



Neutral Citation No. [2023] EWHC 1690 (SCCO)

Case No: T20210222

SCCO Reference: SC-2022-CRI-000080

IN THE HIGH COURT OF JUSTICE
SENIOR COURTS COSTS OFFICE

Thomas More Building
Royal Courts of Justice
London, WC2A 2LL

Date: 26th June 2023

Before:

COSTS JUDGE WHALAN

R

v

CHLOE DEMPSTER

**Judgment on Appeal under Regulation 29 of the Criminal Legal Aid (Remuneration)
Regulations 2013**

Appellant: Ross Solicitors Ltd

The appeal has been unsuccessful for the reasons set out below.

COSTS JUDGE WHALAN

Introduction

1. Ross Solicitors Limited ('the Appellants') appeal the decision of the Determining Officer at the Legal Aid Agency ('the Respondent') in respect of a claim submitted under the Litigator's Graduated Fees Scheme ('LGFS'). The issue is whether the Appellants are entitled to a graduated fee based on a 'cracked trial', as claimed, or whether it should be allowed as a 'guilty plea', as assessed by the Respondent.

Application for adjournment

2. On 23rd August 2022 I issued a Notice of Hearing listing this appeal at 12 noon on 3rd February 2023. At 11:46 hours on 3rd February 2023, my clerk received the following e-mail from Ms Margaret-Victoria Quarshi at the Government Legal Department:

We would like to apologise to both the Court and Mr Ross. We are very sorry, this case did not appear in our internal case list. The Lord Chancellor seeks an adjournment so that we can attend the hearing at a later date. However, in the circumstances we would understand if the Court wishes to proceed in our absence.

The application for an adjournment was opposed by Mr Ross for the Appellants.

3. I considered the Appellants' request carefully but rejected the application for an adjournment. This case had been in the Court's diary for six months and it was unreasonable for such an application to be proffered literally minutes before the listed hearing. An adjournment would have led unreasonably to additional, unnecessary expenditure by the Appellants, and it would have wasted court time. Given the detailed Written Reasons dated 27th May 2022, the Respondent's position in the appeal was not unduly prejudiced by refusal of the application.

Background

4. The Appellants represented Ms Chloe Dempster ('the Defendant') who appeared at Swindon Crown Court with a co-defendant, Mitchell Hicks, on an indictment alleging four counts of possession of Class B drugs with intent to supply, concerning the supply of Class B drugs, possessing criminal property and permitting her premises to

be used for supplying Class B drugs. Initially, the indictment alleged three counts, but a fourth count was added shortly before the pre-trial preparation hearing.

5. The pre-trial preparation hearing ('PTPH') was listed on 14th January 2022. The Defendant entered mixed pleas, pleading not guilty to counts 1 and 2, but guilty to counts 3 and 4. Intended pleas had been indicated to the prosecution on 13th January 2022, shortly before the PTPH. The prosecution did not indicate at the PTPH that the Defendant's pleas were accepted. Swindon Crown Court, as (apparently) is local practise, adjourned the case to 17th February 2022 for 'possible sentencing'. At the same time, the court office recorded that: "If trial date needed, 25th April 2022 (fixture)".
6. Sometime thereafter, the Crown indicated that the Defendant's pleas were acceptable. Sentencing then took place on 15th March 2022.

The Regulations

7. Legal aid was granted to the Defendant in November 2021 and so The Criminal Legal Aid (Remuneration) Regulations 2013 ('the 2013 Regulations'), as amended in 2018, apply to this appeal.
8. Schedule 2, Litigator's Graduated Fees Scheme, Part 6, contains the following relevant definitions:

"Cracked Trial" means a case on indictment in which –

(a) a plea and case management hearing takes place and –

(i) the case does not proceed to trial (whether by reason of pleas of guilty or for other reasons) or the prosecution offers no evidence; and

(ii) either –

(aa) in respect of one or more counts to which the assisted person has pleaded guilty, the assisted person did not so plead at the plea and case management hearing; or

(bb) in respect of one or more counts which did not proceed, the prosecution did not, before or at the plea and case management hearing, declare an intention of not proceeding with them; or

(b) the case is listed for trial without a plea and case management hearing taking place;

“guilty plea” means the case on indictment which –

(a) is disposed of without a trial because the assisted person pleaded guilty to one or more counts; and

(b) is not a cracked trial; ...

Submissions

9. The Respondent’s case is set out in Written Reasons dated 27th May 2022. No appearance was made at the appeal hearing on 3rd February 2023. The Appellants’ case is set out in Grounds of Appeal and a document entitled Appeal to SCCO dated 4th July 2022. Mr Ross, solicitor, appeared and made oral submissions at the appeal hearing.

My analysis and conclusions

10. The Respondent, in summary, submits that while the prosecution could not indicate on 14th January 2022 the pleas offered would be acceptable, this cannot be assessed as a cracked trial. It is common for cases where mixed pleas are entered to proceed in this way. Sensibly, at the conclusion of the PTPH, the court at Swindon pencilled in both a sentencing hearing and a trial fixture, pending the Crown’s indication. If this automatically entitles the defence to a cracked trial fee, that would, argues the Respondent, effectively “make a nonsense of the distinction (and the reason for that distinction) between the fee for a guilty plea and the fee for a cracked trial”. Shortly thereafter, the pleas were accepted and the case proceeded to sentence. Realistically, at no point after the PTPH were the parties anticipating or preparing actively for a trial. The Determining Officer relied on (albeit without citation) the decisions of Master Pollard in R v. Mohammed [2000] and Master Rogers in R v. Pelepenka [2001]. The import of these decisions was that ‘in adjourning a plea and directions hearing to allow the prosecution a chance to decide whether or not to proceed would not qualify for a cracked trial fee’.
11. The Appellants, in summary, submit that this claim falls within para. 1(a) (ii)(bb) of Schedule 2 to the 2013 Regulations. Mixed pleas were entered (and indicated prior to) at the PTPH, at which point the prosecution was unable to indicate whether these

pleas were acceptable. As such, the trial date was ‘pencilled in’ although a sentencing hearing was listed similarly. It was sometime later – the Appellants suggest as late as 14th March 2022, the date of the sentencing hearing – when the prosecution indicated that the Defendant’s fees were acceptable. Mr Ross distinguishes R v. Mohammed and R v. Pelepenka (ibid) on the basis that in both cases the pleas and directions hearing was adjourned specifically to see what the Crown wanted to do. Here, in contrast, both sentencing and trial dates were listed, as an example of sensible, effective court management.

12. The regulations concerning ‘cracked trials’, it seems to me, seek practically to draw a distinction between those cases where after the PTPH the parties demonstrate collectively an intention to proceed to trial, but where this intention is subject to a later change of course, from those cases where there is, in practise, no such intention to proceed to trial, as mixed pleas have been entered, in circumstances where they may well be acceptable to the Crown, and where the prosecution needs a little more time to make a final decision. This is a fairly common scenario in the Crown Courts. I agree with the Respondent that it would be unreasonable for a cracked trial fee to be triggered every time this occurred. Ultimately, every case turns on its own facts, and the facts will require more than in this case before a cracked trial fee is payable. Here pleas were accepted at least a month before the tentative trial fixture (in a relatively tight chronology), in circumstances where the defence had a reasonably clear expectation from the PTPH. For all these reasons, I conclude that, in this case, the fee payable should be determined as a guilty plea and not a cracked trial. Accordingly, this appeal is dismissed.

TO:

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