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IN THE COURT OF APPEAL

CRIMINAL DIVISION

CASE NOS 202203345/A4 & 202300224/A4

[2023] EWCA Crim 628

Royal Courts of Justice  
Strand  
London  
WC2A 2LL

Thursday 11 May 2023

Before:

LORD JUSTICE WILLIAM DAVIS  
MR JUSTICE HOLGATE  
MR JUSTICE SWIFT

REX  
V  
FIESAL HIZAM  
ADAM PRIOR

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MR A ALTY appeared on behalf of the Appellant Hizam  
MR J SMITH appeared on behalf of the Appellant Prior

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**J U D G M E N T**

1. MR JUSTICE HOLGATE: On 10 June 2022 in the Crown Court at Liverpool before His Honour Judge Potter, the appellant Fiesal Hizam pleaded guilty to two counts of conspiracy to supply a class A drug, one dealing with cocaine and the other heroin, and two counts of conspiracy to supply a class B drug, one dealing with cannabis and the other ketamine.
2. On 8 August 2022 in the Crown Court at Liverpool before Mr Recorder Harrington, the appellant Adam Prior pleaded guilty to the offences in the same four counts.
3. On 4 November 2022 in the Crown Court at Liverpool, before Mr Recorder Hannam KC the appellant Hizam was sentenced to an overall term of 16 years' imprisonment, comprising concurrent sentences of 16 years for the class A offences and five years for the class B offences. On the same day and before the same judge the appellant Adam Prior was sentenced to an overall term of 12 years' imprisonment, comprising concurrent sentences of 12 years for the class A offences and three years for the class B offences. The appellants appeal against sentence with the leave of the single judge.
4. Neither appellant provided a basis of plea. The indictment charged a conspiracy running from 1 October 2019 to 12 May 2022. It appears to have ended on about 27 October 2021. This has been agreed.
5. Hizam had an EncroChat device and used the encrypted handle Fine Winter. Officers captured data from the device over the period between 25 March 2020 and 5 June 2020, although Hizam admitted that he had used it from October 2019. As is well-known use of that system came to an end in June 2020.
6. Hizam used Prior's home address as a safe house for receiving drugs and cash for onward supply throughout the conspiracies. No encrypted device was attributed to Prior but a telephone number used by him contained evidence of the role he played and that he was

in regular, frequent contact with Hizam. The Encrochat data showed that on numerous occasions Hizam provided the postcode and described the location of Prior's address when arranging for the delivery and collection of drugs and money. It contained frequent references to "Adam" as the store keeper for money and drugs, facilitating transactions of money, drugs and adulterants from his home. Although that data covered a period of only about two months it showed that the amount of drugs received or supplied during that time totalled 25 kilograms of cocaine, 6 kilograms of heroin, 6 kilograms of Ketamine and 30 kilograms of cannabis. The wholesale values of those quantities were estimated to be: cocaine £900,000, heroin £96,000, Ketamine £42,000 and cannabis £150,000.

7. The EncroChat data revealed a substantial number of transactions which we will summarise. On 26 March 2020 Hizam responded to an enquiry about the price of cocaine and that he had seven kilograms left. Over the next few days Fine Winter was in contact with nine other handles to obtain six kilograms of heroin. On 28 March Hizam paid a driver £500 to move nine ounces of a substance to Carlisle. On 30 March he sent messages seeking quantities of heroin. On 1 April he offered to sell four kilograms of Ketamine and referred to "kids in Chester dropping now". He said that he had already sold a kilogram. On the same day he asked another handle for pictures of cocaine and was offered compressed blocks of cocaine for nearly £40,000 a kilogram.
8. On 2 April 2020 Hizam offered to produce some crack cocaine at Adam's. On 3 April he explained the process for making crack cocaine. On 5 and 6 April he arranged to buy two kilograms of cocaine and for his driver to collect them. Later on 6 April Fine Winter offered cannabis at £4,700 a kilo and there was a discussion about putting slots or concealed compartments into vehicles for the movement of drugs. Between 7 and 8 April 2020 Hizam arranged to buy two kilograms of heroin saying that it needed to be at

“Adam’s” either in the next hour or the next day. He directed the other person to Prior's address. On 8 April Hizam arranged to sell 20 kilograms of cannabis of two different qualities.

9. On 9 April the user of another encrypted device said that he had £27,000 available for Hizam. On 9 and 10 April Fine Winter sourced two kilograms of cocaine and said that one kilogram was for Warrington and the rest for Manchester. On 13 April a customer asked for heroin and adulterant and was told by Fine Winter: "Yes, £350 Adam's got them". On 14 April Fine Winter said in a message that he had a person with cannabis crops which would take 12 weeks to complete. On 21 April Fine Winter said that he had paid for 1.5 kilograms out of two kilograms of heroin. On 30 April Fine Winter said he had three customers who would buy 20-30 kilograms each of cannabis if the price was right. On 5 May a customer asked for adulterant valued at £3,000. On 13 May plans were discussed to import adulterated heroin from the Netherlands, and to re-block it using a hydraulic press to make it look like imported, unadulterated drugs from Iraq.
10. On 17 May Hizam instructed someone to go to "Adam's at five" to collect money and heroin. On 26 May Fine Winter said: "Adam got 108 in his for three tops", or in other words £108,000 representing 3 kilograms of cocaine at a price of £36,000 per kilo was being held at Prior's address.
11. There was then a gap. A separate investigation revealed that between May and October 2021 the appellants had been involved in the supply of class A drugs to customers Ben Cook and Kevin Jones based in Chester. Throughout this period there was telephone contact between Cook and Hizam. Cell site and ANPR evidence showed that Cook and Jones were in the vicinity of Prior's address on 14 occasions between June and October 2021. On a return journey from Prior's address on 27 October the vehicle was stopped by

police and 2 kilograms of cocaine were recovered from the passenger footwell.

12. Hizam was arrested on 12 May 2022. In interview he admitted using the Fine Winter handle and having another EncroChat device prior to that. He said that he had been involved in drug supply and had been robbed at gun point which had left him owing £155,000. He claimed to have paid off the debt by the summer of 2021 by dealing drugs. He said that a delivery driver had worked for him and that he had used Prior's house to store drugs and cash. Prior was arrested on the same day.
13. Hizam and Prior are aged 41 and 39 respectively. Hizam had 11 convictions for 24 offences including possession with intent to supply MDMA for which he received 18 months' imprisonment and controlling criminal property for which he received 2 years' imprisonment. In 2008 Prior received a 5-year minimum term for possession of a prohibited firearm. No pre-sentence report was prepared for either appellant and we confirm for the purposes of section 33 of the Sentencing Act 2020 that no such reports were or are necessary.
14. In his sentencing remarks the judge said that the quantities of class A drugs fell well above the range for Category 1 offences. He said he would pass concurrent sentences taking the Category A counts as the lead offences to reflect the overall criminality. He had regard to the principles laid down in R v Cuni [2018] Cr.App.R (S) 18, R v Greenfield [2020] 2 Cr.App.R (S) 19 and R v Wraight and Bannister [2021] EWCA Crim 1968. He said that although the indicative weights were lower in the present case than in Wraight, the conspiracy in the present case had lasted two years and was much longer. The indicative weights were just snapshot figures relating to the period of the EncroChat data, whereas the conspiracy had continued between June 2020 and May 2021 on the same "multi-kilo basis". The two-month conspiracy in Wraight had ended with the

disruption of the EncroChat network, but here the appellants had carried on for another 16 months.

15. The judge said that the present case involved large scale commercial dealing. It was a sophisticated operation concealed behind the use of EncroChat and using specially constructed hiding places in vehicles. Hizam had a leading role, very much in charge of his own operation. Although Hizam would have been supplied by others, there was no evidence of him being subordinate to anyone else. Hizam had a contact able to import drugs. He was high up in the drugs trade in the United Kingdom. He operated out of Liverpool, trading drugs regionally between Manchester, Chester and Carlisle. He would have expected to earn a large amount of money.
16. Prior's role was significant having an operational and management function, a good understanding of the scale of the operation and financial reward.
17. The judge summarised the personal mitigation in each case and said that after trial the overall sentence for Hizam would have been 24 years' imprisonment but with full credit this was reduced to 16 years. The overall sentence for Prior was 18 years' imprisonment reduced by the credit for plea to 12 years.
18. We are grateful to Mr Alty who appeared on behalf of Hizam and to Mr Smith who appeared on behalf of Prior for their submissions.
19. In summary, Mr Alty submits that although Hizam's previous convictions and the additional counts relating to class B drugs were aggravating factors, a sentence of 24 years after trial was manifestly excessive. Although it is well-known that there will be "bunching" or "crowding" of sentences passed in the range between 20 and 30 years, comparison with the circumstances of Wraight and Cuni and also the sentences passed by Dove J in Coggins and Woodhouse demonstrates that something had gone wrong in the

present case. Mr Alty submitted that it cannot be correct to impose sentences of the length imposed here because the appellants dealt drugs over a longer period but for significantly less amounts as compared with those cases. The key feature is weight, whether inside or outside the range stated in the definitive guideline. The sentences imposed failed to accord with the totality principle.

20. Mr Smith accepted that Prior played a significant role but said that this was towards the lower end of that category. He submitted that a sentence of 18 years after trial was manifestly excessive. He says that it implies that Prior played a leading role in the conspiracy. He submitted that applying the principle of totality the sentence imposed is not just and proportionate to the criminality involved. He adopted the submissions made by Mr Alty.

### **Discussion**

21. The Definitive Guideline on Drugs Offences states 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."

22. The principles applicable to this type of offending are well-established. In addition to the decisions of the Court of Appeal already mentioned, we also have well in mind R v Greenfield [2020] 2 Cr.App.R (S) 19. The principles relevant for the purposes of these appeals may be summarised as follows:

- (i) For offences falling within the 20 to 30-year range there is bound to be an element of bunching, as the scope to differentiate for amounts and roles is very compressed, with the result that sentences on different offenders will be nearer to each other than might otherwise be the case;

- (ii) When dealing with offenders within one of the categories in the definitive guideline it may be necessary for the judge to make a finding with some precision of the minimum quantity of drugs which the judge can be sure were supplied. But when sentencing for a quantity of drugs which is significantly higher than the guideline categories, the exercise becomes a more evaluative one in which the quantity of drug is only one relevant factor, albeit an important one. Sometimes a judge is able to determine with some precision what the quantity of drugs may safely be taken to be and sometimes not. (see Greenfield at [42]);
- (iii) “In the case of large commercial operations such as this which fall outside and well above the guideline categories, the judge has to weigh up a variety of factors, including the quantity supplied as best he can determine it, but also the particular role of the offender in the conspiracy, how far up the supply chain he was, the geographical scope of the operation, the length of time for which it continued, the number of different drugs involved and the number of separate conspiracies in which the offender participated.” (see Greenfield at [43]);
- (iv) The court is not assisted by comparisons with sentences passed or substituted by the Court of Appeal in other cases;
- (v) It is an exercise of judgment for the sentencing judge to scale up the corresponding sentences for those at the bottom rung of leading role, along with significant and lesser roles, in such a way as reflects both the part played by the offender and his comparative significance to the offending as a whole;
- (vi) For such very serious offences matters of mitigation are less important.

23. Mr Alty's submissions depend firstly upon comparing the present conspiracies to other cases, and secondly, treating weight as the more important factor for making that comparison as opposed to, for example, the length of the conspiracy. With respect, this approach is fallacious. Comparisons of this nature are inappropriate.

24. We deprecate in particular the attempt made in submissions to compare the sentences and circumstances of this case with those taken into account by a sentencing judge in the Crown Court in another. Plainly the judgments expressed by a sentencing judge form no basis for this court to determine whether the sentences passed on an appellant are



manifestly excessive or wrong in principle. That is the only basis upon which this court may generally intervene. The notion of disparity in sentences passed on co-defendants is not to be extended to sentencing in other unconnected cases. It also follows that submissions should not seek to draw a sentencing judge into making comparisons of the kind that were advanced in the present case.

25. Greenfield at paragraph 43 emphasises the range of factors which may have to be taken into account in cases of this kind. If a comparison with other cases were to be attempted it would need to reflect all the significant factors affecting sentence and not just the weight of the drugs or the length of the conspiracy. Mr Alty did not seek to do that. But we do not think that such an exercise can be done meaningfully or reliably. The sentencing exercise in this type of case is evaluative and multifactorial. The weights given by different courts to different factors in the circumstances of a particular case before them generally cannot be analysed by other courts so as to be able to identify the relative or numerical effect each of those matters had on length of sentence. Accordingly no proper comparison can be made.

26. We turn to the circumstances of this case. First, the judge was entitled to find that the indicative figures were only snapshot figures relating to the period of only just over two months covered by the EncroChat data. The conspiracy lasted two years. The Chester operation alone had involved 15 trips to Prior's home to collect drugs. The judge was entitled to find that the conspiracies were based upon persistent, multi-kilo transactions dealing in class A drugs through the 16 month gap between the EncroChat period and the Chester period. He could not make findings as to the total quantities involved but given the nature of the conspiracies and their duration the quantities were likely to exceed substantially the snapshot figures.

27. In addition we note the regional coverage of the conspiracies. The supply involved regular trips from Prior's home in London. There was evidence of a contact able to import drugs. The conspiracies involved four different drugs. The concurrent sentences for the class B drugs were a further aggravating feature. The appellants persisted in conspiracies for a lengthy period after the EncroChat network had been disrupted. The judge was entitled to find that Hizam was very much in charge of his own commercial operation. He was also entitled to find that Prior had a significant role. Indeed, on the evidence he performed an important, trusted role within that category, involving significant quantities of drugs and cash. The suggestion that the sentence of 18 years before credit for plea indicates that Prior was sentenced as if he had a leading role is misconceived. Instead, the judge sentenced Prior for his significant role in conspiracies where a leading role merited the substantially higher sentence before credit for plea of 24 years.

28. For all these reasons, we have come to the clear conclusion that even if the sentences could be described as severe, neither appellant received a sentence which was manifestly excessive. Accordingly, both appeals are dismissed.

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

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