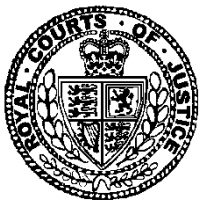

Neutral Citation Number: [2022] EWCA Crim 1347

Case Nos: 202102072 B1
202102075 B1

IN THE COURT OF APPEAL
CRIMINAL DIVISION
ON APPEAL FROM THE CROWN COURT AT SOUTHWARK
HER HONOUR JUDGE CAHILL QC
T20190168

Royal Courts of Justice
The Strand, London
WC2A 2LL

28 September 2022

Before:

LORD JUSTICE STUART-SMITH
MRS JUSTICE LAMBERT DBE
SIR NIGEL DAVIES

Between:

REX

-and-

LUKE RYAN

Mark Fenhalls KC and **Josh Normanton** appeared on behalf of the Appellant
Kevin Dent KC appeared on behalf of the Offender

Approved Judgment

LORD JUSTICE STUART-SMITH:

1. On 12 May 2021 in the Crown Court at Southwark before HHJ Cahill QC (as she then was), the applicant, who was then aged 33, was convicted of one count of fraudulent trading. On 28 May 2021 in the Crown Court before the same judge he was sentenced to six years' imprisonment. A co-accused, a Mr Seakens, was convicted on Count 1 of fraudulent trading and also on four counts of concealing and converting criminal property, which were Counts 2 and 5 of the indictment, and he was sentenced to six years on Count 1 and 13 years concurrent on Counts 2 to 5.

2. The applicant now applies for an extension of time of 21 days in which to renew his application for leave to appeal against conviction and sentence following refusal by the single judge.

3. The background is as follows. The case against the applicant and Mr Seakens on Count 1 related to the business of a Winchester-based company called Enviro Associates Ltd ("Enviro") and the alleged fraudulent sale of Voluntary Emission Reduction ("VER") carbon credits to customers who were deceived into purchasing them as personal investments using high-pressure boiler-room selling tactics.

4. Counts 2 to 5 alleged money laundering offences against Mr Seakens only. The counts related to the cleaning or laundering of criminal monies paid by customers for VER carbon credits purchased from Enviro and other similar VER "brokers" through Mr Seakens's company Carbon Neutral Investments Ltd ("CNI") in its various iterations.

5. In slightly more detail, on Count 1 the prosecution alleged that the applicant, who was the managing director and responsible for the day-to-day running of Enviro, and Mr Seakens, who was a non-executive director for at least part of the time, carried on the business of Enviro for a fraudulent purpose. From February 2011 until early 2014 the company sold worthless VER carbon credits to individuals on the basis that they were good and promising investments and that the investors' money would be safe. In reality, there was no market for investors to sell them on and no realistic likelihood of investors ever being able to sell them on at a profit. Enviro also sold VERs to individuals at inflated mark-ups; so, even if a secondary market had existed, the value of the VERs would need to increase by very large percentages before the buyer could recoup the purchase price.

6. The prosecution case was that the VERs were such a bad and unsuitable investment that no individuals of sound mind who were told the full facts would ever have purchased them. The majority of the monies claimed for the VERs were pocketed by Enviro and CNI. The total losses from identified victims who purchased VERs through Enviro and made witness statements amounted to £368,428. According to the crown, this was an underestimate of the true extent of Enviro's fraudulent trading. In particular, £511,384 was traced through its bank accounts and further analyses of records and purchases established that Enviro made sales of over £1 million in VERs. The investors were typically unsophisticated individuals who were not equipped to resist the hard sell of Enviro's salesmen. Almost without exception, they lost their entire investment.

7. To prove the case against the applicant, the prosecution relied upon expert evidence on the suitability of VERs as investment vehicles for individuals; on evidence of the fraudulent nature of VER sales through Enviro, which gave a consistent picture of false and misleading statements about the suitability of VERs as investments; their illusory security; the basis on which they were being sold and their tradability. The prosecution also relied upon evidence from customers of Enviro who were sold VER carbon credits

and were given a consistently misleading picture of their profitability. None was informed of the large mark-up being applied or their lack of tradability. In addition, the prosecution relied upon evidence from a BBC South documentary made during 2012 for its Inside Out programme. The documentary featured undercover footage of Enviro and captured the hard sell tactics used to sell carbon credits to private individuals over the phone. The footage was filmed during meetings with representatives of Enviro, including the applicant.

8. The defence case was quite different. The defence said that until the autumn of 2011 Enviro sold carbon credits which were either provided to it or held by a company called Alpine Consult. This was a company run by a man called Thomas Knifton, who had also been instrumental in establishing Enviro as a company, although he had not taken on a formal directorship. The applicant's case was that he had been tricked by Mr Knifton and others. Mr Knifton had effective control of Enviro and had persuaded him of the legitimacy of carbon credits. The applicant was therefore not a party to any fraudulent purpose at Enviro.

9. The applicant and Mr Seakens accepted that (1) VER carbon credits were being sold by Enviro and (2) that they knew that they were being sold by Enviro. The issues for the jury on Count 1 in relation to the Applicant therefore were:

   i) Whether the applicant was involved in running a business, in this case Enviro.

   ii) Whether the purpose of the business was the fraudulent sale of carbon credits.

   iii) Whether at the time the carbon credits were sold to investors the applicant knew the investors were being sold VER carbon credits in the way described in (2) above.

   iv) Whether the applicant was acting dishonestly.

10. These four questions formed the basis for the route to verdict to which we shall refer in a moment. At the heart of the case was whether the applicant was dishonest.

11. The key evidence which is central to this proposed appeal came from the applicant himself. He accepted that he was a director of Enviro and on many documents before the jury described himself as the managing director. He accepted that he was in control of the company's bank accounts and there was an email where he told Mr Seakens that he would not have Mr Seakens as a signatory as he wanted to keep control of the bank accounts. The applicant said that he led the sales team and ran the morning meetings. He was responsible for the daily running of the company and wrote the company disclaimer which was checked by others. He accepted that he was paid in excess of £237,000 into his personal account and just short of £38,000 for Forculus, a company which he set up with the intention of saving tax in the period 2011 to 2014; but he said that Thomas Knifton ultimately controlled Enviro. His case was that he knew nothing about what was said by his sales teams. He had no idea that they were making misleading statements. Had he known, he said he would have corrected them. He did not deny anything said in the BBC report. He knew the price at which he bought the carbon credits was at about £2.75 to £3 and was proposing a sale at about £5.50. Enviro would therefore receive about £2.50 or £2.75 per carbon credit; namely, 45 to 50 per cent of the investor's money. Of that, about 5 to 8 per cent went to the salesman. Some of it went on the costs of running Enviro.

12. The judge gave a detailed and split summing up on the law and the evidence. The written directions on the law had been the subject of extensive submissions and discussion between the judge and counsel and there is no suggestion that there is any error in them. The written directions on the law included the route to verdict in the form of four questions with the accompanying ancillary materials to which we have already referred. The route to verdict was in a conventional form asking four questions in the following terms. The Judge said:

> "What you must ask yourselves is:
>
> (1) Are you sure the defendant you are considering was involved in running a business, which in this case is Enviro Associates in Winchester?
>
> In order to run a business a person has to exercise any controlling or management function. ... Mr Ryan accepts that he was a director and in control of the company bank accounts and that he led the sales team and was responsible for the daily running of the business. However, he says it was Thomas Knifton who ultimately controlled the company. You have to decide whether what Mr Ryan did amounts to being involved in running a business.
>
> If your answer to this question is 'no', then you will acquit the defendant you are considering. If your answer is 'yes' and you are sure he was involved in running Enviro Associates in Winchester, you will go to question 2.
>
> (2) Are you sure that the purpose of this business was the fraudulent sale of carbon credits?
>
> What that means in each defendant's case is were the VERs sold dishonestly on the basis of false (either deliberately untrue or deliberately misleading) representations about any or all of the following:
>
> (a) Their suitability for investment for individuals.
>
> (b) Their profitably.
>
> (c) The ability to sell them on, i.e. was there a market for individuals to be able to sell on small quantities of VERs to companies or at all or, alternatively, was it likely such a market would come into existence.
>
> (d) That there were exit strategies that would enable onward sale.
>
> (e) The commission and/or fees charged.
>
> (f) The longevity of the investment.
>
> (g) That the purchase of VERs enjoyed consumer (FSA) protection.
>
> (h) Their being held securely.

(i) Their being held in such a way that they were capable of being traded by the investor.

If your answer to this question is ‘no’, then you will acquit the defendant. If you answer is ‘yes’, then you will go on to question 3.

(3) Are you sure that at the time the carbon credits were sold to investors the defendant you are considering knew that the investors were being sold VER carbon credits in the way described at (2) above.

If your answer to this question is 'no' then you will acquit the defendant. If your answer is ‘yes’, you will go to the final question.

(4) Are you sure the defendant you are considering was acting dishonestly?

In considering this you must (1) firstly establish the actual state of the defendant's knowledge or belief as to the facts at the time. These facts are not limited to past facts, but include all matters that led him to act as he did and include, where relevant, a consideration of his experience and intelligence. (2) Then ask yourselves whether his conduct was honest or dishonest by applying the standards of ordinary decent people. If you were sure he was acting dishonestly, you will convict him. If you are not sure, you will acquit him."

13. After counsels' speeches, the judge completed the second part of her summing-up. Part two of the summing-up covers about 250 pages of transcript. It was detailed, well-structured and covered the evidence given on behalf of the prosecution and on behalf of the defendants fully and fairly. We have read it in full, which is essential in order to address the applicant's complaint that a passage near to the very end rendered his trial unfair and his conviction unsafe.

14. At the outset of part two the judge reminded the jury of the burden and standard of proof and of the written directions of law that she had provided. She also reemphasised that it was a matter for them to decide how and in what order they should consider the evidence. She told the jury the route she was going to take and then followed it faithfully. That included a section where she came to deal with the counts on the indictment separately, outlining the relevant evidence. She said at the outset that the last thing she would sum up would be the evidence of the defendants. One of the features of the summing up is that the judge repeatedly gave the jury references to documents, without taking them to the documents time and again, reminding the jury that they needed to consider all of the evidence and to put it in context later. It is clear from her treatment of the jury that she considered them to be steeped in the case and the evidence so that it was not necessary for her to deal with every detail or to repeat every element of the evidence. It is equally clear that many of the most relevant documents had been looked at time and again during the trial so that she felt no need to refer to their contents in any detail. Instead, she gave references, often reminding them that it was an important document on a particular topic, and reminded them of the need to refer to it in detail when they came to consider their verdicts. There is no criticism of her treatment of the jury and the evidence in this regard.

15. The judge summarised the evidence of Mr Seakens and the applicant in turn and at length. She then drew on counsels' speeches to set out the main points that were being made on all sides, first for the prosecution, then for Mr Seakens and then for the applicant. Then came the passage to which objection is taken, to which we shall refer as "the offending passage". To do justice to the objections raised by Mr Fenhalls KC, who appears for the applicant before us as he did at trial, it is necessary to read the passage in full:

> "It is for you to decide how you approach the evidence that you have heard and in what order you should consider it. At some point, you will no doubt consider the evidence that the defendants have given to you. You will consider what it is that they have told you and how anything they have accepted fits into the overall picture and how you address the questions I have posed for you in respect of the indictment.
>
> It is a matter entirely for you, members of the jury, but in answering those questions you may want to start with what the defendants have said to you themselves and with the matters they have accepted before you.
>
> Luke Ryan accepts that he was a director and on many documents on the iPad, he describes himself as the managing director of Enviro. He accepts that he was in control of the company bank accounts. You will recall the email where he told Paul Seakens that he would not add him as a signatory as he wanted to keep control of the bank account.
>
> He says that he led the sales team and ran the morning meetings. He says that he was responsible for the daily running of the company and he has told you that he wrote the company disclaimer which was checked by others. He also accepts that he was paid in excess of £237,000 into his personal account and just short of £38,000 to Forculus which was a company he set up for tax reasons in the period 2011 to 2014, but of course, he says that Thomas Knifton ultimately controlled Enviro.
>
> Now, the first question I have posed for you on count 1 you have to ask yourselves was Luke Ryan involved in running Enviro? To be so involved, he has to exercise a controlling or management function. of course, members of the jury, you will be aware from your involvement in ordinary life that several people may be involved in the running of the company by having a controlling or management function and you may think there is really not much issue here so if you are sure that he was so involved, then you need go further in your assessment. Your answer to question 1 would be yes and you would move on to question 2. On the other hand if you are not so sure, you would then need to go on and examine all the other evidence in the case before you reach your decision about whether you are or are not sure he was involved in running Enviro.
>
> The second question in respect of Mr Ryan is are you sure the purpose of this business was the fraudulent sale of carbon credits? Of course, it does not have to be the sole purpose. It may be a business is carried on for a number of proper and legitimate purposes and partly for a fraudulent business purpose. Is that so here? Were VER carbon credits sold [by] Enviro dishonestly on the basis of false, either deliberately untrue or deliberately misleading representations?

Now, Luke Ryan has told you that he knew nothing about what was said by his sales teams. He had no idea they were making misleading statements and that if he had known he would have corrected them and you have before you all the evidence about the statements made by the salesmen to the investors.

However, one piece of evidence you also have is the recording made by the BBC. That is direct evidence and it relates to selling by Luke Ryan personally. He does not deny anything said on that recording and you may think he cannot. It is there for all to hear.

In respect of the second question I have posed for you in respect of count 1, there are a number of representations you could consider. You have them set out on the document I have given you. There is a long list of them and I am not going to go through them individually at this stage.

If you are sure that one or more of those are made out then, of course, you would be sure a dishonest, false, untrue or misrepresentation had been made. Now, one such is in relation to commission and/or fees charged. When Luke Ryan was asked by Jonathan [Mr Cuthill, a BBC reporter] about that, he replied that he received a little bit from CNI.

Concentrating only on what Luke Ryan has told you himself and putting aside at this point the prosecution contention that Ryan knew about the cost price and the full mark up what he has told you is that he knew the price at which he bought the carbon credits at about £2.75 to £3 and he was proposing a sale at £5.50. Enviro would therefore receive about £2.50 or £2.75 per carbon credit. That is 45 to 50% of the investors' money.

Of that, on Luke Ryan's own evidence, 5 to 8% went to the salesman, Simon. Some would be spent on the costs of running Enviro. If you look at the overall income and expenditure of Enviro which is at document 789, Enviro in the period in question received £954,161. So, you can see that in payment to Luke Ryan himself at Forculus, about 25% went to him so if Jonathan [Cuthill] had spent £10,000 on the carbon credits that day, regardless of the mark up from EAL to CNI, Enviro out of this £10,000 would have received £4,500 to £5,000 and Simon would have got around £500 to £800. [Simon being an Enviro salesman.] Luke Ryan personally into his pocket would have got between £2,000 and £2,500.

Now, in cross examination, he was asked about a little bit and he replied that Jonathan did not ask what a little bit was. He went on to tell you that had he done so, they may have discussed it further. You may want to consider he may well have told Jonathan that it was as he understood it and that 50% was going to his supplier and he was personally getting £2,000 to £2,500.

Of course, members of the jury, that is a matter for you. You may not accept his evidence at all and you may be sure that the Crown suggest that he knew far more than he was saying. However, on the evidence that he has given you, it is a matter for you, members of the jury, but on the basis of that evidence, Enviro was taking 45 to 50% and he personally £2,000 to £2,500. A decision for you perhaps to make, is that a little bit? It is a matter of fact for you to decide.

> If, members of the jury, as a matter of fact for you to decide, you are satisfied that the proceeds Luke Ryan himself accepts includes a deliberately untrue or misleading representation about commission and/or fees alone then, of course, you would answer yes to question 2 and you would move on to question 3.
>
> Now, if your conclusion in answer to question 2 was yes on the basis of the meeting between Luke Ryan and Jonathan and Jenny, then inevitably, your answer to question 3 would also be in the affirmative. When you come to consider question 4, you consider the facts as Luke Ryan knew them. On this scenario, you would, of course, have already established those facts and it is a question for you whether applying the standards of ordinary decent people, his conduct was dishonest or not. If you are sure it was dishonest you would find him guilty. If you are not sure, you would find him not guilty.
>
> Now, members of the jury, as I have said to you, that is looking purely at things from his evidence alone. You have a huge amount of other evidence which you must also address. It is a matter for you in what order you do so and when you do so."

16. The judge then turned to the case relating to Mr Seakens. She referred to Mr Seakens' professed intention of bringing regulatory practices to the unregulated market in which he and the business were operating. Once again, she pointed to some of the key divergences between the evidence of investors and what Mr Seakens said he was trying to achieve.

17. Finally, before sending the jury out to consider their verdicts, the judge took a brief break for counsel to raise additional points, after which she reminded the jury that the applicant had consistently maintained that he did not deliberately mislead anyone at any stage, including during the BBC recording and that Enviro paid more for their credits and operated on lower profit margins than some other competitors.

18. Within short order, Mr Fenhalls made an application to discharge the jury from returning a verdict in relation to the applicant. That application was made in writing and then orally and was based entirely upon the passage we have set out above. The written application took the following main points:

    i) It was submitted that the offending passage was unnecessary, because the court had already summarised the key evidence and the arguments of all parties.

    ii) It was submitted that the effect of the offending passage was to invite the jury to approach the route to verdict in such a way that they would convict the applicant.

    iii) It was submitted that there was no balancing of the evidence to which the judge referred in the offending passage. In particular, the applicant repeated that there was an issue between the parties about whether he controlled or managed the company, particularly relying upon evidence of the involvement of Mr Knifton. This was compounded by reference to the BBC interview and the judge's approach to him only receiving a "little bit" of commission.

    iv) It was submitted to be unfair that the judge had not adopted the same approach in relation to Mr Seakens on Count 1.

v) Accordingly, it was submitted that the offending passage went well beyond the scope of permissible comment and descended into argument in support of the prosecution case with the result that the applicant could no longer have a fair trial.

19. In his oral submissions to the judge, Mr Fenhalls first confirmed that he was not submitting that anything the judge had said was incorrect as a matter of law or fact and that, but for the offending passage, the summing up was fair and balanced. He then referred to and repeated the submissions he had made in writing.

20. The judge rejected the application. Put shortly, having recorded the acceptance by Mr Fenhalls that nothing said in the summing up was wrong in fact or law and that no complaint was made about anything apart from the offending passage, her reasons were:

i) Every statement in the section of the offending passage about his control and management of Enviro came from the applicant either orally or in writing. There was no suggestion from the defence that his evidence should be ignored.

ii) Even if Mr Knifton was the controlling mind for Enviro, as the defence maintained, it did not mean that the applicant did not also satisfy the agreed legal criteria for control or management identified by question 1 of the route to verdict. On question 2, the jury had direct evidence in the form of a BBC interview, the contents of which were not dispute. Both the prosecution and the defence relied upon it, the defence relying upon it to show how the applicant dealt with customers. The issue was not whether some of the things he said were true, but whether he had in the course of the interview said things that were untrue.

iii) Once again, the basic evidence about mark-up came from the applicant and his evidence either written or oral. He knew the difference between the price at which Enviro bought and sold VERs as he set the sale prices.

iv) In response to the submission that the actual figures used by the judge could not have been known by the applicant at the time of the BBC interview in May 2012, the judge accepted the point, but responded that adopting the figures that had been produced at a later date was more favourable to the applicant and, therefore, fairer to be used than the bald figures that reliance upon what he had said and his state of knowledge in May 2012 would have produced.

v) Overall she rejected the allegation of unfairness.

21. This renewed application is made on essentially the same grounds as were advabced ti and rejected by the trial judge. The principles are not in doubt and they are usefully summarised by Simon LJ in *Reynolds* [2019] EWCA Crim 2145 at para.69, to which we have had full regard. We would only add that there is nothing intrinsically unfair in summarising evidence which is adverse to a defendant. That will often be the case where the evidence against him is compelling, but it remains important in all cases not to usurp or appear to usurp the proper function of the jury as arbiters of guilt or innocence in the light of appropriate directions of law.

22. Refusing permission on the papers, the single judge pointed to the fact that nothing said by the judge about the applicant's evidence was incorrect and that, with one exception, the judge did not direct, either directly or by necessary implication, the jury about how they should answer the questions posed in the route to verdict. The one exception was in the view of the single judge entirely justified and was that if the jury had answered

question 2 in the affirmative, then question 3 should logically also be answered in the affirmative. The judge's comment that the jury might not think there was much of an issue on question 1 was legitimate in the light of the applicant's own evidence. He concluded that it is not reasonably arguable that the conviction is unsafe.

23. In oral submissions before us, Mr Fenhalls came close to submitting that the structure of the summing-up was deliberately framed to the disadvantage of the first defendant, using the phrase that it was "carefully crafted" and speculating about why the judge had not adopted the same analysis for Mr Seakens. We say at once that we reject as completely unfounded any suggestion that in what was otherwise an exemplary summing-up the judge suddenly deviated into deliberate unfairness towards the applicant.

24. We agree with the single judge, for essentially the reasons that he gave. In deference to the persuasive arguments that were well argued before us, we would only add a few additional observations. First, as to context, had these three pages been part of a much shorter and less thorough summing-up, it is possible that they could have exercised a disproportionate influence upon the thinking of the jury. However, they formed a very short passage in a long summing-up which, apart from the offending passage, is agreed on all sides to have been fair and thorough, nor did it form the last words that the jury heard from the judge. Although the judge did not replicate the exercise on Count 1 in relation to Mr Seakens, she did go on to review the case against Mr Seakens after the offending passage. Had we thought that the offending passage had overstepped the mark so as to render a fair trial impossible, we may have sympathy with the submission that the judge's clarification after the pause for submissions from counsel may not have been sufficient to remedy that unfairness. However, viewed overall, a jury that had been steeped in this case for 15 weeks cannot have formed the view that the judge was effectively directing them to convict.

25. Second, the applicant's acceptance that there were no error of fact or law is an unpromising start for a submission that the offending passage rendered a fair trial impossible or should be regarded as rendering the conviction unsafe. The jury would have been perfectly entitled to adopt by themselves the approach of looking at the defendant's evidence first in relation to the route to verdict. Given the complexity of some of the other evidence, it was a natural approach to consider and adopt. No complaint could have been raised if the jury had adopted that approach of their own accord. The judge's suggestion that they "may" want to start by looking at the defendant's evidence did not render that approach, if indeed the jury adopted it, objectionable or the conviction unsafe.

26. The renewed application for permission to appeal against conviction is therefore refused.

27. We turn to sentence. In the absence of a guideline specific to Count 1, the judge looked at the analogous guideline for fraud, which was a reasonable approach for her to adopt. She addressed the submission that the applicant was not truly in control of Enviro and that some decisions were taken by others and she concluded that the applicant had a leading role involving substantial planning over a period of months, if not years. She concluded that his managerial role in relation to Enviro involved high culpability, involving losses to victims which she assessed at as approximately £1.5 million and a personal gain to him of approximately £260,000. She had a proper regard to the testimony and impact statements of victims for whom the level of harm had been high. She therefore identified the category by analogy, having a starting point of seven years with a range of five to eight years. She made an upward adjustment to the starting point

because (a) less than a year before starting the offending he had had a warning from the FSA that he posed a serious risk to consumers, which he had evidently ignored, and (b) some of the customers whom he fleeced had originally come to him for help, having been scammed by others already. She identified his main mitigation as being a lack of previous convictions and the impact that imprisonment would have on his wife and young child. She also took into account the length of time that had elapsed between the applicant's offending and trial. Balancing aggravating and mitigating features, she reached the final sentence of six years.

28. In renewing this application for permission, Mr Fenhalls relies upon what he describes as a number of errors in the sentencing remarks. First, the judge said that the applicant had set up a company Forculus, which he used to reduce his tax bills. This is said to be wrong, because although he had set up the company and had hoped it would enable him to reduce his liability to tax, it was ineffective. There is nothing in this point. The judge referred to the setting up of Forculus as an indication that the applicant was not the mere boy that he sought to portray himself to be. That was reasonable even if his attempt to save tax failed.

29. Second, it is said that the judge's reference to a personal gain of £260,000 was wrong, because although such sums were paid into his personal bank accounts, he subsequently paid out some of the monies to pay Enviro's staff and other costs. Thus, it is submitted the full sum arguably did not amount to gain. There is nothing in this point. The fact on which the judge relied was the amount paid into his account, which provided some useful indication of the level of his involvement and gain, even if he subsequently used some of the money for expenses incurred in running the fraudulent scheme.

30. Third, in the course of her sentencing remarks, the judge referred to remarks she said she had made at the start of the trial asking if the applicant wished to review his position. Those representing the applicant have no recollection of such comments being made. For present purposes, we assume that this observation was an error by the judge when sentencing. The point of her remark in sentencing was that if he had pleaded guilty, she might have been in a position to take a more benign attitude to his criminality, but he did not plead guilty so the judge sentenced on the basis of all she had learned during the trial. She was obviously right to do so. There is no suggestion that she increased the sentence because he had not pleaded guilty. There is nothing in the point.

31. It is submitted that the judge may have taken into account harm that was not properly attributable to the working of Enviro or the applicant. We are not persuaded that she did. More to the point, we consider it to be unarguable that the sentence she imposed was either wrong in principle or manifestly excessive once the whole picture, as disclosed by the trial and summarised in the sentence remarks, is taken into account.

32. Finally, we are not persuaded that it is arguable that there is a disparity between the sentences imposed on Mr Seakens, namely 13 years concurrent on Counts 2 to 5 and six years on Count 1, which renders the sentence passed on the applicant unfair or wrong in anyway. Mr Seakens might have been lucky on the applicant's view of the case, but the sentence imposed on the applicant was unimpeachable for the reasons the judge gave. The renewed application for permission to appeal against sentence is therefore dismissed.