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IN THE COURT OF APPEAL
CRIMINAL DIVISION



CASE NO 202103558/A1
[2022] EWCA Crim 1210

Royal Courts of Justice
Strand
London
WC2A 2LL

Thursday 28 July 2022

Before:

LADY JUSTICE CARR DBE
MR JUSTICE FRASER
THE RECORDER OF LEEDS
HIS HONOUR JUDGE KEARL QC
(Sitting as a Judge of the CACD)

REGINA
V
TIAGO THOMAZ DE-LIMA

Computer Aided Transcript of Epiq Europe Ltd,
Lower Ground, 18-22 Furnival Street, London EC4A 1JS
Tel No: 020 7404 1400; Email: rcj@epiqglobal.co.uk (Official Shorthand Writers to the Court)

MR J DEIN QC appeared on behalf of the Applicant

J U D G M E N T

MR JUSTICE FRASER:

1. This is a renewed application for permission to appeal against sentence brought following refusal of that application by the single judge. The applicant also requires an extension of time of nine days for renewing his application. We shall return to the question of an extension of time at the end of this judgment and will consider the renewed application on its merits. Mr Dein QC has appeared before us to provide oral submissions in support of the renewed application for which we are grateful.
2. The applicant, who is a Brazilian national, pleaded guilty on 7 May 2021 in the Crown Court at Southwark to nine different counts. He was sentenced in the same court on 14 October 2021 by His Honour Judge Perrins to the following sentences for the following offences. Three counts were for conspiracy to supply class A drugs (the drugs being cocaine, MDMA and methamphetamine). For each of these he was sentenced to 18 years' imprisonment, those sentences to run concurrently. Four other counts were for conspiracy to supply class B drugs (amphetamine, chloro-methcathinone and two counts relating to cannabis) and for each of these he received sentences of 45 months to run concurrently. Finally, there were two other counts, one of conspiracy to acquire criminal property for which he received a sentence of six years; and the final count of driving whilst disqualified for which he received a sentence of four months' imprisonment, together with penalty points on his driving licence.
3. Associated orders were also made for the forfeiture, destruction and disposal of the drugs, paraphernalia connected with the drugs, phones, SIM cards, laptop, firearm and bullets. His driving licence as we have explained was endorsed. Given all the sentences were ordered to run concurrently, his total sentence was one of 18 years' imprisonment.
4. We can deal with the facts very briefly. There were a number of co-accused but it is not necessary to identify them individually or explain each of their different roles in the overall criminality. Essentially, there was a large scale criminal drug supply network operating in London in which the applicant was centrally involved.
5. That network supplied many controlled drugs on a significant commercial scale to many postcodes across London and the business was divided into a wholesale and retail division. The group used encrypted social media platforms such as WhatsApp and Signal in order to communicate with each other and to advertise the drugs to those who wished to purchase them. Advertisements would display a menu of different drugs together with times when they would be available to customers. This was an organised crime group ("OCG") and used two known premises in West London, one in London W11 and one in London SW7. These addresses were distribution centres and nobody lived there. The premises were used to store, package and cut the drugs. The applicant also had a storage unit in London NW10. Female motorbike couriers, all of whom used matching pink rucksacks, were used to transport the drugs across London. At the time of arrest they had in their rucksacks between £5,000 and £10,000 worth of class A and class B drugs, along with prescription drugs, in order to transport orders direct to customers' doors after they had ordered drugs from the OCG.
6. The applicant headed the OCG. It was his business and he organised the buying and selling of all the drugs on a significant commercial scale, utilising the self-storage facility where substantial quantities of drugs were found, along with a number of counterfeit bank notes. He had possession and use of an EncroChat enabled device which linked him to transactions of multi-kilo quantities of cocaine worth hundreds of thousands of

pounds. The applicant lived at another address in London W11 and employed one of the co-defendants, Nascimento Dos Reis to attend that address and conduct the administration side of the business as a bookkeeper. The applicant also employed another co-defendant Ananias as the manager to oversee the distribution centres and three of the other female co-defendants. One of the co-defendants managed the distribution centres, being involved in the organisation and the packaging the drugs. She was referred to as "Manager" in the applicant's phone contacts list. All the motorbike couriers were assigned team numbers; numbers 2, 3 and 4 were arrested. One associated with Team 1 was never apprehended. This was a sophisticated operation.

7. The police conducted surveillance on both premises for some time and observed the way the couriers would collect their allocated pink rucksacks which had been stocked for them with drugs, in order for them to conduct pre-ordered deliveries. The applicant was observed riding his motorbike to the self-storage company and dealing with drugs there. Officers executed a warrant upon the SW7 property where the applicant and other co-defendants were detained. Officers found tables full of multiple packages of a wide variety of drugs, clearly marked for ease of distribution and on open display. A freezer contained controlled drugs. There was a bag containing £54,000 in cash on the premises. There were cardboard boxes with clear wallets inside them, with drugs marked inside. There were documents relating to the vehicles used in the conspiracy and there were further drugs found underneath a glass coffee table, along with cash. There were further, large clear polythene bags full of drugs. On top of a set of drawers there was approximately 1.4kg of methamphetamine in multiple packets. There was various drug paraphernalia associated with drug supply, including small self-sealing bags and cutting agents. There was a black box on the living room floor containing approximately 1kg of cocaine in multiple packets. There were a further two bags, one with 0.5kg of MDMA and the other containing 1.5kg of cocaine. In other boxes there were 900 tablets of MDMA and 90g of amphetamine. There was just under 3kg of damped amphetamine in the drawer of the freezer together with, as we have observed, £54,000 bundled up in cash in a bag. There was a further kilogram of cocaine.
8. Police found pink rucksacks that were marked "Team 1" and "Team 2" containing drugs. In total there was over 3.8kg of cocaine with a purity between 48% and 94%, over 2kg of MDMA, over 2.1kg of methamphetamine, 2.59kg of amphetamine, 1.09kg of chloromethylone and 5.29kg of cannabis. The amount of Class A drugs found was worth between £1m and £1.34m.
9. Officers also searched the storage unit at Shurguard and found other large quantities of drugs and bags, packaging and a hydraulic press. Three firearms were recovered from that unit, together with ammunition, although those firearms were not capable of being fired.
10. One co-defendant was arrested at the applicant's home. Officers found a laminated card with a map containing the postal codes of London, an industrial cash counter and an industrial sized pill press.
11. The applicant in interview claimed that his money had been earned from personal training and that he was doing "online stuff", including trading in stocks and shares. He then answered "no comment" to the rest of the questions put to him in interview
12. Analysis of the EncroChat data revealed a number of references to drug dealing and numbers discussed that were consistent with kilo blocks of cocaine, ordinarily ranging

between £36,000 and £40,000. Many messages showed the extent of the operation and the applicant's involvement. They also included statements such as "Everything I do wholesale and seven lines in London. So can sell anything I touch. Also we have got fake ID, DV, Passport Office if you ever need. Full package here, real, 15k, six to nine week, fake 600, three days, got British but recommended Portugal and Italian. I can transform anyone on a new person, birth again, and if you need to skip country, I fly you private at a cost, helicopter pilot. I am dangerous for UK. They call me El Coração."

13. Analysis of the applicant's bank accounts showed significant unexplained monies going through the accounts between January 2019 and February 2021 at a total of over £194,000.
14. His antecedents were three previous convictions for eight offences, spanning from 15 December 2015 to 11 November 2020. These included offences of possession of class A and class B drugs with intent to supply in 2017 for which the applicant was sentenced to three years' imprisonment.
15. In sentencing him, the judge ascribed him a leading role in the conspiracy and explained how calculations showed that the conspiracy was capable of generating about £90,000 per month in cash as profit. He said:

"You were the head of the organised crime group. It's suggested on your behalf that there was someone above you in this conspiracy, but there is no evidence at all to support that assertion and I accordingly reject it. You were involved for 10 months. You organised buying and selling drugs on a commercial scale, and you ran both a retail and a wholesale business. You have possession of an EncroChat device which links you directly to multi-kilo deals of cocaine worth hundreds of thousands of pounds. Photographs on your phone showed large quantities of drugs consistent with wholesale dealing. You also have links to weapons recovered from the storage facility, and were making inquiries on EncroChat about purchasing other firearms. You employed a number of people to help you, including a bookkeeper, a manager and a team of couriers to deliver your drugs and to keep the retail side of your business operational."

16. The sentencing judge said that the applicant directed and controlled everything that happened. Mr Dein very realistically has accepted this morning in oral submissions that the description of the applicant as the "ringleader" was apt.
17. Returning to the sentencing remarks, the judge said that a conspiracy meant that the guidelines had to be approached flexibly and he considered a number of cases where quantities of drugs were outside or in excess of those in the guidelines. He found the applicant was at the top of the chain, he answered to no-one and was involved expecting and receiving significant financial gain. The judge considered the wholesale and retail elements of the business separately and found that the quantities of drugs in particular were sufficiently in excess of the amount in the guidelines for Category 1 that would justify a sentence in excess of 20 years. He noted the statutorily aggravating feature of having a previous conviction for drug dealing class A drugs and that the applicant was subject to a community order at the time of the offending. He also considered the medical evidence and references provided to him. He chose a discount for plea at the

PTPH stage of 25% and reduced the figure of 24 years down to 18 years to reflect the guilty pleas.

18. The grounds of appeal, which were drafted by trial counsel, and which Mr Dein has ably amplified this morning before us orally, are:
 1. That the learned judge erred by concluding that the applicant's offending fell outside of the sentencing guidelines.
 2. The learned judge took a starting point of 24 years that was too high given the applicant's role.
 3. That the learned judge erred given the circumstances of how the pleas were tendered given the chronology of the case by giving the applicant only 25% credit for the guilty pleas.
 4. That the learned judge erred in not allowing any credit to the applicant for his mitigation, when he did give mitigation credit to his co-defendants.
 5. That the sentencing judge erred in that he did give any additional credit to the applicant for the restrictions imposed on him at the start of the remand period.
 6. That he erred when he did not give additional credit for the time that he had saved for the plea in a multi-handed trial.
19. In particular, regarding the credit which the sentencing judge allowed for the guilty pleas and the appropriate discount, we observe that in this case there was no early indication of plea and we would also add the observation that we are unpersuaded that detailed material was required from the prosecution in order for any defendant to be aware of the extent of their own criminality when deciding to plead guilty. This applicant did not plead guilty at the earliest opportunity.
20. We are not persuaded by Mr Dein that any of the grounds of appeal are reasonably arguable. Firstly, the advice and the grounds referred us to a number of authorities, all of which we have read and carefully considered, in which different sentences of varying lengths have on different facts led to a number of different outcomes. Mr Dein, who did not draft the advice, has taken a realistic approach to the citing of numerous other cases on different facts on an application such as this one, and we are grateful to him for his very sensible approach this morning. Ultimately consideration of the other cases in this case has proved to be an arid exercise. The purpose of sentencing guidelines is to compare the facts of the instant offending in any case with the guidelines themselves. The sentencing guidelines are in any event for a single offence. Here there were three counts of class A drugs conspiracy counts and four of class B. We refer to the guidelines themselves, which state the following:

"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."

21. The quantity for Category 1 is only 5kg. The total quantities here identified in the material recovered, including the messages, were very high and very much in excess of that figure. Further, this was a conspiracy which had gone on for some time and the figure of over £1 million worth of drugs is just a snapshot of the stock referred to or held at the specific time of the arrest. The sentencing judge gave the correct credit for plea at the stage at which the applicant pleaded guilty and also observed that the maximum credit of one-third is to be reserved for those who plead guilty at the earliest stage. It is true that he

did not separately identify a specific reduction for the personal mitigation, but it is also equally true that he did not identify any specific uplift either for the previous convictions, including that of supply of class A drugs, or for the fact that the applicant was subject to a community order. He also separately referred to and must have been aware of the effect of the pandemic. He considered all the mitigating factors and we too have considered them, including the psychiatric report which is dated 11 October 2021 referring to the applicant's personal circumstances.

22. This is one of those rare cases where the particular features present of organisation, commerciality, marketing, branding and scale of the operation are such that the sentencing judge was perfectly justified in going outside the range in the sentencing guidelines of 20 years and above, and significantly so. As we have identified, the sentencing guidelines are for a single offence and here there were a total of seven drug conspiracies.
23. The sole question for this court is whether the resulting sentence is manifestly excessive, which we do not accept that it is. This was carefully explained by the single judge in refusing permission and we agree with his detailed reasons for refusing permission. There is nothing we can usefully add.
24. We therefore return to the issue of the extension of time. The reasons provided are somewhat terse and explain the short delay was caused by the applicant being moved from one prison to another. We accept that occasionally short delays can be caused by such administrative matters not being dealt with quite as smoothly as they ought to be and we also accept, as Mr Dein has reminded us this morning, that the extension sought is only modest. Were we to have been persuaded by Mr Dein that there was any arguable merit in the application we would have extended time for the modest period necessary. However, for the reasons that we have explained we are of the view that there is no such merit in the substantive application and that it ought to be refused. There is therefore no point in granting any extension of time.
25. The outcome of this renewed application is therefore that both applications, that for permission to appeal and that for an extension of time, are refused.

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Lower Ground, 18-22 Funnival Street, London EC4A 1JS
Tel No: 020 7404 1400
Email: rcj@epiqglobal.co.uk