



IN THE COURT OF APPEAL
CRIMINAL DIVISION
ON APPEAL FROM THE CROWN COURT AT
BIRMINGHAM
HHJ KERSHAW T20217259
CASE NO 202302669/A5-202302721/A5-202302763/A5

[2024] EWCA Crim 935

Royal Courts of Justice
Strand
London
WC2A 2LL

Friday 12 July 2024

Before:
LADY JUSTICE MACUR

MR JUSTICE BRYAN

MR JUSTICE FREEDMAN

REX
V
ALTIN HOTI
ELVIS HOTI
YLEBER HOTI

MR S RASHID appeared on behalf of the Applicant ALTIN HOTI.
MR A MONTGOMERY appeared on behalf of the Applicant ELVIS HOTI & YLEBER HOTI.

APPROVED JUDGMENT

MR JUSTICE BRYAN:

1. On 22 April 2022, in the Crown Court at Birmingham, Elvis Hoti pleaded guilty to counts 3, 4 and 5 on the indictment. Subsequently, on 28 March 2023, he pleaded guilty upon re-arraignment to counts 1 and 2.
2. On 27 May 2022, in the Crown Court at Birmingham, Altin Hoti pleaded guilty to count 2 on the indictment. Subsequently, on 12 August 2022, he pleaded guilty upon re-arraignment to counts 1 and 4.
3. On 31 March 2023, Yleber Hoti pleaded guilty upon re-arraignment to counts 1 and 2.
4. On 13 July 2023, in the Crown Court at Birmingham HHJ Kershaw sentenced the applicants as follows:
 - (1) Altin Hoti (then aged 36) on count 1 (conspiracy to supply Class A drugs) 12 years 10 months' imprisonment; on count 2 (conspiracy to supply Class A drugs), 8 years 6 months' imprisonment concurrent; on count 4 (conspiracy to supply a Class B drug) 3 years' imprisonment consecutive. A total sentence of 15 years 10 months' imprisonment.
 - (2) Elvis Hoti (then aged 26) on count 1 (conspiracy to supply Class A drugs) 11 years and 10 months' imprisonment; on count 2 (conspiracy to supply Class A drugs) 7 years 6 months' imprisonment concurrent; on count 3 (possessing a controlled drug of Class A with intent) 4 years' imprisonment concurrent; count 4 (conspiracy to supply Class B drugs) 4 years' imprisonment concurrent; and count 5 (conspiracy to supply Class B drugs) 4 years' imprisonment consecutive. A total sentence of 15 years and 10 months.
 - (3) Yleber Hoti (then aged 39) on count 1 (conspiracy to supply Class A drugs) 13 years and 6 months' imprisonment; on count 2 (conspiracy to supply Class A drugs) 8 years 6 months' imprisonment concurrent. A total sentence of 13 years and 6 months' imprisonment.
5. Altin Hoti and Elvis Hoti renew their applications for leave to appeal against sentence after refusal by the single judge. Yleber Hoti also renews his application for leave to appeal against sentence, the single judge having granted an extension of time to do so whilst refusing the application itself.
6. Altin, Elvis and Yleber Hoti were three brothers involved in a drug-dealing operation in South Warwickshire. Each had a different role within the business and the conspiracy spanned 1 January 2018 to 29 April 2021.
7. The conspiracies involved the use of numerous mobile phones. Of those that have been identified, seven were attributable to Altin Hoti, eight to Elvis Hoti and five to Yleber Hoti. The brothers had a car valeting and washing site in Wellesbourne and a restaurant in Stourbridge. Both were used as foils for their illegal activity.
8. The facts are comprehensively set out in the Prosecution Opening Note and the Defence Sentencing Note in each case. We have had careful regard to the matters there identified

but it is not necessary to set them out in full, given the degree of common ground as to factual events in relation to the grounds of appeal before us. What follows is simply a broad overview which gives the flavour of the conspiracies and the amounts of drugs and monies involved.

Count 1

9. Count 1 was a conspiracy to supply wholesale quantities of cocaine sourced from London and then passed on to others in Coventry and Bristol for onward sale. The London part of the operation was directed through a mobile telephone ending 30001 based in Enfield. Altin Hoti was the primary point of contact from that number. The Hoti brothers were assisted by a number of individuals including *Marlind Pjetergjokaj*, *Kevin Selimaj*, *Luke Hales*, *Roland Istrefi*, all of whom have either pleaded guilty or have been convicted in respect of their involvement.
10. Luke Hales was a wholesale customer of the Hoti brothers in Bristol. He was arrested on 20 March 2020, in Cheltenham, whilst in possession of 246 grams of cocaine and £18,410 of cash. Altin Hoti was the primary point of contact for Hales. On 22 March, Altin Hoti messaged a Mr Rexhaj and told him that Hales had been arrested. When Rexhaj asked if Hales owed money, Altin Hoti responded “£150,000”.
11. On 5 June 2020, Pjetergjokaj was arrested. Behind the back seat of his vehicle was a Tesco bag with £18,900 in cash. Another individual (Istrefi) was arrested and found with half a kilo of cocaine in a bag underneath his car passenger seat, valued at £18,000. In Istrefi’s house, £3,000 of cash and a growing crop of cannabis with a yield value of £20,000 was found.
12. On 28 August 2020, Elvis and Yleber Hoti met with a Kreshnik Lamnica at Costa Coffee in Coventry. Following that meeting, Elvis Hoti drove away in convoy with Bernard Morinaj to an address in Great Barr in Birmingham, where they met a money launderer named Heng Teng Lin, to whom they gave £299,350 in drugs money. Heng Teng Lin was arrested soon thereafter.
13. Bernard Morinaj was arrested on 13 November 2020 whilst driving from Coventry to Gloucester. He was found in possession of £48,000 in cash. Morinaj had been in contact with Elvis Hoti, who then contacted Yleber Hoti, who travelled to the same location as Morinaj half-an-hour before Morinaj’s arrest. The cash was concealed in a hide in Morinaj’s vehicle.
14. Messages found on Yleber Hoti’s mobile phone showed that the Hoti brothers tried to keep the operation running following Bernard Morinaj’s arrest. On 16 December 2022, Kevin Selimaj left Enfield and drove to Park Hill where he was met by Hassan Mohammed, who had been sent by the Hoti brothers to collect the drugs from Selimaj. Police were present and approached the men. Selimaj had a bag containing a kilo block of cocaine valued between £38,000 and £44,000. Mohammed fled but was in communication with Altin Hoti before and afterwards.
15. In January 2021, messages were exchanged between Yleber and Altin Hoti about meeting

Hales in Bristol. Arrangements were made for someone to travel to see Hales in Bristol on 10 January. Three days later, Hales was arrested in the passenger seat of a car. He was in possession of £23,000 in cash. Officers found a kilogram block of cocaine at Hales's home address. Altin Hoti messaged Hales the following day to ask if he was all right. Contact between the two continued on almost a daily basis apart from between the 4 and 9 April when Elvis Hoti stood in. On 8 April, Elvis Hoti made a trip to deliver to Hales. He was given a Bath postcode at an address on Longleat Terrace. Hales was arrested at that address on 7 May 2021. Officers found 1.5 kilograms of cocaine worth between £16,000 and £35,000 and 30 kilograms of cannabis, worth between £90,000 and £120,000.

16. There were nine deliveries from London to Coventry that were known about. Of those nine loads, three were seized, one was half a kilogram of cocaine and the others a kilogram each.

Counts 2 and 3 (Count 3 - Elvis Hoti only)

17. Count 2 was a conspiracy to supply cocaine to local drug users in South Warwickshire. Whilst count 3 was a single incident where Elvis Hoti was stopped on 29 August 2018 in Nuneaton and found in possession of cocaine and cash.
18. Messages recovered from Yleber Hoti's personal mobile telephone showed that between January and June 2018, he was regularly supplying cocaine to a local man, Matt Cotter - sometimes on a daily basis. Cotter would collect the drugs from Yleber Hoti at the family carwash or would be directed to pick them up from Altin Hoti. On other occasions Elvis Hoti would deliver the drugs to Cotter.
19. On 29 August 2018, police stopped Elvis Hoti while driving a motor vehicle with false number plates. Inside the car was a container with 13 small bags of cocaine (approximately half a gram each) and £220 in cash. His home address in Coventry was searched; £1,170 in cash was found in a jacket. Outside the property was a Seat motorcar which contained a 122 gram block of cocaine valued at approximately £10,000, digital scales and items to wrap and bag individual deals.
20. On 23 July 2019, police raided a unit at Oakes in Wellesbourne, located just down the road from the Hotis' car valeting business. Cocaine valued at £20,000 was found. The drugs had been bagged and were ready for sale. Rexhaj was arrested on the premises and pleaded guilty to possession of drugs with intent to supply. The unit had been leased to a man named Kestusis Simonatis. On 30 January 2020, Simonatis was seen to meet with all three Hoti brothers at their car valet business.
21. When Yleber Hoti was arrested, a mobile telephone ending 8070 was found at his address. Between December 2019 and April 2021 messages on the mobile telephone showed that over £730,000 in drug deals had been made. If the quantities were sold at a street value of £50 for ½ gram, that equated to 7 kilograms of cocaine or 14,600 individual deals.

Count 4 (Altin and Elvis Hoti)

22. Between 1st July 2019 and 29 April 2021, Altin Hoti, Elvis Hoti and Kreshnik Lamnica were involved in a conspiracy to supply cannabis, mainly in Chester. They used others, including *Darren Burr, Thomas Hickey and Alex Cooper*, to deliver the drugs or money.
23. Elvis and Altin Hoti and Lamnica would obtain the cannabis directly from factories where they were grown and arranged for the drugs to be transported away from the Midlands for onward sale. Burr and Hickey were couriers based in Midlands; Cooper was a courier based in Chester.
24. There were various police stops of vehicles and various police searches of addresses in which significant quantities of money and cannabis were found. It suffices to give but a few examples.
25. On 6 August 2020, police executed a search warrant at the address at Beaumont Road. It was a professionally set up cannabis factory with a potential yield of between £8,600 and £28,000 per crop. A mobile telephone was seized and had messages from three mobile telephones linked to Altin Hoti on it, as well as messages from two mobile telephones linked to Elvis Hoti, and another mobile attributed to Lamnica. Alex Cooper was stopped in his car and was arrested on 9 October 2020. Inside the vehicle were 15 1-kilogram bags of herbal cannabis with a value between £60,000 and £75,000.
26. On 14 November 2020, police raided two addresses in Walsall Street that had been turned into cannabis factories. At No 62 there were 133 plants spread over three floors with a yield of between £37,000 and £110,000. At No 64 there were 153 plants over three floors with a value of between £42,000 and £128,000. A mobile telephone left at the property had been in contact with numbers attributable to Altin Hoti, Lamnica and to Bernard Morinaj

Count 5

27. Count 5 was a conspiracy to supply cannabis in respect of Elvis Hoti only. On 27 May 2021, Luke Hales was arrested for a third time. At his address, officers found 1½ kilograms of cocaine (valued between £16,000 and £35,000) and 30 kilograms of cannabis (worth between £90,000 and £120,000). A mobile telephone seized from Hales was used by Elvis Hoti. Messages between the two men showed that Elvis Hoti had been supplying cannabis to Hales on a regular basis up until 26 May 2021.

The Sentencing Remarks

28. In his sentencing remarks the Learned Judge identified that the case involved sophisticated and extensive drug dealing in amounts that show on occasions clear wholesale amounts of drugs, with an extensive operation to provide and supply Class A drugs in the main with a level of supply of cannabis was also extremely high and very serious. It was a clear business that was being run by the three Hoti brothers and as such was a “family” business. As conspirators, those involved in the conspiracies lended support to the co-conspirators which was an aggravating factor. He imposed overall terms for each offender to reflect the defendant’s overall criminality rather than simply imposing separate individual sentences.

29. He stated the scale of the conspiracy on counts 1 and 2 involved an enormous distribution of Class A drugs, with at times drug seized being in larger blocks or measured in kilos or part kilos and moneys seized were in the tens of thousands. He referred to Yleber Hoti messaging that he would stop when he had made £1 million and messages on his phone indicating that something like £700,000 was generated from drug dealing. The Learned Judge identified that that part alone revealed a conspiracy indicative of amounts “clearly well over” 5 kilograms (the indicative quantity under Category 1).
30. In terms of role, he considered all the Hoti brothers had a *leading role*, identifying multiple *leading role* factors. Whilst there was a hierarchy among the brothers, he treated the eldest two (that is Yleber and Altin) as occupying similar roles, with Elvis (the youngest brother) still performing a *leading role* (with him organising those below him in the chain) but at the behest of his older brothers (with he and Altin also having a *leading role* in the cannabis conspiracy).
31. Category 1 *leading role* for Class A drugs has a starting point of 14 years’ custody (based on 5 kilograms) with a range of 12 to 16 years’ custody.
32. In relation to Altin Hoti, the Learned Judge sentencing in respect of the criminality on both counts 1 and 2 identified that the least term at trial would be 16 years’ imprisonment which, after 20 per cent credit for guilty plea, was 12 years and 10 months with a concurrent sentence of 8½ years on count 2. On count 4 (the cannabis conspiracy) he identified that a consecutive sentence was necessary for what was a separate conspiracy involving different drugs. He took a sentence at trial of 7 years’ imprisonment, which he reduced by 15 per cent for the guilty plea to 6 years’ imprisonment. He then halved that, having regard to totality, to 3 years’ imprisonment, a total sentence of 15 years and 10 months’ imprisonment.
33. In relation to Yleber Hoti, sentencing in respect of counts 1 and 2, he identified again the least sentence at trial would be 16 years with 15 per cent credit for plea, to produce a term of 13 years 6 months’ imprisonment, with 8 years 6 months’ imprisonment concurrent on count 2.
34. In relation to Elvis Hoti, in respect of counts 1 and 2 and reflecting his lesser but still *leading role*, he identified the least sentence at trial would be one of 14 years’ imprisonment, less 15 per cent credit for guilty plea, a sentence of 11 years and 10 months with 7 years 6 months concurrent in respect of count 2. Count 3, a sentence of 4 years’ imprisonment but concurrent as part of the conspiracy. Counts 4 and 5 were treated together, and he considered the least sentence at trial on count 5 would be 9 years’ imprisonment less 27 per cent guilty plea, reducing it to 7 years. He then reduced that to reflect totality to one of 5 years’ imprisonment consecutive, a total sentence of 15 years and 10 months’ imprisonment.

The Grounds of Appeal

35. On behalf of Altin Hoti, it is submitted that the sentence passed was manifestly excessive in that:
- (1) The 16-year sentence at trial (at the top of the range) was too high. There were no

aggravating factors justifying a departure from the 14-year starting point and the sentence was artificially increased to create a gap between Elvis Hoti and the other two brothers and/or

(2) Insufficient reduction was made for available mitigation and/or

(3) Whilst 20 per cent credit was appropriate, given that the other brothers were given a (generous) 15 per cent credit rather than 10 per cent credit, there should have been a further downward adjustment by way of mitigation in the case of Altin Hoti to avoid disparity (reference being made to *R v Plaku* [2021] EWCA Crim 568) and/or

(4) Given that the criminality was the supply of drugs, both cocaine and cannabis, arising out of the same facts, the cannabis sentences should have been concurrent (reference being made to *R v Lines* [2016] EWCA Crim 2104).

36. On behalf of Yleber Hoti, it is submitted that the sentence was manifestly excessive, in that:

(1) Yleber Hoti should have been sentenced at the upper end of *significant role* not *leading role* and/or

(2) The 16-year sentence at trial (at the top of the range) was too high and/or

(3) Insufficient reduction was made for available mitigation.

37. On behalf of Elvis Hoti, it is submitted that the sentence passed was manifestly excessive in that:

(1) The Learned Judge erred in making the sentence on count 5 (cannabis) consecutive to the cocaine counts 1 and 2 and/or

(2) In imposing an overall sentence of 15 years 10 months, the Learned Judge did not have adequate regard to the principle of totality and/or

(3) Wrongly assessed Elvis Hoti's role as a *leading role* rather than *significant role* and

(4) The total sentence ought to have reflected a disparity in role between the defendant and his brother, Altin Hoti.

38. We are most grateful to counsel, Mr S Rashid, who appears pro bono for Altin Hoti, and Mr A Montgomery, who appears pro bono for both Elvis Hoti and Yleber Hoti, for the quality of their written and oral submissions before us.

39. However, like the single judge before us, we do not consider that there is upon examination any merit in the proposed grounds of appeal. We will take each applicant in turn and their respective grounds.

40. However, before doing so and turning to their individual grounds, we would make a number of overarching observations.

41. In relation to count 1, category 1 *leading role* under the drugs guideline (range 12 to 16 years' custody), that has a starting point of 14 years' custody, which is based on an indicative quantity of 5 kilograms of cocaine. It is clear, on the Learned Judge's findings, that the amounts involved were, as he put it, "well over that amount" which, in of itself justified a very significant increase from the starting point (at least to the top of range if not beyond). Secondly, a further significant increase from the starting point was required to reflect the totality of the Class A drugs offending across counts 1 and 2 (count 2 itself

reflecting further serious Class A drug offending). Thirdly, the fact that what was being sentenced was a conspiracy was a further aggravating factor justifying a further increase. In combination, these factors justified going out with the category 1 *leading role* range, before consideration of other aggravating and mitigating factors.

42. Fourthly, the Drugs Guidelines expressly 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 role of the offender.”

We note that the prosecution did not seek to argue that the overall Class A conspiracy amounted to an operation on the most serious and commercial scale, and it appears that the Learned Judge did not sentence on the basis that it was. We have to say that we consider that to be very much to the advantage of the applicants in this case. In circumstances where, as the Learned Judge found, the case involves sophisticated and extensive drug dealing of wholesale amounts of Class A drugs (in many cases in 1 kilo blocks) with “directing and organising on a commercial scale” and with close links to the original source in the case of each of the applicants (as the Learned Judge expressly found).

43. On any view, it would have been difficult to see a sentence very much higher than 16 years’ imprisonment as inappropriate (even before considering aggravating and mitigating factors).

44. We also consider it incorrect to submit that there were no aggravating factors; we consider there were a number of aggravating factors; the operation was determined, well organised and sophisticated; there was the use of multiple phone numbers and dedicated cell phones with a changing of numbers after adverse events, arrests, seizures and other disruptions were treated as a mere logistical problem, and in no manner dissuaded the defendants from continuing the family business as a carwash and a restaurant which were used as a shield; there was a wealth of false identity documents and paperwork; and others were recruited into the conspiracy to play subordinate roles.

45. So far as the roles of different participants in the conspiracy are concerned, we consider that what was said by Leggatt LJ (as he then was) in *R v Williams (Declan)* [2019] EWCA Crim 279 to be apposite:

“3. Before addressing these individual appeals, it is worth emphasising the general difficulties which face defendants who seek to appeal against their sentence in cases of this kind where a judge has sentenced many defendants for their various parts in a large conspiracy to supply drugs. In such a case the judge will usually have had charge of the case over many months and at a series of hearings, will have read or heard the prosecution evidence as it relates to all the defendants and he may have conducted trials or *Newton* hearings in relation to some of them. It is self-evident

that in those circumstances the sentencing judge is uniquely well placed to consider the different roles of the various conspirators and the nature and extent of each person's involvement. The judge is thus also uniquely well placed to calibrate the sentences imposed so as to achieve parity among the defendants and reflect their relative levels of responsibility.

4. The Court of Appeal does not have those advantages. So unless it can be shown that in sentencing a particular defendant the judge did so on a factual basis which is obviously mistaken, or that the judge made an error of principle, or that in assessing the weight which should or should not be given to one or more relevant factors the judge formed a view which no reasonable judge, acting reasonably, could have formed, the Court of Appeal is most unlikely to think it right to interfere with the judge's assessment of the appropriate sentence. Arguments that the judge misappraised the level of a defendant's role in the conspiracy or imposed a sentence which is unfair in comparison with the sentences imposed on other defendants will seldom have any realistic prospect of success."

46. Turning then to the individual grounds of appeal starting with those of Altin Hoti.

- (1) It is accepted on behalf of Altin Hoti that the Learned Judge was entitled to place Altin Hoti in category 1 *leading role*. For the reasons already identified above, the Learned Sentencing Judge was also entitled to increase significantly from the 14-year starting point (and beyond the top of the range) having regard to the quantities of Class A drugs involved, the fact that the judge was sentencing for the totality of offending across counts 1 and 2, the fact that he was sentencing for involvement in a conspiracy and for the further aggravating factors identified above.
- (2) There is no substance in the allegations that the sentence of 16 years' imprisonment was arrived at, to provide a distinction from the 14-year sentence at trial in respect of Elvis Hoti. The Learned Judge was particularly well placed to identify and distinguish between the respective roles of those involved in the conspiracy and was justified in concluding that Elvis Hoti's sentence at trial on counts 1 and 2 should be lower than that of Altin Hoti.
- (3) The Learned Judge had expressed regard to the available mitigation (at 10G to 11C of his sentencing remarks) although, as also noted by the single judge, the scale and highly organised nature of the serious drugs offending meant that such mitigation could only result in a modest downward reduction. The Learned Judge also had express regard to prison conditions and the state of the prison population.
- (4) The sentence passed on count 1 of 16 years at trial (12 years 10 months' imprisonment after the appropriate 20 per cent credit) was not arguably manifestly excessive and the suggestion that there should have been a further reduction to avoid disparity, given the 15 per cent reduction given to those that pleaded guilty after the start of trial (in order to honour an indication the judge

had given) is both novel and without foundation. It finds no support in the reduction of sentence for a guilty plea guideline nor in the case of *R v Plaku (supra)*.

- (5) The cannabis conspiracy was a separate and substantial conspiracy for a period of nearly 2 years concerning a different drug, sourced through a different operation, involving different individuals. It would have been open to the judge to impose a single sentence for the Class A offence, increased to reflect the full range of offences or to impose a consecutive sentence reduced to reflect considerations of totality (see in this regard what was said in *R v Lines (supra)* at [14]). The judge chose the latter option as he was entitled to do. The judge made a very substantial reduction to the cannabis sentence to reflect totality. The judge could have passed a higher sentence on count 1 and passed a concurrent sentence in respect of the cannabis conspiracy but, if he had done so, we consider that the overall sentence would have been no different to that which was imposed.
 - (6) The total sentence passed at 15 years and 10 months' imprisonment was not arguably manifestly excessive.
47. In relation to grounds of appeal of Yleber Hoti, and as already noted, the identification of the respective roles of those involved in the conspiracy was a matter for the learned judge and it cannot be suggested that he erred in principle in considering that Yleber Hoti performed a *leading role* and stood to be sentenced as such. For the reasons already addressed, a sentence at trial of 16 years' imprisonment was not arguably manifestly excessive for a *leading role* in a Class A drugs conspiracy and the learned judge did not err in his treatment of the available mitigation in relation to Yleber Hoti to which he had express regard (at 13B to 13E of his Sentencing Remarks). The sentence passed of 13 years 6 months' imprisonment to reflect the totality of the offending across 1 and 2 after the (generous) 50 per cent credit was not arguably manifestly excessive.
48. In relation to the grounds of appeal of Elvis Hoti:
- (1) The Learned Judge did not err in making the sentence on count 5 (cannabis) consecutive to the cocaine counts (1 and 2) for the reasons identified.
 - (2) The Learned Judge had express and careful regard to totality in imposing an overall sentence of 15 years' 10 months' imprisonment.
 - (3) Identification with respective roles of those involved in the conspiracy was a matter for the Learned Judge. It cannot be suggested that he erred in principle in considering that Elvis Hoti performed a *leading role*.
 - (4) The Learned Judge made an appropriate adjustment to the sentence at trial to reflect the fact that Elvis Hoti's role was below his older brothers in respect of the hierarchy.
49. Accordingly, the renewed applications for leave to appeal against sentence are refused.