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IN THE COURT OF APPEAL
CRIMINAL DIVISION

Case No: 2021/02821/A2, 2021/02838/A2



[2022] EWCA Crim 693

Royal Courts of Justice
The Strand
London
WC2A 2LL

Thursday 12th May 2022

B e f o r e:

LORD JUSTICE COULSON

MRS JUSTICE MCGOWAN DBE

MR JUSTICE BOURNE

R E G I N A

- v -

ARDIT SARASLI
ARJEL SELFO

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Mr P Wakerley appeared on behalf of the Applicant Ardit Sarasli
Mr E Brown QC appeared on behalf of the Appellant Arjel Selfo

Mr D Harounoff appeared on behalf of the Crown

J U D G M E N T

Thursday 12th May 2022

LORD JUSTICE COULSON:

Introduction

1. The applicant Sarasli is now aged 30; the appellant Selfo is now aged 40. On 7th June 2021, in the Crown Court at Harrow, both men pleaded guilty to two separate conspiracies to supply drugs (cocaine and cannabis).

2. On 6th August 2021, they each pleaded guilty to a third count of possession of criminal property. On that day they were sentenced by Ms Recorder Horwood-Smart QC: Sarasli to 10 years' imprisonment and Selfo to 14 years' imprisonment.

3. Sarasli now renews his application for leave to appeal against his sentence following refusal by the single judge. Selfo appeals against his sentence with leave of the single judge.

The Facts

4. On 6th May 2021, officers stopped the appellant Selfo at a ground floor car park at Arctic House in Colindale, North London. Selfo had just opened the driver's door to a silver Citroen and officers saw him place a bag behind the driver's seat. A search of the vehicle took place and officers found a bag containing a sealed block of cocaine weighing 1 kg. Selfo was found to be in possession of three mobile phones and a set of door keys. He stated that his home address was 62 Arctic House and that there would be another man present at that address. Police officers forced entry into the flat and the applicant Sarasli was detained in the living room. From within the flat, officers seized 77 kg blocks of cocaine, just over 5 kgs of cannabis, rubber gloves, just over £134,000 in cash, brown parcel tape, packaging, a black ledger book, electronic scales, clingfilm, a money counting machine and a number of mobile phones.

5. Sarasli and Selfo were arrested and taken to the police station. Selfo declined to answer questions put to him in interview. Sarasli admitted to working in a drugs safe house and being involved in the supply of drugs. We shall come in a moment to the written prepared statement that he signed and presented at the police station which set out his involvement in these conspiracies.

6. Images from a mobile phone found in Sarasli's pocket showed large amounts of cash packed into holdalls. A telephone number ending in 279 was saved on the device under the name "Manager". Whilst both men were being arrested, that number called Sarasli's phone repeatedly. The same number was saved in Selfo's mobile phone, under the name "Chessman". Cell site evidence of Selfo's mobile phones were consistent with him being at a number of different locations over the previous few weeks, where he had handed over sizeable amounts of cocaine and collected cash. The details recorded in the black ledger seized by officers supported the cell site data.

7. The additional amount of cocaine which Selfo had delivered during that period was eventually put at around 78 kgs. The Recorder sentenced him on that basis, and we consider that she was entitled on the evidence to do so. Mr Brown QC pragmatically accepted that on behalf of Selfo. In this way, Sarasli's involvement in the drug conspiracy concerned the supply of 78 kgs of cocaine, whilst Selfo was involved in the supply of 156 kgs of cocaine. There was also 5 kgs of cannabis that was the subject of the second conspiracy to which both men pleaded guilty.

8. This was, on any view, a conspiracy to supply a very large quantity of Class A and Class C drugs. Perhaps the best evidence of that is by reference to value. The cocaine that was found in the flat at Arctic House was given a street value of as much as £7.5 million.

Bases of Plea

9. As we have indicated, Sarasli and Selfo pleaded guilty to three counts: count 1, conspiracy to supply cocaine; count 2, conspiracy to supply cannabis; and count 3, possession of criminal property, namely the cash found at the flat at Arctic House. Each man put in what was effectively a basis of plea, albeit that Sarasli's was in the form of the written statement to which we have previously referred. It is appropriate to set that statement out in full:

- "1. I confess to involvement in the supply of cocaine.
2. I accept working in a drugs 'safe house'.
3. The drugs certainly did not belong to me.
4. I have never made drug deliveries myself.
5. I believe my role was as an extra body for security. I don't think I would have been much use in a fight.
6. I watched drugs coming in and out, but I didn't organise that movement.
7. I did help count money.
8. I wasn't aware of cannabis being in the flat.
9. I was working there to pay back the debt of being brought into the country.
10. I hoped eventually to settle in the UK, live a legitimate life, and bring over my wife and child.
11. It has been a miserable existence being in the drugs safe house. I was very upset and I used alcohol to help me get through it. The biggest issue for me working in that drugs safe house was that it was contrary to everything I had ever done before in my life, and I had always worked legitimately.
12. I had no idea whatsoever of the amounts of drugs in the house. I didn't touch the drugs."

10. Selfo's basis of plea was much shorter. He effectively admitted that he had been involved in the delivery of "a significant quantity of cocaine in the month before 6th May 2021 in the

journeys that are reflected in the cell site evidence and the ANPR captures". He could not say exactly how many kilos that amounted to. As we have already explained, the amount was put at 78 kgs.

The Sentencing Exercise

11. We say at once, with regret, that the sentencing exercise was unsatisfactory. Although the task of working out the precise basis on which the Recorder sentenced Sarasli and Selfo has been hampered by the inadequacies of the transcript, where too much is said to be inaudible, the Recorder failed to explain, other than in very general terms, how she had arrived at the sentences she imposed.

12. The Recorder found that Sarasli had played a "significant role"; that the quantities of cocaine involved warranted an uplift from the recommended starting point in the sentencing guidelines; and that she would give full credit for his guilty plea. She then went on to identify a period of ten years' imprisonment, without further calculation or explanation.

13. Similarly, the Recorder found that Selfo had played a "leading role". It appears that, as a result of that finding, and because he had been part of a conspiracy that involved twice the amount of cocaine as Sarasli, the Recorder imposed upon Selfo a term of 14 years' imprisonment, again without further calculation or explanation.

14. For those reasons we agree with the submissions made by Mr Brown QC, who appears on behalf of the appellant Selfo, and Mr Wakerley, who appears on behalf of the applicant Sarasli, that the sentencing remarks were not fully and properly reasoned. We propose to make good that deficiency in the remainder of this judgment by re-doing the sentencing exercise with reference to the applicable guidelines.

Sarasli: The Section 31 Proceedings

15. Sarasli applied for leave to appeal against the sentence of 10 years' imprisonment. Leave to appeal was refused by the single judge. In particular, the single judge noted:

"However, the quantity of drugs for which you were to be sentenced was 78 kilograms – the amount for a Category 1 offence is 5 kilograms; the street value was estimated to be in the region of £6.1 million to £7.65 million. The prosecution case was that it was a significant role by reason of management function, expectation of significant financial advantage and an awareness of the scale of the operation. Under the guidelines this gave a Category starting point of ten years with a range to 12 years.

A significant role applies where there is expectation of significant financial or other advantage (save where this advantage is limited to meeting the offender's own habit), whether or not operating alone and also where there is some awareness and understanding of the scale of operation.

In your statement you accepted that you were working there for financial gain. This therefore brought it into significant role. (This is identified in the prosecution note for sentence although your grounds omit reference to reliance on it by the prosecution). Given the sheer quantity of Class A drugs a starting point well outside the range for Category 1 was justified. It was aggravated by the other counts for which you fell to be sentenced and there was little by way of mitigation.

Whilst the reasoning of the Recorder may be scant, the resulting sentence is not arguably manifestly excessive."

16. Notwithstanding that explanation, the applicant now renews his application for leave to appeal against sentence. We are grateful to Mr Wakerley for his attendance and for his concise and succinct submissions this morning.

17. On behalf of Sarasli, Mr Wakerley effectively advanced three grounds of appeal:

- (1) That the Recorder had been wrong to find that Sarasli played a "significant role"; or if he did, that it was towards the lower end of the range;

(2) That the uplift in the sentence due to the amount of drugs was too high; and

(3) That the Recorder failed to take into account other mitigating factors.

18. We deal with each of those points one by one. However, we should say at the outset that, attractively though they were advanced by Mr Wakerley, we are unable to accept that the term of 10 years' imprisonment imposed on Sarasli was manifestly excessive.

Significant Role?

19. The Recorder found that Sarasli had played a "significant role", although she did not explain why she had come to that view. In our judgment, however, she was right. The first point to note is that made by the single judge: that Sarasli was involved in the conspiracy for financial gain. He accepted in his basis of plea that he had incurred a debt as a result of entering the country illegally, which he needed to pay off. That debt was not linked to any drug habit he himself had. Because it was a debt due to people-smugglers, it was likely to be significant. Expectation of significant financial or other advantage is one of the indications of a significant role.

20. In addition, we conclude that the fact that Sarasli was trusted to look after such a huge quantity of drugs (78 kgs) and £134,000 in cash, and the fact that he was employed to count the money earned from the conspiracy, were clear further indications that he played a significant role. Those were, on any view, operational functions. Those functions also gave him an understanding of the size of the conspiracy. Those, therefore, are further indications that the played a significant role.

21. Mr Wakerley argued that either Sarasli played a "lesser role", or, perhaps more realistically,

that he was towards the bottom end of the scale of a significant role. We do not accept that. It is always important to stand back and look at what the individual offender did as part of the conspiracy. It cannot be said, in our view, that Sarasli was playing a "lesser role". Looking after such a large amount of drugs and counting such large amounts of cash could not be described as a limited function. Nor was there any meaningful evidence of control or exploitation. We note, importantly, that neither is mentioned in Sarasli's signed statement. Although that was produced at an early stage, when he was taken to the police station, that is all we have from Sarasli to explain his involvement in the conspiracy. As we indicated to Mr Wakerley during his submissions, whilst it is right that Sarasli was working to pay back a debt, that could be said to be true of most working people.

22. Accordingly, we conclude that the Recorder was right to find that Sarasli had a "significant role" in this major drugs conspiracy. In our view, it was a significant role that fell in the middle of the range for a significant role. Since it is accepted that this was a category 1 case, the recommended starting point in his case was 10 years' custody, with a range of between nine to 12 years' custody. In the circumstances, we consider that the 10 year starting point was therefore appropriate.

Uplift for Amount of Drugs

23. The sentencing guidelines make plain that the 10 year starting point for category 1 is based on 5 kgs of cocaine. The guidelines recognise 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 offender's role."

Those last words are important. They do not mean that everybody who is involved in a drugs

conspiracy of this size must somehow end up with sentences of 20 years or more. It will always depend on their role. The important point is that the sentencing judge is encouraged to take a starting point by reference to the guidelines, which in turn reflect the role played by the defendant, and then uplift that figure for the amount of drugs involved.

24. In the present case, the amount of drugs with which Sarasli was concerned was 78 kgs. That was 13 times higher than the 5 kgs on which the guidelines are based. In our view, that warranted an uplift from 10 years to a starting point of around 16 years' imprisonment.

Aggravating and Mitigating Factors

25. We accept that there were some mitigating factors. They include Sarasli's remorse, his lack of previous convictions, his personal mitigation, and his early guilty plea. We will address the plea separately, but those remaining mitigating factors have to be balanced against the aggravating factors, namely his other criminality represented by the cannabis conspiracy, and the possession of large amounts of criminal property. Neither of those is reflected in the 16 year starting point to which we have so far referred. That is not an unimportant point by reference to the sentencing guidelines: Sarasli's involvement in the cannabis conspiracy may alone have had a starting point of 4, 5, or even 6 years' imprisonment. He had to be sentenced for his involvement in not one, but two drugs conspiracies. Taken in the round, therefore, looking at both the aggravating and mitigating factors, one view might be that they cancel each other out; a more generous view perhaps is that there should be a net reduction, but that it should not be more than about 1 year. On that basis, therefore, an appropriate term in this case, having considered the aggravating and mitigating factors, but before the discount for the early guilty plea, would have been 15 years. A discount for plea would then reduce that to 10 years. That is the sentence that the Recorder imposed on Sarasli.

26. For those reasons, we do not accept that the sentence imposed on Sarasli was manifestly

excessive. In our view, although it was not properly explained by the Recorder, 10 years' imprisonment was an appropriate sentence for Sarasli. Accordingly, and despite Mr Wakerley's assistance this morning, Sarasli's renewed application for leave to appeal against that sentence is refused.

Selfo: Section 31 Proceedings

27. The single judge granted leave to appeal on the sole ground that it was arguable that the Recorder erred in concluding that Selfo had played a "leading role". However, although that was the basis upon which leave to appeal was granted, it appears that, like Sarasli, Selfo also wishes to advance arguments in relation to both the uplift and the mitigating factors. Mr Brown QC made clear and concise submissions on all those matters.

Leading Role?

28. This is the most important element of Selfo's appeal. Having considered all the evidence, and for reasons which we shall explain, we consider that Selfo played a significant, not a leading, role. Although not expressly accepted in his grounds of appeal, Mr Brown QC realistically accepted during his submissions that there were at least a number of indications to suggest that Selfo played a significant role. That, in our view, is the clear gravamen of the evidence. We consider that it was a particularly significant role, because it was Selfo who rented the flat at Arctic House and who paid the monthly rent of £1750 in cash. He also delivered the drugs. The flat and the delivery of the drugs was at the heart of the conspiracy. They were very important operational functions.

29. In addition, Selfo's work in delivering the drugs inevitably meant that he must have understood the sheer scale of the conspiracy. Again, therefore, there are a number of factors identified in the guidelines which suggest that Selfo played an important significant role in this case.

30. By the same token, however, we consider that the evidence was insufficient to justify a finding that Selfo played a "leading role". There was no compelling evidence that he directed or organised the buying and selling of cocaine, or that he had substantial links to or an influence on others in the chain, or that he had close links to the original source of the drugs. Even if the flat was, as it appears to have been, the core of the operation, that could not of itself prove that Selfo played a leading role in the conspiracy. It must always depend on what the individual did. What Selfo did in this case, in our view, indicated that he played an important significant role, but not a leading role. For those reasons, therefore, we agree with Mr Brown QC that the Recorder was wrong to put Selfo in the leading role category.

32. For the reasons that we have indicated, his starting point should have been higher than the 10 years taken for Sarasli. In our view, it was at the top of the recommended range for a significant role – 12 years – before any uplift for the amount of drugs.

Uplift for Amount of Drugs

33. We have already explained that, under the sentencing guidelines, the starting point for a significant role is linked to the supply of 5 kgs of cocaine and that sentences of 20 years and above may be appropriate where the quantity of drugs is significantly higher than that, depending on the role played.

34. In the present case it is not unfair to say that the quantity of drugs with which Selfo was concerned (158 kgs) was unimaginably high. Looked at arithmetically, it was 30 times the measure taken by the sentencing guidelines to calculate the recommended starting point. In our view, such was the scale of the cocaine conspiracy with which Selfo was involved that the starting point of 12 years, to which we have referred, would then have to be uplifted to something like 19 years.

Aggravating and Mitigating Factors

35. The same points in respect of aggravating and mitigating factors that we have set out in relation to Sarasli apply equally to Selfo. The court cannot lose sight of the aggravating factors, namely the cannabis conspiracy and the possession of criminal property, as well as the mitigating factors: the remorse, the absence of previous convictions, and the person mitigation. Again, the basis of plea does not refer to control or exploitation. Taken together, those aggravating and mitigating factors could be said to cancel each other out; but again, taking a generous view, they may lead to a net reduction of not more than about one year. That would reduce the starting point in Selfo's case, before taking into account the discount for the guilty plea, to 18 years. With a full reduction for the early guilty plea, that would reduce the term in Selfo's case to one of 12 years' imprisonment.

Selfo: Summary

36. For the reasons that we have given, therefore, we consider that the sentence of 14 years' imprisonment imposed on Selfo was not properly explained and was, in any event, manifestly excessive. We propose to quash that sentence and to replace it with a term of 12 years' imprisonment.

37. In so doing, we should add two further observations. First, we consider that such a sentence is generally in line with recent decisions in this court concerned with the delivery of large amounts of category A drugs: see in particular *Attorney General's Reference (R v Bailey v Reece)* [2018] EWCA Crim 1640, and more recently *R v Wraight* [2021] EWCA Crim 1968. Secondly, we consider that such a term is better aligned to the 10 years' imprisonment imposed on Sarasli. They both played a significant role. The differences were that Selfo's was a more important role than Sarasli's, and that Selfo was involved in the supply of a larger amount of drugs. That, therefore, justifies the two year difference between their sentences.

37. Save for that adjustment, no other aspect of Selfo's appeal succeeds. The net result therefore is that his term is reduced from one of 14 years' imprisonment to one of 12 years' imprisonment.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

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