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IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
The Strand
London
WC2A 2LL

[2024] EWCA Crim 1225

ON APPEAL FROM THE CROWN COURT AT KINGSTON UPON THAMES
(HIS HONOUR JUDGE LODDER KC) [T20220154]

Case No 2023/03871/A1

Friday 30 August 2024

B e f o r e:

LORD JUSTICE POPPLEWELL

LORD JUSTICE FULFORD
(Sitting in Retirement)

MRS JUSTICE TIPPLES

R E X

- v -

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Mr R Furlong appeared on behalf of the Appellant

A P P R O V E D J U D G M E N T

Friday 30 August 2024

LORD JUSTICE POPPLEWELL:

1. Having pleaded guilty to offences of conspiracy to supply drugs, money laundering and conspiracy to sell or transfer prohibited weapons, on 9 October 2023 the appellant was sentenced to a total of 21 years and six months' imprisonment by His Honour Judge Peter Lodder KC, the Recorder of Richmond, in the Crown Court at Kingston Upon Thames.

2. The appellant appeals against sentence with the leave of the single judge.

3. The individual sentences for the drugs and money laundering offences were as follows: on count 1, conspiracy to supply cocaine, 14 years and three months' imprisonment; on count 2, conspiracy to supply cannabis, seven years' imprisonment; on count 3, conspiracy to acquire criminal property, seven years' imprisonment; and on count 8, possessing criminal property, 18 months' imprisonment. The conspiracy period was from 27 March 2020 to 13 June 2020. These sentences were ordered to run concurrently with each other. The conspiracy to sell or transfer weapons was the subject matter of count 4. For that offence a consecutive sentence of seven years and three months' imprisonment was imposed.

The Facts

4. On 5 May 2022 police officers executed a warrant at the home address of the appellant who was arrested and cautioned. A number of mobile phones were seized and approximately £23,800 in cash was recovered in white envelopes showing details of amounts inside and terms such as "collected", "sales" and "my pay" on them (count 8). Subsequent analysis during the course of "Operation Venetic" led police officers to conclude that the appellant had been the user of two EncroChat handles, namely "savagetops" and "eurosandpounds". Numerous messages on those phones revealed the nature and scale of the offending and the

appellant's role.

5. The amount of cocaine supplied in the conspiracy period was at least 9 kilograms. The amount of cannabis was at least 60 kilograms. The cash handled by the appellant was in excess of £1 million on account of his own drug dealing, and in excess of a further £1 million on behalf of another organised crime group.

6. As to the appellant's role, the defence had submitted that it was at the lower end of leading role. The judge accepted the prosecution's submission that it was squarely within the category of leading role as a result of the evidence in relation to the weapons offence.

7. As to that weapons offending, on 2 May 2020, a photograph of a revolver and nine bullets was sent by the appellant to another EncroChat handle with the message: "Just grabbed this for the team bro". A different photograph of the same revolver, with 14 bullets, was sent shortly afterwards to another handle, apparently in error.

8. The prosecution submitted, and the judge accepted, that this showed that the gun had been obtained for use by those below the appellant in the hierarchy, for use if necessary to protect their drugs operation.

9. On the same date the appellant shared with another EncroChat handle a pricelist of different types of firearms and ammunition as being available to purchase.

10. On 5 May 2020 the appellant sent a message to a different EncroChat handle, saying: "Just grabbed a pocket rocket today with 200 sweets – James Bond small thing". This was a reference to a semi-automatic pistol of a kind such as a Walther PPK and 200 rounds of ammunition.

11. The prosecution submitted, and the judge accepted, that in the light of the other messages about weapons, this too was an indication that it was for use in the drug dealing organisation.

Sentencing

12. The appellant was aged 25 at the time of the offending and had seven previous convictions for 13 offences, but none of the previous convictions was serious or had resulted in a custodial sentence. The most recent was when he was aged 18, in 2013, some seven years prior to the commission of the offences with which we are concerned.

13. A psychological report was prepared for the court by a forensic psychologist who confirmed that the appellant suffered from ADHD, which had been diagnosed in childhood, and showed some elements of suggestibility.

14. Character references from family friends were relied on. There was a positive behaviour report from Wansworth Prison, as well as a report from the Pathways to Recovery Substance Misuse Service in Wansworth Prison, and a pre-sentence report which concluded that the appellant posed a medium risk of serious harm. The appellant himself wrote a letter to the sentencing judge expressing his remorse.

15. The appellant had pleaded not guilty at the plea and trial preparation hearing in July 2022, but changed his pleas shortly before the trial which was fixed for 3 January 2023. The judge afforded him credit of 17½ per cent.

16. The judge determined to pass the main sentence on count 1 and to impose concurrent sentences on counts 2 and 3. They were the counts which were concerned with the drugs offences and the money laundering offence. He determined that the appropriate individual

sentences for the 60 kilogram cannabis conspiracy on count 2 and the more than £2 million money laundering conspiracy on count 3 was in each case seven years' imprisonment, and for the possession of cash (count 8), it was 18 months' imprisonment. No criticism is or could be made of that assessment of the appropriate sentences for those offences, considered individually.

17. On count 1 (the cocaine conspiracy) the judge concluded that the appropriate sentence after a trial would be one of 19 years' imprisonment. With discount for the guilty plea (rounded up) this would become 15½ years. It was not expressly stated that these figures involved any uplift to take into account the cannabis offending in count 2, or the money laundering offence in count 3, for which the concurrent sentences were imposed.

18. In relation to the weapons offence, the judge identified the appropriate sentence as 10 years' imprisonment after a trial, which, with credit for the guilty plea, would become eight years and four months' imprisonment. He then made a further reduction for totality between the consecutive sentences he imposed. That reduction was one of two years and four months, which he split unequally between counts 1 and 4, to arrive at the final sentence.

The Argument

19. Mr Furlong (who did not appear below) argues that the sentence is manifestly excessive for a number of reasons. We are grateful to him for his submissions which were attractively presented.

20. His first and main point is that the judge's starting point of 19 years' imprisonment for count 1 was too high; that it was outside the range for A1 offending, which is 10 to 16 years' imprisonment. At the heart of the submission is the proposition that the starting point for the category is 14 years, which is based on an indicative quantity of 5 kilograms. The quantity

involved in this case (9 kilograms) could not justify an increase from 14 years to 19 years, which was well above the top of the range.

21. So far we would agree. However, this ignores the fact that the sentence on count 1 had to take account of the cannabis conspiracy offending and the money laundering, for which consecutive sentences were to be imposed. Had count 1 stood alone, a sentence of about 15 years would have been justified (approximately one year above the 14 year starting point) to reflect the quantity involved. In our view, a further four year increase for the other drugs and money laundering offending was fully justified. Each involved serious, separate offending which merited in each case a sentence of seven years' imprisonment, if looked at individually. Mr Furlong submitted that where there is Class A drugs dealing on the scale involved in this case, offenders are very often involved in dealing with other drugs and that the handling of the criminal proceeds by way of cash, which can form a money laundering charge, is really part and parcel of the drugs offending.

22. However, if the starting point for count 1 was for the cocaine alone sufficient to justify 15 years' imprisonment, a significant increase needs to be made for the very substantial quantity of cannabis which was involved in count 2, namely 60kgs. Moreover, and perhaps unusually, the money laundering charges were not simply a necessary corollary and reflection of the drug dealing which was charged in count 1. The figure in excess of £1 million for money laundering in relation to drug dealing on the appellant's own account would reflect a considerably higher quantity than nine kilograms of cocaine – perhaps approximately three times that amount. Moreover, the money laundering in this case involved money laundering which was unconnected with the drug dealing, to the extent of a figure in excess of £1 million in cash handled for another organised crime group. Accordingly, a further four year increase from what would have been an appropriate starting point of 15 years for the cocaine alone was not, in our view, inappropriate. It was not clear from the judge's sentencing remarks that

this was his thought process. But however that may be, a sentence of 19 years' imprisonment on count 1 as the lead offence for all of the drug dealing and money laundering offending was not, in our view, manifestly excessive.

23. Next, Mr Furlong argued in his written grounds of appeal (although this was not elaborated in oral argument) that the judge had indulged in double counting in treating the evidence of the weapons offending as putting the appellant squarely in the leading role category for the drugs offences and then passing a consecutive sentence on the weapons offence.

24. This argument is mistaken. The weapons offending was conduct which revealed the appellant's role in the drugs offending, not conduct which was treated as aggravating the drugs offending.

25. Next, Mr Furlong argued that the appellant was given insufficient credit for his guilty plea, which should have been 20 per cent because he was hampered in relation to his plea by the illness of his trial counsel, Ms Smullen. The chronology of events is this. At the plea and trial preparation hearing in July 2022 the appellant pleaded not guilty. The trial was set for October 2022. Thereafter, discussions commenced about bases of plea. Ms Smullen then became unexpectedly ill in September 2022 and had to go into hospital on a number of occasions between then and December 2022. As a result, the trial date in October was vacated and re-fixed for 3 January, by which time Ms Smullen was fit again to represent him.

26. Following discussions in December, the appellant changed his pleas to guilty on 21 December, shortly before the date fixed for the trial. This was on the footing that he would be putting forward a basis of plea. When formulated a few weeks later, was unrealistic and unacceptable to the Crown. It suggested, for example, that the appellant had played a "lesser

role". A date was set for a *Newton* hearing in June 2023. Shortly before it was to take place, the basis of plea was abandoned. Even then the defence sought tactical advantage by including in its initial sentencing note matters which were unacceptable to the Crown and which would have required a *Newton* hearing. Under threat from the Crown of a *Newton* hearing, they too were abandoned. That all resulted in not far short of a year's delay between the guilty pleas being entered and the sentencing hearing, and the consequent disruption to other court users over that period.

27. In those circumstances we see no merit in Mr Furlong's submission in relation to credit for the guilty plea. The appellant had the benefit of full legal advice before the plea and trial preparation hearing, at which he tendered not guilty pleas. The offences did not involve any legal complexity. The appellant would have been well able to understand and accept his guilt without any further legal advice between September and December 2022, when Ms Smullen was indisposed. The guilty pleas, when tendered, were then subject to an unrealistic basis of plea, which was maintained until the eve of the *Newton* hearing, and then the defence indulged in gaming to try to reduce the sentence by reference to matters which would have required a further *Newton* hearing, before abandoning them, all of which caused further delay and disruption. When he afforded credit of 17½%t, the judge said that some might think it generous. He was right so far as the members of this court are concerned.

28. Mr Furlong's final point was that there was an inadequate allowance for totality. We cannot agree. There was a very substantial allowance for totality within the drugs and money laundering offences in reaching an initial figure of 19 years' imprisonment after a trial for count 1 as the lead offence. The weapons offence involved a different kind of criminality which required separate punishment, and a deduction of a further period of over two years for totality was appropriate.

29. For these reasons the appeal is dismissed.

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