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IN THE COURT OF APPEAL
CRIMINAL DIVISION



Neutral Citation No. [2023] EWCA Crim 1292
CASE NO 202203479/A1

Royal Courts of Justice
Strand
London
WC2A 2LL

Thursday 26 October 2023

Before:

LORD JUSTICE SINGH

MR JUSTICE JEREMY BAKER

COMMON SERJEANT OF LONDON
(HIS HONOUR JUDGE MARKS KC)
(Sitting as a Judge of the CACD)

REX

V
ADIL RIAZ

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_____ MR O COOK appeared on behalf of the Applicant.

_____ **APPROVED JUDGMENT**

MR JUSTICE JEREMY BAKER:

1. Adil Riaz is 33 years of age, and having earlier pleaded guilty to offences on three separate indictments, he appeared at Bristol Crown Court on 1 November 2022, where he was sentenced as follows:

The first indictment T20217089

Count 2 - conspiracy to supply a controlled drug of Class A - 9 years' imprisonment.

Count 29 - conspiracy to transfer criminal property - 4 years' imprisonment.

Count 38 - conspiracy to supply a controlled drug of Class A - 12 years' imprisonment.

Count 39 - being concerned in a criminal arrangement which facilitated the control of criminal property by another - 6 years' imprisonment.

Count 40 - acquiring criminal property - 2 years' imprisonment.

The second indictment T20227020

Count 1 - possessing a prohibited firearm - 7 years' imprisonment.

Count 2 - robbery - 4 years' imprisonment.

Count 3 - robbery - 4 years' imprisonment.

Count 5 - dangerous driving - 12 months' imprisonment.

Count 6 - driving whilst disqualified - no separate penalty.

The third indictment T20227021

Count 1 - possessing for transfer a prohibited weapon - 8 years' imprisonment.

Count 2 - having an explosive substance - 8 years' imprisonment.

2. All of the above periods of imprisonment were ordered to run concurrently with each other, with the exception of count 2 on the second indictment, which was ordered to run consecutively, and count 1 and count 2 on the third indictment, which were ordered to run concurrently with each other but consecutively to the other sentences, resulting in a total period of imprisonment of 24 years.
3. The judge disqualified Adil Riaz from driving for a period of 14 years, being expressed to be a 2-year period of disqualification from driving, together with an extension period of 12 years.
4. Moreover, whilst the trial record sheet states that no separate penalty was imposed for a related offence of driving without insurance and that the disqualification from driving was until an extended retest was passed, neither of these latter two orders were expressed by the judge in the course of his sentencing remarks.
5. On the other hand, the trial record sheet only states that the sentence on count 1 of the third indictment should run consecutively to the other sentences, rather than as expressed by the judge in his sentencing remarks, that the periods of imprisonment imposed on count 1 and count 2 should run concurrently with each other but consecutively to the other sentences.
6. Adil Riaz seeks to renew his application for leave to appeal against sentence following refusal by the single judge.

The offences

7. The first indictment reflected the applicant's involvement in a Sheffield-based organised crime group which communicated through the use of Encrochat. Although the applicant was not the head of the group, he was a trusted lieutenant and was involved in the supply

of approximately 284 kilograms of cocaine, over a 3-month period between March and May 2020, together with the corresponding handling of the money used in the drug transactions, which amounted to £2.9 million, and in respect of which the applicant received over £22,000.

8. The second indictment concerned the applicant, who was driving a Seat motorcar, pulling in front of a Golf motorcar on 14 September 2020 whilst it was being driven in Sheffield. The applicant alighted, and armed with a handgun, he approached the two occupants of the Golf motorcar telling them to hand over their possessions adding: *“Don’t do anything and no one will get hurt. You know what I’m about, don’t speak to the police.”* The two complainants handed over their mobile phones, whilst one of the complainants handed over his bank card. The applicant then seized the key from the ignition and drove away. Whilst en route around the Meadowhall area, he drove dangerously by weaving in and out of traffic on the roads, and also drove onto the pavement causing a pedestrian to have to jump out of the way.
9. When the police subsequently located the applicant’s Seat motorcar, they found a semi-automatic pistol under one of the seats which, when tested, was found to be in working order and fitted with a sound moderator.
10. The third indictment involved the discovery of weaponry by the police during the course of searches of properties associated with the applicant following his arrest for the robbery offences on 14 September 2020. At one of these properties the police found a 9 mm AR-15 assault rifle, hundreds of rounds of ammunition and three IED hand grenades. When the rifle was examined, it was found to be capable of firing in fully automatic mode and had DNA matching that of the applicant on various of its parts, including the trigger. The grenades were capable of causing serious injury to individuals in close

proximity to their detonation. It was apparent from Encrochat messages sent by the applicant that he was willing to supply these items for others to use in their operations.

The applicant

11. The applicant had a number of previous convictions, including offences of supplying heroin to others for which he received a sentence of 33 months' imprisonment in 2014, and he was made the subject of a suspended sentence order in 2017 for an offence of producing cannabis.
12. The pre-sentence report, together with a letter from one of his childhood friends, disclosed that the applicant had spent a significant amount of time caring for his parents, who suffered from serious physical illness, one of whom had since died. Moreover, the applicant himself was drug dependent, and suffered from issues with his mental health.

Sentencing Remarks

13. In his sentencing remarks, the judge determined that in relation to counts 2 and 38 on the first indictment, which comprised the applicant's involvement in the drugs conspiracy, he had a *significant role* under the relevant sentencing guidelines, because he had an operational function within a chain, he had an expectation of significant financial gain and some awareness of the scale of the operation. Moreover, that the quantity of drugs involved was significantly higher than indicated by category 1.
14. In so far as the second indictment was concerned, the judge determined that under the Sentencing Guideline for Street and Less Serious Commercial Robberies, the applicant's culpability was high, due to the production of a firearm to threaten violence, whilst the harm was within category 2, resulting in an appropriate starting point of 5 years' custody.
15. In relation to count 1 on the third indictment, the judge determined that under the relevant

sentencing guideline for the transfer of prohibited weapons, the applicant had medium culpability, due to his *significant role* where offending is part of a group activity, whilst the level of harm involved was within category 1, due to its close connection to other serious criminal activity, namely drug trafficking, which indicated that the offending was part of a large-scale commercial and/or highly sophisticated enterprise. Therefore, the appropriate starting point was 14 years' custody, with a category range of between 12 and 18 years. Moreover, although there were no specific guidelines in relation to count 2, on the third indictment, the judge noted that the maximum sentence was one of life imprisonment, and that similar culpability and harm factors pertained in relation to the analogous guideline relating to count 1.

16. Thereafter the judge took into account such mitigation as was available to the applicant, and stated that he had had regard to the principle of totality when he determined the total notional figure prior to any reduction to reflect the timing of the pleas of guilty.
17. Finally, the judge stated that despite the fact that the applicant had initially indicated he was making an application to dismiss the counts on the first indictment and only pleaded to them shortly before trial, and that he had initially pleaded not guilty to the offences on the second indictment, and did not initially indicate his intention to plead guilty to the counts on the third indictment, he would nevertheless reduce the overall sentence by 25 per cent to reflect the fact that the applicant had eventually pleaded guilty to all three indictments.

Grounds of Appeal

18. The single judge ground of appeal against sentence, which is set out in written grounds of appeal and helpfully articulated by Mr Cook this morning, is that by placing count 1 on the third indictment within category 1 harm within the relevant Sentencing Guideline,

due to the close connection with drug trafficking, and then ordering the sentence of 8 years' imprisonment to run consecutively to the sentence of 22 years' imprisonment imposed for the drug conspiracy on the first indictment, not only was there an element of double counting, but the resulting sentence failed to have due regard to the principle of totality and resulted in a manifestly excessive sentence.

Discussion

19. On any view, the offending in which the applicant had been involved, especially as reflected by the first and third indictments, was of a particularly high order.
20. In this regard, we remind ourselves that under the Sentencing Guideline for the Supply of Class A drugs, the indicative quantity of cocaine within harm category 1 is 5 kilograms, and that the quantity involved in this case was 284 kilograms. Moreover, not only does the category range for an offender with a *significant role* in category 1 offending extend to 12 years' custody but, as the guideline also points out:

“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.”

21. In our judgment, the quantity of cocaine which was involved in this case and the sophisticated nature of its operation, including the use of Encrochat communications, well justified, even for an offender such as the applicant with a *significant role*, a notional period of 16 years' custody, prior to any reduction to reflect the timing of the pleas of guilty.
22. In so far as the third indictment is concerned, we are satisfied that it was appropriate for the judge to determine that the level of harm involved the transfer of the prohibited

weapon in count 1 was within category 1, under the relevant guideline, due to the large-scale commercial and/or highly sophisticated enterprise in which this offence took place, as indicated by its close connection to other serious criminality, namely drug trafficking and that the additional criminality involved in this offence, and indeed in count 2, justified a consecutive period of imprisonment.

23. This leaves the only issue as to whether the overall sentence had sufficient regard to the principle of totality. In this regard, we remind ourselves that the appropriate starting point for the offence in count 1 on the third indictment, and by analogy count 2, was one of 14 years' custody, with a category range of between 12 to 18 years, whereas the notional figure imposed on count 1, prior to any reduction to reflect the timing of the plea of guilty, was just over ten years and 8 months.

Conclusion

24. In these circumstances, we are satisfied that the reduction in the notional figure for the counts on the third indictment from 14 to just over ten years and 8 months adequately satisfied the principle of totality and that the overall sentence, in relation to the three indictments of 24 years' imprisonment, is neither arguably wrong in principle nor manifestly excessive. Indeed, we would observe that, bearing in mind the timing of the applicant's pleas of guilty as set out above, the applicant was fortunate to receive a reduction of 25 per cent.

25. Although, for the reasons we have provided, the renewed application is refused, we would make the following additional points.

- (i) Although the judge did not express in his sentencing remarks that no separate penalty was imposed in relation to the related offence of

driving without insurance, we will make that order, as this will not have the effect that, taking the case as a whole, the appellant will be more severely dealt with on appeal than he was dealt with by the court below, under section 11(3) of the Criminal Appeal Act 1968. Moreover, the trial record sheet should be amended accordingly.

- (ii) However, although upon conviction for dangerous driving it was mandatory for the applicant to have been disqualified from driving until he passed an extended driving test, under section 36 of the Road Traffic Offenders Act 1988, as the judge did not express this in the course of his sentencing remarks and we are precluded from imposing this requirement at this stage, under section 11(3) of the Criminal Appeal Act 1968, we will order that the trial record sheet be amended so as to delete this requirement.
- (iii) On the other hand, as the judge did state in the course of his sentencing remarks, that the periods of imprisonment imposed upon counts 1 and count 2 of the third indictment, should run concurrently with each other but consecutively to the other sentences, we will order that the trial record sheet be amended accordingly.
- (iv) Finally, although the judge sought to disqualify the applicant from driving in accordance with sections 35A and 35B of the Road Traffic Offenders Act 1988, by imposing a total disqualification of 14 years, comprising a period of disqualification for 2 years on the offence of dangerous driving and an extension period of 12 years, it is apparent that in addition to the 2-year period of disqualification for the offence of dangerous driving which was imposed, there should have been an extension period of 6 months to reflect the time which the applicant would serve in relation to sentence of 12 months' imprisonment for that offence, together with an uplift of 12 years and 10 months, resulting in a total period of disqualification of 15 years and 4 months, (see *R v Needham* [2016] EWCA Crim 455). This is due to the fact that whilst the applicant will be entitled to automatic release after he has served half of that period of his sentence imposed for the offences on the first and second indictment, he will only be entitled to release from the consecutive sentence of 8 years' imprisonment imposed upon count 2 on the third indictment, after he has served two-thirds of the sentence (see section 244ZA of the Criminal Justice Act 2003). However, as any order to this effect, at this stage, would be to deal more severely with the applicant than he was dealt with before, we are precluded from making this order and so his period of disqualification will remain as ordered and the trial record sheet will not be amended.

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

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