



Neutral Citation Number: [2023] EWCA Crim 483

Case No: 202300533 A2

**IN THE COURT OF APPEAL (CRIMINAL DIVISION)**  
**ON APPEAL FROM THE CROWN COURT AT STAFFORD**  
**Her Honour Judge Crabb**  
**T20207145 and T20227022**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 11/05/2023

**Before :**

**LADY JUSTICE THIRLWALL**  
**MR JUSTICE CAVANAGH**  
and  
**MRS JUSTICE STACEY**

**Between :**

**REFERENCE BY THE ATTORNEY GENERAL**  
**UNDER SECTION 36 OF THE CRIMINAL JUSTICE**  
**ACT 1988**

**REX**  
**- and -**  
**TREHMAYNE CLARKE**

**Appellant**

**Respondent**

**Sarah Przybylska** appeared on behalf of the **Attorney General**  
**Joanna Hardy-Susskind** appeared on behalf of the **Offender**

Hearing dates : 19.04.2023

**Approved Judgment**

This judgment was handed down remotely at 11:00am on Thursday, 11 May 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives

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**Lady Justice Thirlwall :**

1. We announced at the end of the hearing on 19<sup>th</sup> April that we dismissed this application. These are our reasons.
2. Trehmayne Clarke is 27. On 12th January 2021, in the Crown Court at Stafford, the offender (then 24) pleaded guilty to offences on Indictment T20207145, referred to as the 2020 Stafford offences. On 11 March 2022 in the Crown Court at Cambridge, the offender (then aged 25) pleaded guilty to the offences on Indictment T20227022, the Cambridge offences.

3. On 20th January 2023, in the Crown Court at Stafford, he was sentenced as follows:  
**Stafford offences**

Counts 1 & 2 - Conspiracy to supply a controlled drug of Class A, s 1 (1) Criminal Law Act 1977 and s 4 (1) (b) Misuse of Drugs Act 1971, 5 years & 11 months imprisonment, concurrent on each.

**Cambridge offences**

Counts 1 & 2 - Being concerned in supplying controlled drug of Class A to another, s 4 (3) (b) Misuse of Drugs Act 1971, 5 years & 7 months imprisonment, concurrent to the Stafford offences.

Count 3 - Obstructing a constable, s 23 (4) (a) Misuse of Drugs Act 1971, no separate penalty.

Total sentence: 5 years & 11 months.

4. This is an application by the Solicitor General on behalf of the Attorney General for leave to refer the sentence which she regards as unduly lenient pursuant to Section 36 of the Criminal Justice Act 1988.

**FACTS**

5. The case concerns the supply of Class A drugs in Stafford, Peterborough and Grantham by members of the Wolverhampton based V8 street gang and others working for them. The conspiracy took place over 14 months between March 2017 and May 2018. The offender was said to have a leading role, although he was not a gang member and was based in Peterborough. He directed others lower in the conspiracy, including child street dealers. He liaised with co-conspirators who were members of the V8 street gang.
6. The drugs were supplied by means of three telephone lines known as the 'Jay line', 'Panda line' and 'Tiny line'. The main controller of the Panda line was Reece Gordon. The Jay line had various controllers. The Tiny line belonged to this offender. The police disrupted the activity of the conspirators on 12 occasions known as 'events' during the period by stop and search operations. Class A drugs and telephones used in the conspiracy were recovered on some of those occasions and the conspiracy continued.
7. The offender's drug line was in operation from April 2017 until February 2018. Throughout the indictment period, he was in contact with co-conspirators from

Wolverhampton. He was directly involved on two occasions. The first, on 14 December 2017, when his telephone sent three sets of advertising messages to drug users in Cambridgeshire. He and two co-defendants were in Peterborough at the time. Police executed a search warrant at his home in Peterborough. He was not there but a co-conspirator was in the house. Police seized 20 packages of crack cocaine and £210 from the co-conspirator. The next occasion (Event 12) took place between 28 March and 10 May 2018. The offender was observed near his house in Peterborough on five occasions, selling drugs to a number of individuals. The last occasion was on 10 May 2018 when he was arrested in possession of a large knife and a quantity of Class A drugs.

8. Event 12 was the subject of a separate prosecution which led to indictment T20180181. The offender was sentenced on 10 August 2018 at Cambridge Crown Court, after pleading guilty to being concerned in the supply of diamorphine and crack cocaine between 28 March and 10 May 2018 and possession of both drugs with intent to supply on 10 May 2018.
9. The sentencing judge on that occasion (in the absence of any information about the wider conspiracy) found that the offence fell into category 3/significant role of the relevant guideline. He adjusted the sentence upwards from the guideline starting point to reflect the duration of the offending – six weeks – and then again on account of the offender’s previous convictions. He reduced the sentence after considering his youth and the difficulties he had encountered in his life. The appropriate sentence for the drugs offences after a trial would have been five years, the judge said. Giving full credit for an early guilty plea, he imposed a sentence of three years and four months’ imprisonment. He imposed five months consecutive in relation to possession of a ten-inch sheath knife and a lock knife recovered on his arrest. The minimum term applied and he gave the maximum possible reduction on account of his plea leading to a total sentence 3 years 9 months imprisonment.
10. The Cambridge offences were committed shortly after the offender was released from custody on 15 April 2020, following his release on licence in respect of the offences to which we refer at paragraph 8. He attempted, with little success, to reinstate his drugs line, sending bulk text messages daily from 4 May 2020 until his arrest on 23 June 2020. He was arrested in a car, in possession of a deal phone, a hunting knife with a six inch blade, a quantity of cash and six wraps of Class A drugs. The drugs offences appeared on the Cambridge indictment.
11. He was prosecuted separately for the possession of the hunting knife found on the same occasion. He admitted his guilt and on 7 August 2020 at Cambridge Crown Court he was sentenced. In the light of the mandatory minimum and his previous convictions for carrying knives he was sentenced to 8 months imprisonment, reduced from 12 months on account of the early guilty plea.
12. By the time matters came before the judge at Stafford Crown Court in January 2023 the offender had previously been convicted of 25 offences. Until the 2018 offences the only matter relating to the supply of controlled drugs was a 2013 conviction for being concerned in the supply of Class A drugs. He was 17 at the time of the offence and conviction and received a youth rehabilitation order. He also had previous convictions as a juvenile for two separate offences of possession of a bladed article in 2012.

13. In relation to the minimum sentencing provisions for the drugs offences, the offender's 2013 conviction was his first qualifying conviction and the conviction in August 2018 for the 28 March to 10 May 2018 'event' that was later subsumed within the Stafford conspiracy [the 2020 indictment] was his second qualifying conviction. He therefore had only one qualifying conviction when committing the offences on the 2020 indictment and the mandatory minimum did not apply. At the time of committing the offences on the 2022 indictment, the Cambridge drugs matter, between 4 May and 24 June 2020, he did have two qualifying convictions and was liable to the mandatory minimum, seven years' imprisonment for that offence.

### **The Sentencing hearing**

14. Counsel agreed that the appropriate reduction for the guilty pleas was one third, subject to the maximum permissible credit for the mandatory minimum sentence in relation to the Cambridge indictment.

In relation to the Stafford conspiracy, it was agreed that the dates were in fact October 2017 (not September 2017) to May 2018, and that the offence came within category 2 of the Guideline. In relation to the Cambridge indictment, prosecuting counsel agreed with the judge that the offending was category 3/significant role for the purpose of the Guideline.

15. In the course of counsels' submissions the judge indicated that she would consider the matter as a whole and then deduct from the sentence the three year and four month sentence imposed in relation to the 28 March to 10 May 2018 event and would then deduct a further three months to reflect the eight month sentence imposed in August 2020 for possession of the knife found when the offender was arrested for the Cambridge drugs matters. She considered that this would have been a shorter sentence on account of totality had all matters been dealt with together. Prosecuting counsel did not disagree with this approach.
16. The judge found that the offender was an integral part of the Stafford conspiracy, running one of the busiest drugs lines. He had a leading role in a "professionally planned, lucrative and sophisticated county lines operation", which fell into category 2. The starting point was 11 years imprisonment. The offending was aggravated by his 2013 previous conviction (albeit he was a youth at the time), the use of child runners, and the geographic spread of the county lines operation.
17. In relation to the Cambridge drugs matter, he had re-established a drugs line within days of his release from custody. This was a small operation and the offending was category 3/significant role. The offending was aggravated because it was sustained over a period of a month and committed on licence.
18. The mitigating factors were the offender's age (21-24), the considerable delay in prosecuting and sentencing the offences, the effect of the pandemic on prison conditions for much of the time he had already spent in custody and his efforts to educate himself in custody.
19. The judge declined to make any reduction arising out of the offender's recall to prison from June 2020 to February 2022 such that he had served his entire sentence. She considered that the appropriate sentence after trial for the Stafford 2020 conspiracy,

- balancing the aggravating and mitigating factors, would have been 11 years. He was entitled to a reduction of one third, which brought the sentence to one of seven years and eight months.
20. She found no reason to disapply the mandatory minimum in relation to the Cambridge 2022 drugs matter. The sentence after trial would have been seven years. The maximum allowable reduction of 20% brought the sentence to five years and seven months.
  21. The judge then considered totality. She found that adding the two sentences together – giving 13 years and three months, or 18 years after trial – would be unjust as it was “too high”. She concluded that the appropriate sentence overall was nine and a half years, to be imposed on the lead offences, namely the Stafford conspiracy. (This was a notional term of 14 years and three months after trial.) She then reduced that term by three years and seven months to reflect the three years and four months imposed in relation to the 28 March to 10 May 2018 ‘event’ and by three months on the basis that the 2020 bladed article charge would have merited a lesser sentence on account of totality had all matters been sentenced together. She also expressed puzzlement as to why the bladed article offence which had attracted a sentence of 8 months imprisonment was prosecuted separately from the drugs case.
  22. The overall sentence was therefore five years and 11 months on the Stafford offences, with five years and seven months concurrent on the Cambridge offences.
  23. On behalf of the Attorney General in writing and in commendably succinct oral submissions Ms Przybylska says that the judge fell into error in the reduction she made at the end of her sentencing exercise to reflect totality such that the resulting sentence was too lenient.
  24. Although there were in court on the appeal a number of police officers, counsel had no information about why the case had been prosecuted in such a piecemeal way, in several different courts and with significant delay, notwithstanding the judge’s comments at first instance.
  25. On behalf of the offender, Ms Hardy-Susskind provided a helpful analysis of the chronology of the whole history which, she submitted, it was necessary to understand in order to come to a fair assessment of the judge’s decision which, at first glance might appear lenient. She pointed out that at the time of sentence the Stafford conspiracy had come to an end five years earlier.
  26. Ms Hardy-Susskind submitted that some judges might have made a reduction for the fact that the offender had to serve the whole of the sentence imposed in 2018 and it was just a few days after that sentence ended that he had his first appearance in court in respect of what became the Cambridge indictment. This may be correct but we are quite satisfied that the judge was entitled to reject the submission to that effect in the overall assessment of the correct sentence. We also consider that the judge was right to reject the submission (made at first instance but not pursued before us) that it was unjust to impose the minimum sentence on the Cambridge offences.
  27. Ms Hardy-Susskind submits that there was no gross error, the judge took the right approach and imposed a sentence which was not unduly lenient. She also drew our attention to the report from the prison which notes a marked difference in the offender’s

conduct between the period of 2021 and 2022 when he was serving his earlier sentence and his conduct since January 2023 when these sentences were imposed. The first period is littered with adjudications for a range of offences. There has been no adjudication or adverse finding against the offender in those three months. He is said to be engaging well with a thinking skills programme and is said to have made steps in the right direction. This was not available to the judge and does not affect our approach but we acknowledge that there may be some change in the offender's conduct.

28. This was not an easy sentencing exercise. The judge was faced with a sentence which had been served in full in respect of a significant period of the conspiracy, and had to take account of sentences imposed by two other judges at different times in offences which had been prosecuted in the way we have described with significant delays.
29. When considering whether the sentence was lenient it is important to note that the sentence before reductions for the terms already served, and the reduction for the guilty pleas was one of 14 years and 3 months imprisonment, the judge having, decided against aggregating the sentences. She expressed in short form that such a course (which would lead to an 18 year sentence of imprisonment) would not lead to a just and proportionate sentence. That was a decision that was properly open to her.
30. The judge was right then to reduce the sentence by the length of the term already served and the fact that the bladed article offence was unlikely to have attracted a consecutive sentence of 8 months had all matters been dealt with together. The reductions for the guilty pleas were entirely in accordance with the guideline.
31. An overall sentence before plea of 14 years and 3 months imprisonment was lenient. The issue is whether it was unduly lenient. We are satisfied that the sentence does not fall "*outside the range of sentences which the judge, applying his mind to all the relevant factors, could reasonably consider appropriate,*" subject to authority and the *sentencing guidelines,* " the test for unduly leniency as set out by Lord Lane CJ in *Attorney General's Reference No 5 of 1989* 11 Cr. App. R. (S) 489. It is not a sentence with which we should interfere and accordingly we dismissed the application.