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Neutral Citation No. [2023] EWCA Crim 938

IN THE COURT OF APPEAL  
CRIMINAL DIVISION

Case No: 2023/01075/A3, 2023/01674/A1



Royal Courts of Justice  
The Strand  
London  
WC2A 2LL

Tuesday 25<sup>th</sup> July 2023

**B e f o r e:**

**LORD JUSTICE DINGEMANS**

**MR JUSTICE PICKEN**

**MRS JUSTICE YIP DBE**

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**ATTORNEY GENERAL'S REFERENCE**

**UNDER SECTION 36 OF**

**THE CRIMINAL JUSTICE ACT 1988**

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**R E X**

**- v -**

**MARK HOBBS**

**JOHN WILLIAM ANDERSON**

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Lower Ground, 18-22 Furnival Street, London EC4A 1JS  
Tel No: 020 7404 1400; Email: rcj@epiqglobal.co.uk (Official Shorthand Writers to the Court)

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**Mr B Lloyd** appeared on behalf of the Attorney General

**Mr M Neofytou and Miss C Gaber** appeared on behalf of the Offender Mark Hobbs

**Miss T J Ayling KC** appeared on behalf of the Offender John William Anderson

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

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## **LORD JUSTICE DINGEMANS:**

### **Introduction**

1. This is an application by Her Majesty's Solicitor General, under section 36 of the Criminal Justice Act 1988, for leave to refer to this court two sentences which he considers to be unduly lenient.

2. The first offender is Mark Hobbs; he is aged 53, of effective good character and worked as a supermarket delivery driver before suffering an injury. The second offender is John William Anderson; he is aged 58 and is also of effective good character.

3. On 3<sup>rd</sup> March 2023, in the Crown Court at Guildford, having been convicted following a trial, Mr Hobbs was sentenced for two offences. The first (count 5) was conspiracy to supply cocaine (175 kilograms which had come from South America to Spain). The conspiracy, which also involved, among others, Mr Anderson, lasted from June 2018 to May 2019, when the quantity of 175 kilograms of cocaine was seized in Spain as part of a larger seizure of one tonne of cocaine. Mr Hobbs' role lasted from June 2018 to January 2019, when he had to leave the conspiracy because he had been closely associated with another conspirator, Mr Song, who had been arrested. Mr Hobbs' role was to deal with the finances of the conspiracy. Mr Hobbs was sentenced to three years' imprisonment for that offence.

4. The second offence (count 3), to which Mr Hobbs had pleaded guilty at a time when he was entitled to 20 per cent credit for a guilty plea, was one of being involved in the supply of cocaine together with his son in the Hampshire area. For that offence Mr Hobbs was sentenced to a consecutive term of two years and three months' imprisonment. His overall sentence was, therefore, one of five years and three months' imprisonment.

5. It is submitted on behalf of the Solicitor General that the judge was wrong to find that Mr

Hobbs did not have a "significant role" in the conspiracy, and that the judge was wrong to apply the money laundering guidelines when there was an offence specific guideline for supplying drugs. On behalf of Mr Hobbs, it was submitted that this was an experienced judge who had seen Mr Hobbs give evidence over two days during the course of a 29 day trial, who had heard three contested *Newton* hearings for co-conspirators, Mr Lockyer, Mr Harris and Mr Plume, and that the judge had worked out that Mr Hobbs was less important and that he could be jettisoned quickly from the conspiracy. It was submitted that the judge was right to note that Mr Hobbs acted on the direction of Mr Anderson and that his gains (guesstimated at about £12,000) were very limited, albeit that he had the use of cars. It was submitted that the judge was right to have regard to the money laundering guideline, given Mr Hobbs' role, and that the sentence did not fall outside the range of sentences which a judge might reasonably consider appropriate.

6. On 24<sup>th</sup> April 2023, in the Crown Court at Guildford, Mr Anderson was sentenced for an offence of conspiracy to supply cocaine. It was the same conspiracy for which Mr Hobbs had been convicted. After the count of conspiracy had been added, Mr Anderson pleaded guilty on 8<sup>th</sup> March 2023. He did not maintain his basis of plea. He was sentenced on the full prosecution case. His role had lasted throughout the conspiracy. It is submitted on behalf of the Solicitor General that the judge should have placed Mr Anderson in a "leading" and not a "significant" role; that if his was a "significant" role, he should have been at the top of the range; that the increase to reflect the volume of drugs was too low; and that the reduction for mitigation and the effect of the Covid-19 pandemic in prison was too great.

7. On behalf of Mr Anderson it is submitted that the judge was able to assign roles to each conspirator; that he had been able to pass sentence without the need for a *Newton* hearing; that the judge needed to reflect the actual role carried out by the relevant offender, see *R v Khan* [2013] EWCA Crim 800; and that the factual assessments of a judge should not be

easily disturbed. The judge had relied on the Encrochat material to find that Mr Anderson was not able to exert influence on those above him in the chain, including Mr Lockyer, but that he did involve Mr Hobbs in the conspiracy. The judge had found that Mr Anderson's financial reward was significant, but it could not be described as a significant financial advantage, given the sums to be expected by those higher in the chain. The judge had added on four years to reflect the nature of the conspiracy, which was hardly a small increase.

8. We are very grateful to Mr Lloyd on behalf of the Solicitor General, Miss Ayling KC on behalf of Mr Anderson, and Mr Neofytou and Miss Gaber on behalf of Mr Hobbs, for their helpful written and oral submissions. We should note that Mr Hobbs and Mr Anderson were charged with co-defendants, Mark Lockyer, Alan Harris, Mark Plume, Donna Flynn and Ting Run Song, to whom we have already made brief reference. A defendant was found not guilty, and Mr Steven Flynn (the husband of Donna Flynn) is awaiting trial in Spain.

### **The Factual Circumstances**

9. The conspiracy involved an organised crime group which was concerned in the supply of cocaine into and then within the United Kingdom. At the top, it involved the sourcing of cocaine in South America, and a network of individuals to receive and distribute the cocaine on its arrival in Europe, which made the attribution of roles particularly important. The investigation commenced in June 2018 and led ultimately to the seizure of the cocaine in Spain in May 2019, and then to the arrests of persons in Spain and persons in the United Kingdom.

10. On 12<sup>th</sup> February 2021, Mark Lockyer, who was a leader within the conspiracy, was arrested returning to the United Kingdom from Cairo. That prompted a series of other co-ordinated arrests in the United Kingdom.

11. Surveillance and enquiries led by officers of the Southeast Regional Organised Crime Unit had helped to identify the relevant roles of the various defendants. Further insight into the operations of the group was provided by encrypted telephone data, or "Encrochat" material. Individuals within the group had different functions which ranged from sourcing cocaine in South America, to making arrangements for its receipt in Spain and its onward movement to the United Kingdom, and to the planned ultimate distribution of the cocaine within the United Kingdom.

12. Mark Lockyer was a leading player in the conspiracy. He was responsible for the international movement of the drugs. He organised all the stages of the importation from Bolivia and Colombia to Spain and the United Kingdom. He operated on an industrial scale, and he had managed to avoid leaving a digital footprint. He had a "leading" role in the organised international crime at the highest level. It was an ongoing complex business involving regular multi-kilo quantities of cocaine.

13. Alan Harris played a "leading" role in the organised group, including organising the movement of large amounts of cocaine into the United Kingdom. He co-ordinated the actions of the more junior members of the group using an Encrochat phone. He maintained contact with those operating in Spain, and had particular connection with Lockyer, Anderson, and both Flynns.

14. Mark Plume co-ordinated and arranged the movement of high purity cocaine. Examination of his encrypted communications demonstrated that he played a "leading" role in the international supply of the drugs. He met Mr Anderson regularly but without leaving a trace of calls, indicating that there were probably more encrypted phones which had been used but which had not been identified. Amongst other matters, he had met Mr Anderson in January 2019 in Basingstoke. Mr Anderson had arranged for the supply of Encro phones to

the group, arranged storage facilities and was involved in the transfer of cash for the group. The timing of the meeting on 15<sup>th</sup> January 2019 and the detail of the discussion was consistent with other evidence that Mr Plume was linked to the cocaine seized in Spain.

15. The offender John Anderson assisted in the international trafficking of cocaine and the onward supply in the United Kingdom. He supplied the Encrochat phones. He was involved in controlling the finances of the group and was going to be responsible for the safe storage of the cocaine seized in May 2019. Mr Anderson had been involved with others in the drug trade, including Mr Hughes, who was arrested at the end of 2018. Mr Anderson rented a shipping container on the River Thames. Within it he constructed a "hide", which was a white metal container which housed three storage voids, which was designed to be used for storing the drugs. He played a role in the group's accounting, for which he acquired the nickname "paper man" for his trips to a money exchange in North London, and he is referred to in the Encrochat material as attending "wire shops". He devolved some of this responsibility to Mr Hobbs. He was concerned in the handling of funds, including cash deposits and transfers. There was no record of any legitimate employment. He had meetings on various dates with others connected directly or indirectly with the group.

16. After Mr Anderson's release from his first arrest in 2019, he obtained a new Encrochat telephone which indicated his commitment to the conspiracy. It is apparent that he was released under investigation and had not been bailed at that stage. That replacement Encrochat telephone was seized on 9<sup>th</sup> January 2020. It had been activated on 29<sup>th</sup> May 2019. Mr Anderson had lived a cash-rich lifestyle. He paid, for example, for the rental of his flats in cash and on time. He had received about £70,000 in cash from unknown sources.

17. A timeline had been prepared with commendable skill and care by those involved in the prosecution. It identified the various roles of Mr Anderson and Mr Hobbs. For example,

there was an exchange on telephones saying, "Let's see if he takes it. He won't have to cut it up". They had met with two men with a large suitcase. There had been a meeting with Mr Hobbs and Mr Anderson, when Mr Hobbs had given Mr Anderson a brown bag. Mr Anderson had been in the vicinity of Mr Song's address when it was apparent from text messages that the latter had received cash from Mr Anderson. There had been meetings and handovers of bags. There had been meetings with Miss Flynn in Windsor. There had been cash deposits from Miss Flynn. Mr Anderson had been involved with detailed discussions with Encrochat contacts about arrangements for paying rent for a villa in Spain. Mr Flynn had maintained contact with Mr Anderson. There had been meetings between Mr Plume and Mr Anderson. There had been a meeting with Mr Hobbs, which had marked Mr Hobbs leaving the group, having been compromised by Mr Song's arrest. Mr Anderson had received the money that Mr Hobbs had been handed. £40,940 had been paid over to Mr Anderson. There were recordings of telephone conversations, with Mr Anderson saying: "He said they're dragging their heels, but he said from this weekend I'm going to Colombia and I'm sitting with them until the job is done", and of him managing the team dynamic by saying: "You two need to come up with a plan of how to talk to each other". He talked about the car man having transferred money. There were numerous other examples, all set out in the timeline.

18. As far as Mr Hobbs' role was concerned, he was involved in the finances of the group. He had particular roles of delivering cash generated by the sale of cocaine. He stored, collected and delivered cash for a wage. There is reference to £200 being paid for his role on various days. He was seen to meet Mr Anderson on a regular basis on a number of different occasions and at different locations. As noted above, those meetings included visits to Mr Anderson's home address. He was a trusted member of the group. He was known to some of his friends and associates by the nickname "Chelsea". At the time of the conspiracy there was no record of any legitimate employment carried out by Mr Hobbs.



19. Over the course of several months Mr Hobbs was seen to travel and meet with Mr Anderson on numerous occasions. He was also in contact with others, including Mr Hughes, before he met with Mr Anderson. Items had been handed over. That was also apparent from visits to Blackbushe Airport and Winchester Service Station. On his Encro phone notes made with references to handles or nicknames for others and transfers of money. Those included Mr Anderson and Mr Flynn.

20. Mr Hobbs helped to fund the payments in relation to the villa rental. The prosecution pointed to the fact that Mr Hobbs was trusted to keep the accounts for the conspiracy and knew of the existence of those much higher up, including Mr Lockyer. He had also made payments to Mr Song. He was noted to arrive at Mr Song's home address with a Tesco bag and to announce "I'm here". Mr Song was later arrested and the bag was found to contain £19,000 in cash. Mr Song, in fact, also had a money-counting machine.

21. There was reference to football club crests being given to Mr Hobbs as a parting gift when he left the conspiracy after Mr Song's arrest. In spite of what was common ground to be modest wages paid to him, Mr Hobbs knew of Mr Lockyer, and a note on his phone on 17<sup>th</sup> January 2019 referred to a payment from Mr Lockyer, whose role was towards the very top of the conspiracy.

22. On 1<sup>st</sup> March 2019 Mr Hobbs took ownership of a Vauxhall Astra, for which he paid cash. On 11<sup>th</sup> April he purchased a Vauxhall Insignia, which was insured in his name, and for which he paid £3,850 in cash.

23. He was arrested on 23<sup>rd</sup> May 2019, the same day that the Spanish authorities had made arrests in Spain.

### **The separate offence with Mr Whiting-Hobbs**

24. Following his departure from the group, Mr Hobbs had involved himself in drug dealing in the Hampshire area with his son Reece Whiting-Hobbs. That drug dealing was reflected in the separate offence with which he was charged (count 3). It involved dealing in cocaine. It was a joint business. The two acted with another person who was identified on Mr Hobbs' telephone as "Ivo Work". The evidence of the cocaine business derived from the drugs, handwritten notes, money and telephones which were seized from Mr Hobbs on his arrest. A Samsung mobile telephone seized from his bedroom provided links to drug dealing. The Samsung contained a text message about cocaine dealing on 21<sup>st</sup> May. Also found was a photo on 2<sup>nd</sup> May 2019, with Mr Hobbs leaning against a wall with bundles of cash in piles of £20, £10 and £5 notes. The photograph of a drug dealing ledger was found on his phone.

25. In his son's bedroom was found a set of scales containing traces of cocaine and cannabis. In a cupboard was found a Rolex watch with a value of £8,800. The amount of cocaine recovered from the home was valued at £7,000. A black plastic bag found in the kitchen contained 16 grip seal plastic bags, each of which contained £80 deals of cocaine. There was also a bag containing cocaine of low purity of 18 per cent, which had the fingerprints of both Mr Hobbs and his son on them.

26. A black Encrochat handset was found in Mr Hobbs' bedroom. A message sent from the telephone to nine numbers read: "Banging top shelf. In about all day until late". A further message on 13<sup>th</sup> February read: "Please delete this number as will not be in use after tonight." In a kitchen drawer next to the fridge was found an A4 piece of paper containing columns and numbers. Mr Hobbs in his evidence accepted that this note related to cocaine dealing. Sums of over £10,500 and €1,300 odd in cash were seized from the premises.

27. Handwritten notes were found which set out the instructions as to how to access Mr Hobbs' Encro phone. The police were able to follow those instructions with the result that Mr Hobbs' telephone was accessed, unlike other seized encrypted phones. The phone itself was found in his bedside cabinet. That phone contained the organised crime group's balance accounts in the notes sections.

### **The Sentencing of Mr Hobbs**

28. When it came to sentencing Mr Hobbs, the judge was provided with references about his good qualities and his work with others in prison. The updated report that we have from prison shows that he is a model prisoner.

29. The prosecution submitted that he had a "significant" role in the conspiracy, which was category 1 offending, giving a starting point of ten years' custody, and a range of nine to 12 years.

30. As regards count 3, the prosecution submitted that that was a category 3 offence, in which he had had a "significant" role, which gave a starting point of four years and six months' custody.

31. The defence submitted that Mr Hobbs had played a significant role, but was really a "useful idiot" who left the conspiracy in January 2019. His role was below that of Mr Anderson, for which he received wages, and in some respects therefore had a "lesser" role. He was effectively a money launderer. In relation to the offence committed with his son he had elements of "significant" and "leading" roles.

32. In his sentencing remarks, the judge noted that the case against Mr Hobbs concerned his involvement in the criminal activities of a number of other individuals who had formed part

of an organised crime group concerned with the supply of cocaine into and within the United Kingdom. There had been an investigation over many countries that had tracked more than a tonne of high purity cocaine. Of the seizure of the one tonne, 175 kilograms had been attributed to the organised crime group.

33. The judge set out the prosecution's case on roles, but he found that Mr Hobbs' main role was the delivery of cash generated from drug sales to London to facilitate the laundering of that cash. Following the delivery of the cash to Mr Song in January 2019, Mr Hobbs' role had changed. He was removed from the work that he had been previously doing within the conspiracy, although the evidence showed that he had remained involved with his son in the supply of cocaine in this country. When he was arrested in May 2019, drugs and a large amount of cash were found.

34. The judge noted Mr Hobbs' mitigation. He had pleaded guilty to count 3 at a stage which would attract 20 per cent credit. He had no previous convictions. He had been tempted into criminality because he saw drug dealing as an easy way to improve finances. The judge said that his role was to collect, count and deliver monies from which he was able to deduct sums for wages, but his pay was extremely modest.

35. The judge found that Mr Hobbs' role in the conspiracy involved elements of both significant and lesser roles. On the one hand, he had an operational function within the chain, and he clearly had some understanding of the scale of the operation. On the other hand, the function he performed was a limited one under direction. He had no influence on the chain above him, and his expectation of financial advantage was limited. The judge agreed with the characterisation that had been suggested in mitigation of him being a "useful idiot". The judge took the view that Mr Hobbs fell into a lesser rather than a significant role.

36. The judge went on to say that in some way Mr Hobbs' role in delivering the proceeds of drug sales to others could be better assessed under the sentencing guidelines relating to money laundering. Mr Hobbs was not involved in sourcing, funding, transporting or arranging receipt of the drugs. His role was akin to that of a money launderer.

37. Looking at the money laundering guidelines, the judge placed Mr Hobbs in category B4, with a starting point of three years' custody, and a range of 18 months to four years. That needed to be compared with the drugs guideline, which had a starting point of seven years' custody, and a range of six to nine years.

38. The separate matter of being concerned in the supply of cocaine was street dealing. There were elements of both significant and lesser role. The judge took a starting point which reflected the upper end of lesser role and the lower end of significant role. The judge said that the starting point would be three years' custody. With credit for the guilty plea, that gave a sentence of two years and three months. Having regard to totality, an overall sentence in the region of five to six years would be appropriate. Accordingly, the judge imposed a sentence of three years' imprisonment for Mr Hobbs' involvement in the conspiracy (count 5) and a consecutive term of two years and three months' imprisonment for being concerned in the supply of cocaine (count 3), which gave an overall sentence of five years and three months' imprisonment.

### **The Sentencing of Mr Anderson**

39. The judge had references for Mr Anderson showing his qualities and also materials from the prison showing that he, too, has been a model prisoner.

40. The prosecution submitted that Mr Anderson had a leading role because the conspiracy depended on him. It was accepted on behalf of Mr Anderson that he had an operational or

management function; but it was submitted that caution was needed about placing everyone in the top echelon. He had an important role, but it was not a leading role.

41. The judge found that Mr Anderson was trusted to move large amounts of money on behalf of the conspirators, either by conveying the money to those laundering it or to a Money Exchange in North London. There was reference in the Encrochat material to Mr Anderson attending a wire shop. His Encrochat conversations revealed an in-depth knowledge of the significant cost of hiring a villa in Spain and his links to others in the conspiracy. He had a cash-rich lifestyle, but had no legitimate means of employment. Significant sums of nearly £70,000 were credited to Mr Anderson from unknown sources over the two year period. He had first-hand knowledge of a trip made by Mr Lockyer to Colombia, and he passed that information on to another member of the conspiracy. Such sensitive information indicated his role.

42. The judge summarised the meetings with Lockyer and Plume, and the liaison role between Harris and Flynn. The prosecution maintained that Mr Anderson was a trusted manager, but the judge found that by reference to the timeline he had a significant role. Mr Anderson did not control the finances of the conspiracy, but rather was involved in the movement of funds.

43. The judge said that it was necessary to look at Mr Anderson's overall role, which was best described as that of a trusted middle man. He had an operational or managerial function within the overall conspiracy. Although Mr Anderson had links to those at the top, including Mr Lockyer, on the judge's analysis there was no evidence to suggest that they were either close links or placed him in a position where he could influence anyone above him. Rather, it was an example of him being used as an expendable person. The judge noted that it was Mr Anderson who had involved Mr Hobbs in the conspiracy. For all of those reasons the judge

sentenced Mr Anderson on the basis that his was a significant and not a leading role in the conspiracy.

44. As regards harm, it was accepted on Mr Anderson's behalf that he was fully aware of the extent of the conspiracy, which concerned 175 kilograms of cocaine. To that extent, the assessment of harm fell some significant way outside the upper limits of the guideline. The judge noted the effective previous good character. The best mitigation was the plea of guilty. The judge noted Mr Anderson's letter of remorse. The fact that he had been in custody for two years during the pandemic, when prison conditions were difficult, was taken into account.

45. The judge held that the starting point would normally be ten years' custody, with a range of nine to 12 years. However, the 175 kilograms took the starting point to significantly beyond that level. The judge noted that those in a leading role had had starting points of 22 years' custody. The judge therefore took a starting point of 14 years to reflect the quantity of cocaine involved. That was then reduced to 12 years to reflect Mr Anderson's good character, his remorse, his acceptance of his position and the other mitigation advanced. That figure was reduced, following the guilty plea, to eight years' imprisonment.

### **Offence specific guidelines**

46. Section 59 of the Sentencing Act 2020 relates to the general duty of the court. Section 59(1) provides:

"(1) Every court —

- (a) must, in sentencing an offender, follow any sentencing guidelines which are relevant to the offender's case, and

(b) must, in exercising any other function relating to the sentencing of offenders, follow any sentencing guidelines which are relevant to the exercise of the function,

unless the court is satisfied that it would be contrary to the interests of justice to do so."

47. Section 60 of the Sentencing Act 2020 relates to the determination of sentence. It provides a duty to impose on an offender a sentence within the offence range of an applicable offence specific guideline.

48. There are sentencing guidelines in force for the possession of a controlled drug with intent to supply. They require any sentencing judge to go through a number of steps to identify the appropriate sentence. The judge has to identify the offender's role, of which there are three: leading, significant and lesser. The guideline recognises that an offender may have characteristics falling under two roles, and the court's function is then to balance the characteristics in order to reach a fair assessment of the offender's culpability. The characteristics for a leading role are: directing or organising; buying and selling on a commercial scale; substantial links to and influence on others in a chain; close links to the original source; expectation of substantial financial or other advantage; using business as a cover; and the abuse of a position of trust or responsibility. The characteristics of a significant role are: operational or management function within a chain; the involvement of others in the operation, whether by pressure, influence, intimidation or reward; the expectation of significant financial or other advantage, save where the advantage is limited to meeting the offender's own habit, whether or not operating alone; and some awareness and understanding of the scale of the operation. The characteristics for a lesser role are: performing a limited function under direction; engaging by pressure, coercion, intimidation, grooming and/or control; involvement through naivety, immaturity or expectation; no influence on those above in a chain; very little, if any, awareness or understanding of the



scale of the operation; and the expectation of limited, if any, financial or other advantage.

49. It was common ground that the conspiracy fell into harm category 1, which is based on an indicative quantity of 5 kilograms. There is a note stating 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.

50. A culpability A leading role has a 14 year starting point with a range of 12 to 16 years; a significant role has a 10 year starting point, with a range of nine to 12 years; and a lesser role has a seven year starting point, with a range of six to nine years. For culpability A, harm category 3 offending, which applies to those selling directly to users, a significant role has a starting point of four years and six months' custody, with a range of three years and six months to seven years; and a lesser role has a three year starting point, with a range of two to four years.

51. Under the money laundering guidelines, for the amount of money handled by Mr Hobbs, this would have been a category B4 offence, with a starting point of three years' custody, and a range of 18 months to four years.

### **The Appropriate Sentence for Mr Hobbs**

52. We turn first to deal with the prosecution's submission that under the relevant drugs guideline Mr Hobbs ought to have been sentenced as having had a significant role. It was submitted that the defence below had accepted such categorisation. Mr Hobbs had been involved at an early stage of the conspiracy, had frequent meetings with Mr Anderson, was trusted to have an Encro phone and to handle large amounts of money. While it was true that his wages were limited, that could not have been Mr Hobbs' motivation for being involved in

the group. He was likely to have earned more had the 175 kilograms of cocaine been received from Spain. Whilst he may have been unwise to write down the instructions for his Encro phone, the prosecution did not accept that he was a "useful idiot". He was properly said to have a significant role because he had some awareness and understanding of the scale of the operation.

53. We record that the sentencing judge had conducted the trial. He had heard and determined *Newton* hearings and had made clear findings about the hierarchy within the conspiracy. It is very difficult to disturb findings of fact made by sentencing judges who have conducted trials, but not impossible. An appellant, whether it be the Solicitor General or a defendant, would need to show something like: internal inconsistency in the findings: a finding not based on any evidence; a finding inconsistent with uncontroverted evidence; or an irrational finding. There is nothing of that sort here. The judge, in our judgment, was plainly entitled to find that Mr Hobbs had a lesser role.

### **The Application of the Money Laundering Guidelines**

54. We agree, however, that the judge erred in having regard to the money laundering guidelines. Mr Hobbs was charged with a drugs conspiracy. All crime damages society, but drug offending leads to: destroyed minds; the creation of addicts, making useful member of society a burden; and the commission of further crime as the addicts commit offences to fund their habit. The judge had a duty to apply the offence specific guideline, unless it was not in the interests of justice to do so. The judge made no such finding. We have looked very carefully at all of the material before us and in our judgment there is no basis on which to find that it was not in the interests of justice to apply the offence specific guideline. Accordingly, we grant leave for the Solicitor General to refer Mr Hobbs' sentence to this court.

55. Doing the best we can, having regard to the judge's findings, we take a starting point for a lesser role category 1 offence of seven years' imprisonment. We increase that to reflect the amount of drugs which was involved in the conspiracy. We have regard to the role carried out by Mr Hobbs, but maintain issues of proportionality. We increase the sentence, therefore, to one of nine years' imprisonment. We have regard to Mr Hobbs' mitigation, which was before the judge and is before us, and we will reduce that sentence to seven years and nine months' imprisonment. That sentence cannot be further reduced, because Mr Hobbs did not plead guilty.

56. The other sentence was one of two years and three months' imprisonment. We consider that there is force in what was submitted on behalf of the Solicitor General in relation to that sentence. However, having regard to the issue of proportionality and totality, we will leave that sentence undisturbed, but it will continue to run consecutively to the sentence for the conspiracy. We therefore increase the sentence that was imposed on Mr Hobbs from five years and three months' imprisonment to one of ten years' imprisonment, made up of seven years nine months and two years and three months.

### **The Appropriate Sentence for Mr Anderson**

57. The prosecution maintained that Mr Anderson had a leading role. It was submitted that his role was very important and wide-ranging. It was that of a manager who acted upon the instructions of others and directed the conspiracy from afar. There were leading role features: he had substantial links to and influence on others in the chain; he had the expectation of substantial reward if the Spanish cocaine arrived safely; he was trusted by Mr Lockyer, Mr Harris and Mr Plume; he was capable of performing his varied actions without the need for day-to-day instruction; and he allowed Mr Lockyer and Mr Harris to remain in the shadows. In these circumstances, submit the prosecution, the judge should have placed Mr Anderson within the category of leading role. On the other hand, it is submitted on behalf

of Mr Anderson, as we have already identified, that the judge had a fair regard to his position and a fair regard to all of the other relevant features.

58. In our judgment, there is no justiciable basis for intervening with the finding as to the role that was ascribed to Mr Anderson, or indeed the basis on which the judge started the sentencing exercise.

59. We turn then to the Solicitor General's next submission about uplift. It was submitted that even if the judge was entitled to place Mr Anderson within the significant role, the nature of his role meant that he fell to be sentenced at the top of the significant role category. The second basis for the uplift, it is said, is that there should have been an even greater increase than the ten to 14 years to reflect the amount of cocaine.

60. So far as the significant role and the category are concerned, in many respects that is the flip side of the point that had already been made on behalf of the Solicitor General in relation to Mr Anderson's role. In our judgment, the judge was best placed to make proper findings in relation to the conspiracy, and he did sentence the conspirators to terms of imprisonment which had starting points in excess of 20 years. We can see no justiciable basis for interfering with this aspect of the sentence.

61. So far as the increase from ten to 14 years to reflect the amount of cocaine is concerned, in our judgment the judge was right to have regard to the amount of cocaine and to increase the sentence by a substantial amount, and four years is not an insubstantial amount, but also to have regard to the role played. It is simply not possible to add on eight years because those with a leading role category had an addition of eight years' imprisonment, given the amounts of cocaine involved.

62. The judge's approach thereafter was to reduce the sentence by two years for mitigation. There is no doubt that that is a very generous reduction, but we are wholly unable to say that the sentence is unduly lenient.

63. Similarly, the judge has not expressly referred in his sentencing remarks to the fact that the sentence was increased to reflect the Encrochat material, but it was apparent that all such materials were before him. It must have been one of the features that the judge had taken into account when increasing the starting point from ten years to 14 years. After discount for mitigation that meant that Mr Anderson was to be sentenced to 12 years' imprisonment. The fact that he did not receive that sentence is because he pleaded guilty and was entitled to a full one-third credit. Although we consider that the sentence imposed on Mr Anderson was generous and lenient we are wholly unable to say that it was unduly lenient.

64. In circumstances where we have found that the sentence was lenient, we will grant leave for the Reference to be made, but for the reasons already given, we refuse it.

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

Lower Ground, 18-22 Fumival Street, London EC4A 1JS

Tel No: 020 7404 1400

Email: rcj@epiqglobal.co.uk