Neutral Citation Number: [2024] EWCA Crim 1584

IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
The Strand
London
WC2A 2LL

ON APPEAL FROM THE CROWN COURT AT MANCHESTER MINSHULL ST
(HER HONOUR JUDGE JOANNE WOODWARD) [T20247006]

Case No 2024/03316/A1

Friday 13 December 2024

B e f o r e:

LORD JUSTICE HOLGATE

and

MR JUSTICE BRYAN

R EX

- v -

RASHIDA AYUB

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Mr I McMeekin appeared on behalf of the Applicant

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

LORD JUSTICE HOLGATE: I shall ask Mr Justice Bryan to give the judgment of the court.

MR JUSTICE BRYAN:

1. On 20 May 2024, following a trial in the Crown Court at Minshull Street Manchester before Her Honour Judge Joanne Woodward and a jury, the applicant (then aged 69) was convicted of one offence of conspiracy to do an act to facilitate the commission of a breach of United Kingdom Immigration Law by a non-European Union Citizen (contrary to section 1(1) of the Criminal Law Act 1977).

2. On 22 August 2024, the applicant (then aged 70) was sentenced to four years' imprisonment.

3. Two co-accused (Bakhtyar Ahmed and Bakhtiar Ali) were acquitted. Two co-accused, Jumagul Mohamadi and Wshiar Sarteep were convicted. Jumagul Mohamadi was sentenced to 42 months' imprisonment, and Wshiar Sarteep was sentenced to 32 months' imprisonment.

4. The applicant renews her application for leave to appeal against sentence, following refusal by the single judge.

5. We turn to the facts relating to the applicant's offending. On 29 December 2016 the applicant had arranged with others to smuggle Bakhtyar Ahmed in the boot of her vehicle through the Eurotunnel from France.

6. The applicant made a further trip to France via the Eurotunnel on 21 January 2017. It was evident that Jumagul Mohamadi and Wshiar Sarteep had known about that trip and were party to a meeting when the applicant returned to South Manchester in the early hours of 22 January 2017. The Crown's case was that this had been a further facilitation. On 23 January 2017 Jumagul Mohamadi made bank transfer payments to the applicant which the Crown suggested had been payment in relation to the conspiracy.

7. On 29 January 2017 the applicant made a further trip to France and was apprehended at Coquelles with two Iraqi females in the boot of the car. Jumagul Mohamadi and Wshiar Sarteep had been together on that date and there had been evidence that Wshiar Sarteep had been in direct communication with one of the females that had been found in the boot of the applicant's car. It had been the Crown's case that the applicant had been responsible for making the travel arrangements in relation to the conspiracy and had carried out multiple trips. It had been suggested that the applicant had been paid a minimum of £3,800 for just one trip on 21 January 2017.

8. The applicant was arrested for the index offending. In interview she stated that she did not know that there had been illegal entrants in her car and that she would not knowingly smuggle people into the country. The applicant subsequently declined to comment to questions asked by the police.

9. The applicant was of previous good character, and as at the date of sentence she was 70 years old. She had various physical medical conditions and was not in the best of mental health.

10. In a pre-sentence report, which was before the court, the author noted that the applicant continued to deny any knowing involvement and considered herself to be the victim. She was incredibly upset about what had happened and more upset that the others had been "cleared". It was noted that the applicant had refused to take any responsibility for her

actions. She was assessed as a medium risk to the public. If a custodial sentence was passed, the author of the report recommended that the application be placed on an ACCT (Assessment Care in Custody and Teamwork care planning process for prisoners identified as being at risk of suicide or self-harm). If the court was minded not to impose a custodial sentence, a 12 month community order with a Rehabilitation Activity Requirement (RAR) was proposed.

11. In her sentencing remarks the judge noted that there were multiple individuals involved in the planning and implementation of the conspiracy, including facilitating arrangements on both sides of the border and ensuring distribution of payments. The motivation, as evidenced by the banking transactions, was clearly financial and involved the payment of thousands of pounds. She noted that such offences threaten the security of the people in the United Kingdom and, as this court has made clear, such offences generally call for deterrent sentences. The maximum sentence for an offence committed at this time is 14 years' imprisonment.

12. The judge identified that there are no offence specific Sentencing Council guidelines and applied the General Guideline Overarching Principles. She had regard to a number of sentencing judgments of this court, from which it is clear that the appropriate penalty for all but the most minor offences of breach of UK immigration law is immediate custody. She noted that the offence is one which very often calls for a deterrent sentence. She also noted that in the present case there were a number of aggravating factors: first, the fact that that the offence is a conspiracy, each conspirator playing his or her part and supporting the others; secondly, the illegal entries were facilitated for strangers, as opposed to family members or on humanitarian grounds; thirdly, this was a commercial enterprise committed for significant financial gain; fourthly, there was a high degree of planning and organisation; and fifthly, there was some risk of harm to those confined in a very cramped space during the facilitations.

13. The trial judge was very well placed to make factual findings in relation to the complainant, having presided over the trial and had heard the applicant give evidence. She found that the applicant was personally responsible for smuggling people into the country, making all the travel arrangements and planning and carrying out three facilitations, or attempts, whilst gaining or expecting substantial financial advantage from her actions. She was in frequent contact with others who were involved in the conspiracy, including some who had not been apprehended. The judge was entitled to find, and found, based on the evidence at trial that far from acting under duress (as she had asserted at trial and had maintained to the author of the pre-sentence report), the applicant was a willing participant throughout and had a significant role in the operation.

14. The judge had express regard to the delay in the case. In the initial period from the applicant's interview shortly after she was stopped at the border (in which she denied any knowledge or involvement in the offence) an extensive and thorough examination of phone records and financial transactions was required. By 2018 evidence had been identified that linked her, Mohamadi and Sarteep to the second and third facilitation; and by 2019 Bakhtyar Ahmed, who was brought into the country by the applicant, had been identified, traced and interviewed.

15. However, nearly 12 months then elapsed before the conspirators were all charged by postal requisition in May 2020, and such delay remained unexplained. The conspirators all pleaded not guilty at the plea and trial preparation hearing in September 2020 and, due to pressures on the court system, the trial could not be heard until May 2024, with the result that the conspirators fell to be sentenced in August 2024 – over seven years after the offences

were committed. In this regard we have a helpful chronology of events prepared by Mr McMeekin on behalf of the applicant.

16. The judge rightly noted that a defendant should not benefit by reason of the fact that they have elected to have a trial, and that the court should not, by reason of delay alone, reduce the sentence to the extent that it would have been reduced if a guilty plea had been entered. She indicated that to the extent that there was any unjustified delay which had had a detrimental effect on any defendant, she would reflect that in the sentence she passed.

17. The judge had express and careful regard to the applicant's available mitigation, her previous good character, her age, her mental conditions, her ill-health (which included chronic arthritis and fibromyalgia), and the difficulties the applicant had with mobility. She made express reference to the pre-sentence report, to the addendum to that report, as well as to a letter from Dr Cole, a consultant in old age psychiatry, dated 19 August 2024, and to letters from the applicant's son. She also had the benefit of hearing the applicant give evidence at trial.

18. While she noted that the applicant's culpability was not reduced, she accepted that the applicant's physical and emotional vulnerabilities were such that a custodial sentence would have a greater impact upon her than it would if she had not had these vulnerabilities, which the delay had enhanced. In consequence, she would reduce the sentence to reflect this.

19. The judge concluded that but for the applicant's personal mitigation, the appropriate sentence would have been one of six years' imprisonment. This was reduced to four years by reason of the applicant's previous good character, the current prison conditions, and the impact of this and the delay upon her, having regard to her physical and mental health. This was, therefore, a reduction of one third from the sentence that would otherwise have been passed.

20. The proposed grounds of appeal on which leave was refused by the single judge and which are renewed before us today are:

> 1. That the judge had insufficient regard to the applicant's personal circumstances (her age and medical conditions) and the delay between the offence and the imposition of the sentence; and
>
> 2. That it would have been just and proportionate to take "an exceptional course" and to pass a Suspended Sentence Order, particularly in the light of the period spent on remand between conviction and sentence.

21. These grounds were elaborated upon in the written grounds of appeal prepared by Mr McMeekin on behalf of the applicant and in his oral submissions before us. He realistically accepted that in the ordinary course of events a deterrent sentence would be merited, and he took no issue with a sentence of six years' imprisonment after a trial, before consideration of the available mitigation and the effect of delay upon the applicant. He submitted that an overarching principle of sentencing was to have regard to the interests of justice and that, having regard to the combination of the applicant's personal circumstances and the delay between the offence and sentence, there should have been an even greater reduction than that, from six years to four years (a third), and that, at least in his ground of appeal, a suspended sentence or a community order should have been passed (which would have necessitated a two thirds reduction, even before consideration of whether the offending was so serious that only an immediate custodial sentence was appropriate).

22. We are grateful to Mr McMeekin for the quality of his written and oral submissions before us, but ultimately they are overambitious and unrealistic in submitting that the "exceptional course" of passing a community order should have been taken by the judge.

23. All of the points relied upon on behalf of the applicant were carefully considered by the judge. The applicant's defence had been that she was unaware of the stowaways and had always acted under duress. The judge, who had heard the trial, was entitled to conclude, as she did, that the applicant was the significant facilitator and a main player in the conspiracy, and did not act under any form of duress. She expressly took into account the applicant's personal circumstances, including the matters now raised, and accepted that prison would be a harder experience for the applicant as a result. She also took account of the delay.

24. This was very serious offending. It required a deterrent sentence before consideration of personal mitigation and delay. The judge had careful and express regard to the available personal mitigation and to the detrimental effect of delay, as well as the current prison conditions. She made a substantial reduction of one third to take account of such factors. Far from erring in doing so, such reduction was entirely apposite and appropriate. The offending was so serious that a custodial sentence of a length capable of suspension, still less the passing of a community order, was not a realistic option. Yet further, even if, contrary to our conclusion, it would have been possible to pass a sentence capable of suspension, the applicant's offending was so serious that only an immediate custodial sentence was appropriate.

25. Having regard to the seriousness of the offending, and weighing the numerous aggravating factors against the available personal mitigation and the impact of delay (all of which were identified and taken into account by the judge), the sentence passed of four years' imprisonment was not arguably manifestly excessive.

26. Accordingly, the application for leave to appeal against sentence is refused.
