICK THORNE
GERWYN BAILEY
CHRISTOPHER LEE MORRIS

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the court office or take legal advice.

Mr G Morley appeared on behalf of the **Applicant Thorne**
Mr A Waldman appeared on behalf of the **Appellant Morris**
Ms F Tomos appeared on behalf of the **Crown**

The Applicant Williams did not appear and was not represented
The Applicant Bailey did not appear and was not represented

J U D G M E N T
(Approved)

1. LORD JUSTICE LEGGATT: In March 2018, in the Crown Court at Swansea, His Honour Judge Thomas QC sentenced no fewer than 30 defendants for their parts in conspiracies to supply Class A drugs on what the judge described as "an industrial scale" into towns and cities of west and Southwest Wales. The conspiracies involved highly organised crime groups operating in North Wales and also in Liverpool. All the defendants were sentenced after pleading guilty to one or more offences included in a 17 count indictment.

2. Before the court today are renewed applications made by three of those defendants for leave to appeal against their sentences, together with an appeal by one defendant, Christopher Morris, who was given leave to appeal by the single judge.

Appeals against sentence in drug conspiracy cases

3. Before addressing these individual appeals, it is worth emphasising the general difficulties which face defendants who seek to appeal against their sentence in cases of this kind where a judge has sentenced many defendants for their various parts in a large conspiracy to supply drugs. In such a case the judge will usually have had charge of the case over many months and at a series of hearings, will have read or heard the prosecution evidence as it relates to all the defendants and may have conducted trials or Newton hearings in relation to some of them. It is self-evident that in these circumstances the sentencing judge is uniquely well placed to consider the different roles of the various conspirators and the nature and extent of each person's involvement. The judge is thus also uniquely well placed to calibrate the sentences imposed so as to achieve parity among the defendants and reflect their relative levels of responsibility.

4. The Court of Appeal does not have those advantages. So unless it can be shown that in sentencing a particular defendant the judge did so on a factual basis which is obviously mistaken, or that the judge made an error of principle, or that in assessing the weight which should or should not be given to one or more relevant factors the judge formed a view which no reasonable judge, acting reasonably, could have formed, the Court of Appeal is most unlikely to think it right to interfere with the judge's assessment of the appropriate sentence. Arguments that the judge misappraised the level of a defendant's role in the conspiracy or imposed a sentence which is unfair in comparison with the sentences imposed on other defendants will seldom have any realistic prospect of success.

Williams and Bailey

5. Turning to the present cases, we refuse the three renewed applications for leave to appeal. In each case the single judge gave detailed written reasons for refusing leave after consideration of the papers. Those reasons addressed all the grounds of appeal. Two of the applicants, Declan Williams and Gerwyn Bailey, are not represented today and have made no written submissions to expand on their grounds of appeal or to take issue with any of the reasoning of the single judge. It is sufficient in their cases to say that, having considered all the relevant material ourselves, we are satisfied that the single judge was right to refuse leave to appeal for the reasons he gave.

Thorne

6. The third applicant, Jonathan Thorne, has appeared today by counsel, Mr Gareth Morley. We appreciate the assistance that Mr Morley has sought to give to his client by travelling here to represent him. Mr Morley has endeavoured to persuade us that the sentence of 16 years' imprisonment which Thorne received for his part in the conspiracies was manifestly excessive or otherwise wrong in principle.

7. Thorne put forward a basis of plea which was not accepted by the prosecution and a Newton hearing was therefore held which took two days. At that hearing Thorne did not challenge any of the prosecution evidence but he, along with a co-defendant, Ms Powell, gave evidence himself and was described by the judge as "a wholly unconvincing witness".

8. At the Newton hearing the judge found that Thorne and Powell were the main points of contact in Llanelli, a town of some 35,000 people, and were the main distributors in the Llanelli area, of drugs brought down from North Wales and Merseyside. The prosecution showed that deliveries of heroin were made on some 70 occasions. From the quantities seized when three of these deliveries were intercepted, the judge estimated that the quantity delivered was typically at least one-sixth of a kilogram and that the total quantity of heroin received by Thorne for onward supply to street dealers was over 8 kilograms. On the judge's findings, Thorne clearly played a leading role and it was accepted on his behalf that the quantity of drugs involved took him above the category 1 range in the Sentencing Guideline, for which the upper limit is 16 years' custody. The judge found that Thorne went on supplying drugs in Llanelli even after heroin had caused the death of someone he knew well. He had many previous convictions for multiple offences including drugs offences, although none of those had previously involved dealing. In all the circumstances, including parity with other conspirators, the judge took a starting point of 17 years (just above the guideline range), which he reduced to 16 years on account of Thorne's guilty plea.

9. Mr Morely has sought to pursue two grounds of appeal on Mr Thorne's behalf. First, he submitted that the judge was not entitled to infer that the quantity of drugs delivered to Mr Thorne for onward supply in Llanelli was at least 8 kilograms. Mr Morley accepted, as he was bound to do, that on each of the three occasions when deliveries were intercepted, the quantity of drugs found was either a sixth of a kilogram or in one case more. He also accepted, and it is a simple matter of arithmetic, that the figure of just over 8 kilograms which the judge took was in fact conservative, on the basis of his assumption that at least a sixth of a kilogram was delivered on 70 occasions. Nevertheless, Mr Morley submitted that it was quite simply incredible that, on what were sometimes weekly trips, a quantity of drugs which would have a street value of some £16,000 could have been supplied to that particular location.

10. This, in our view, is an example of the kind of attempt to persuade the Court of Appeal to second guess decisions made by the judge who was in full possession of all the facts which cannot reasonably be entertained let alone sustained in this court. The judge made the findings that he did after a two-day Newton hearing in which he had the opportunity to consider all the evidence. No doubt the suggested unlikelihood of such a quantity of drugs being supplied on weekly trips loomed large in the defence submissions made on that occasion but the judge rejected it and there is no possible

basis on which this court could consider that it was appropriate to interfere with that factual finding.

11. The same applies to the second submission which Mr Morley has made, which is that the sentence passed on Thorne was excessive as a matter of parity with other defendants. In particular, Mr Morley emphasised that the sentence imposed on the defendant Ryan Kenny, who was found to have been the head of the organisation, who enjoyed an affluent life-style and who was supplying many kinds of Class A drugs throughout Wales, was only 4 years longer than the sentence imposed on Thorne. Mr Morley also sought to draw comparisons with the defendant Ingleby and with other defendants.

12. Arguments based on disparity are, as Mr Morley accepted, never easy arguments to make at the best of times. The test is a very high one. In so far as it is relevant to consider comparisons with other defendants at all, the test is whether right-thinking members of the public, with full knowledge of all the relevant facts and circumstances, learning of the sentence, would consider that something had gone wrong with the administration of justice.

13. It is clear from his sentencing remarks that the judge in this case had well in mind the question of parity with other conspirators when sentencing Thorne; indeed, it was explicitly on that basis that he took the starting point of 17 years that he did. This court is in no position to say that that was an inappropriate judgment, let alone that it comes anywhere close to satisfying the test that it would need to meet in order to justify intervention on this appeal.

14. We therefore consider that there is no merit in either of the points maintained on this renewed application and, for those reasons, leave to appeal is refused.

Morris

15. Turning then to the case of Christopher Morris, in which leave to appeal was granted, he pleaded guilty to the offence of conspiracy to supply heroin on a factual basis which was agreed by the prosecution. By that basis of plea Morris accepted that he had known Ryan Kenny – who was found by the judge, as mentioned, to have been the head of the conspiracies – since they were both very young. Both men lived in Liverpool. Through Ryan Kenny, Morris met Max Hampson, described by the judge as a "trusted lieutenant" and "in many ways a right-hand man of Ryan Kenny", along with some of the other defendants. Morris would often socialise with them when he was in North Wales, which he visited on a weekly basis to see his children who lived there with their mother.

16. Morris accepted that on one occasion he visited the address which was the headquarters of the organised crime group. He also accepted that on one occasion he drove Ryan Kenny and another defendant, Christopher Inglesby, characterised by the judge as "Kenny's deputy", to Llanelli. Morris was aware that they were trafficking drugs and was paid £100 for the trip. Morris also accepted that on four occasions he assisted other defendants in obtaining drugs when they visited Liverpool. On each occasion he acted under the direction of Ryan Kenny or Max Hampson and his only payment was £50; he did not receive any of the proceeds of the sale of the drugs.

17. Morris asserted that he fell within category 2 of the Sentencing Guideline. He accepted he had a "significant" role by virtue of the payments he received but asserted that he fell towards the lower end of that category.

18. In sentencing Morris, the judge described him as "a point of contact, a conduit when the north Wales organised crime group travelled to Liverpool to source drugs". The judge said:

> "You were one of the very few who were trusted to do that and it seems to me that you were fairly close to the top of the structure. The description courier does not properly describe your role, it is more of a facilitator."

19. The judge accepted that Morris fell within category 2 and had a "significant" role but considered that he came at the top of that bracket because of a previous conviction in 2009 for dealing in cocaine. The top of the category range is 10 years' custody, which the judge took as a starting point and then reduced to 8 years after giving credit for the guilty plea.

20. The short submission made by Mr Amos Waldman, on behalf of Morris, is that the judge sentenced him on a basis which was inconsistent with his basis of plea. In particular, Mr Waldman submits that the inference that Morris was "fairly close to the top of the structure" is not one which the judge was entitled to draw. His contact with Ryan Kenny, and with others whom he met socially through Ryan Kenny, is explained, so Mr Waldman submits, by the fact that Morris and Ryan Kenny both lived in Liverpool and had known each other since they were very young. Mr Waldman submits that on the agreed basis of plea Morris played a limited and specific role under direction, for which he received only modest financial reward. He argues that in these circumstances the judge should have accepted that the role played by Morris was at the lower end of a "significant" role and that the judge adopted too high a starting point.

21. We are unable to accept this argument. The facts agreed by Morris in his basis of plea amply justified the conclusion that he had close and direct links which were criminal and not merely social with the leaders of the organised crime group. The judge was entitled to describe him, at least in that sense, as close to the top of the organisation. In any event, the judge was entitled to characterise his role as that of a conduit or facilitator as opposed to just being a courier.

22. Despite his limited financial reward, the significance of that role, combined with the aggravating feature of his previous conviction for dealing in cocaine, plainly entitled the judge to take a starting point, as he did, at the top of the category range. We accordingly reject the criticism of the sentence imposed and dismiss the appeal.