



Neutral Citation Number: [2021] EWCA Crim 1474

Case No: 202001975 A1

IN THE COURT OF APPEAL (CRIMINAL DIVISION)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 14/10/2021

Before:

VICE-PRESIDENT OF THE COURT OF APPEAL (CRIMINAL DIVISION)
(LORD JUSTICE FULFORD)

MR/MS JUSTICE X

and

MR/MRS JUSTICE Y

Between:

"T"

Appellant

- and -

The Queen

Respondent

Approved Judgment

Lord Justice Fulford VP:

1. The court ordered that these proceedings and the full judgment were not to be reported because otherwise the administration of justice would be frustrated. There are strong public interest reasons for not revealing the identity or the role of the appellant as an informer. We have handed down this partial judgment to comply with requirements of open justice and because the court dealt with an issue of principle that merits wider distribution. We have not included material which would have enabled the appellant to be identified, including the names of the judge and counsel, the hearing date in the CACD or the names of the other two judges who heard the appeal. All of these details would have enabled the appellant's identification to be discovered.
2. The appellant pleaded guilty serious offences for which he was sentenced.
3. The appellant submitted he did not receive sufficient credit for his mitigation which warranted a greater reduction in the sentence passed because he had provided valuable information and intelligence to the authorities over a significant period. His efforts and the information supplied were expressly held in high regard by his handlers. The text provided in confidence describes the benefit to the authorities of the information received as being valuable.
4. The judge indicated as follows:

“I took a starting point of X years. I took account of assistance but only to a limited extent. It seemed to me that the defendant had been paid for that already. It reduced the sentence (by one year).”
5. There was no complaint as to the starting point. It was submitted by counsel on behalf of the appellant that it is wrong to equate the receipt of payment by an informer with the allowance of credit in mitigation for assistance rendered to the authorities. It is suggested they are different in quality and effect. It is submitted payment is a feature of the relationship between the informer and his handler. It is a show of appreciation and it encourages cooperation. Giving a reduced sentence is intended to promote the public interest in the detection of crime and the conviction of criminals and it is a recognition and reward for the assistance provided.
6. In *R v A and B* [1999] 1 Cr App R (S) 52, Lord Bingham CJ observed that those who help in the investigation of crime can expect a discount depending on the value of the help given, and similarly if a defendant exposes himself or his

family to personal jeopardy, that will be suitably recognised. In *R v Yvan Nshuti* [2012] EWCA Crim 1530 the court observed at paragraph 7:

“In addition to the submissions which have been made to us both in writing and orally by Mr Murray, we have considered a number of authorities, in particular *King* [1985] 7 Cr App R (S) 227, *Wood* [1997] 1 Cr App R (S) 347, *P & Blackburn* [2008] 2 Cr App (S) 5, from which we distil the following principles: first, the assistance should be valued and discounted from the starting point before credit is given for a plea of guilty; second, the overriding principle is one of totality, namely that the sentence when reduced should reflect fully the value of the assistance and credit for a plea; third, the total credit available will generally be between 50 and 66 per cent, with the greatest credit being served for the maximum assistance and in particular those who put themselves at most risk for so acting.”

7. It was submitted that there should have been a reduction of at least 50% for the combination of his guilty pleas, his general mitigation and the assistance he had provided. The judge allowed 31.25% reduction in total for these matters. We are told that the applicant's role as an informer is well known and that he has been threatened in prison. Indeed, it is suggested there have been threats on life.
8. In our view, the judge needs to look at all the factors in the round when considering the extent, if at all, of any reduction in sentence for information provided to the authorities. Whilst it is legitimate, therefore, to consider the extent of any financial reward already received by the accused in this context, it must be remembered that these two incentives – a financial reward and a reduction in sentence – are complementary means of demonstrating to offenders *“that it is worth their while to disclose the criminal activities of others for the benefit of the law-abiding public in general”* (*Simon* (1988) 87 Cr App R 407 at 411). It would undermine the proper functioning of this tried and tested means of gaining valuable intelligence if an accused was to conclude that having been rewarded financially any reduction in sentence would be slight, non-existent or significantly reduced. It follows, that unless the financial reward has been exceptionally generous, this factor will play only a small, if any, part in the judge's calculation.
9. We have needed to consider the quality and quantity of the material disclosed, including its accuracy and the extent to which it enabled serious criminal activity to be stopped or the perpetrators brought to justice, or both. Willingness on the part of “T” to give evidence against those he has informed on and the degree of risk to himself and his family are also relevant considerations.
10. The steps to be followed are long established and in this case the Fraud Guideline applied. The offence category should first be identified, followed by

the starting point and category range, including the factors increasing and reducing seriousness, along with personal mitigation. Then a reduction should be made for assistance provided to the prosecution and there should be a reduction for guilty pleas. Finally, the judge should consider totality.

11. This material was of significant utility to the prosecuting authorities, as it led to seizures and assisted in the identification of perpetrators, including corrupt customs officials. We consider that a greater allowance should have been made for the notable assistance he provided, and that the payments made to the applicant should not have had a significant impact on the credit afforded to him in the sentence passed. This is not a strict mathematical exercise. We substitute a shorter sentence of imprisonment.