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IN THE COURT OF APPEAL
CRIMINAL DIVISION

Case No: 2023/02432/A2

Neutral Citation: [2024] EWCA Crim 602



Royal Courts of Justice
The Strand
London
WC2A 2LL

Thursday 16th May 2024

B e f o r e :

LORD JUSTICE EDIS

MR JUSTICE MURRAY

HIS HONOUR JUDGE DENNIS WATSON KC
(Sitting as a Judge of the Court of Appeal Criminal Division)

R E X

- v -

MOKTER HOSSAIN

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Non-Counsel Application

J U D G M E N T

Thursday 16th May 2024

LORD JUSTICE EDIS:

1. In this case the court has received an email sent by a prison officer at the prison where the applicant is held. It conveys an application to have the case taken out of the list and refiled on another occasion. The reason given is that the applicant wishes to consult lawyers and has been unable to do so hitherto.
2. We have carefully considered that application. If we had thought that the instruction of lawyers might in any way assist the applicant, then we might have granted the application. However, in view of the decision that the court has reached in relation to the merits of the application, which my Lord, Mr Justice Murray, will deal with in a moment, we do not consider that any purpose would be served by vacating this application from today's list. We propose to deal with it now. Mr Justice Murray will give the judgment of the court.

MR JUSTICE MURRAY:

3. On 21 December 2021, in the Crown Court at Snaresbrook before HHJ Canavan, the applicant, Mokter Hossain, then aged 53, pleaded guilty to one count of conspiracy to facilitate illegal immigration.
4. On 23 June 2023, in the same court, HHJ Canavan sentenced the applicant to ten years six months' imprisonment.
5. The applicant now renews his application for leave to appeal against his sentence following refusal by the single judge.
6. The factual background is set out in some detail in the Criminal Appeal Office Summary. This has been provided to the applicant, and he has raised no objections to it. We do not repeat it in detail.
7. For present purposes it is sufficient to note that the applicant was sentenced on the basis that he ran a sizeable commercial people smuggling operation for persons to travel illegally into and out of the United Kingdom concealed on lorries. He did this over a considerable period of time, namely almost three and a half years, during which time he made substantial financial gains from these operations.
8. The period of the conspiracy involved at least 20 separate people smuggling events and a total of 129 migrants, a very small number of whom were involved in more than one of these events.
9. The applicant had pleaded guilty on a basis of plea. However, following a three-day *Newton* hearing, the basis of plea was entirely rejected by HHJ Canavan.
10. On 4 January 2022, in the Crown Court at Snaresbrook, the applicant's co-accused, Noor Ullah, pleaded guilty to one count of conspiracy to facilitate illegal immigration. On 24 March 2022, at the same court, Mr Ullah was sentenced by HHJ Kamill to two years five months' imprisonment. On the day of the sentencing hearing, Mr Ullah put a basis of plea before the court. Under that basis of plea, his role in the conspiracy was stated to be limited to a liaison role over a few days, for a single people smuggling event that took

place between 27 and 30 March 2021, involving less than ten migrants who were not the subject of any coercion or exploitation. The basis of plea also maintained that he had acted under the direction of the applicant. HHJ Kamill tested this basis of plea at the hearing by asking various questions, but ultimately accepted it, as the basis was confirmed by prosecuting counsel, subject to Mr Ullah's acceptance, which was forthcoming, that he had acted in the conspiracy for financial gain.

11. HM Solicitor General made an application to this court for leave to refer Mr Ullah's sentence as unduly lenient. On 26 May 2022, this court granted leave to refer but dismissed the reference on the basis that, given the basis of plea, the sentence, while lenient, was not unduly so: *R v Ullah* [2022] EWCA Crim 777.
12. At the applicant's sentencing hearing on 23 June 2023, HHJ Canavan proceeded to sentence without a pre-sentence report. None was necessary then and none is necessary now.
13. Having just completed a three day *Newton* hearing, the judge gave a summary of the factual basis on which she sentenced the applicant. She emphasised the scale, duration, and commercial and professional nature of the conspiracy, which involved hundreds of illegal migrants. The judge made it plain that she considered the applicant to be “at the top” of this business and that he had made considerable amounts of money out of the misery of trafficking individuals into and out of the UK.
14. The judge noted that there was no offence-specific Sentencing Council guideline for the applicant's offence. She had regard to *R v Ali* [2018] EWCA Crim 405, which bore some similarity to the applicant's case, but she was of the view that the applicant's conspiracy was on a “very much larger” scale, and she identified other factual differences between the case of *Ali* and that of the applicant.
15. The judge indicated that she would give reduced credit of eight per cent for the applicant's guilty plea, bearing in mind that he had been unsuccessful at the *Newton* hearing. The principal mitigation was the applicant's previous good character. The judge also had regard to the impact that the applicant's custodial sentence would have on his family.
16. The judge considered that the starting point for sentence before mitigation and discount for guilty plea was 12 years' imprisonment. After reduction for mitigation and discount for the applicant's guilty plea, she imposed a sentence of 10 years six months' imprisonment.
17. The applicant asserts that the sentence was manifestly excessive for one or both of the following reasons:
 - a. the judge's starting point of 12 years' imprisonment was too high, having regard to the guidance given by this court in *Ali*, and bearing in mind that the maximum sentence for this offence is 14 years' imprisonment; and
 - b. the disparity between the applicant's sentence and that of his co-accused Mr Ullah is too great.
18. We are not persuaded that there is any merit in either of these grounds. In relation to her starting point, it is clear that the judge had regard to the case of *Ali*. We also bear in mind that the court in *Ali* at [22] made it clear that it was not intended to be a guideline case. In *Ali* at [23], the court said that “... the starting point for genuine organisers for offences of this kind *and on what we consider to be this scale*” (emphasis added) should have been

in the region of ten years' imprisonment. That is clearly a fact-specific conclusion.

19. We also observe that *Ali* was decided in 2018, before the small boats crisis and the escalation over the past few years of human smuggling operations between the United Kingdom and continental Europe, which has resulted in a number of deaths of illegal migrants in distressing circumstances. The sentencing climate has changed. In particular, the importance of the sentencing objective of deterrence in such cases has increased.
20. The sentencing judge was careful to indicate that she considered the conspiracy in this case to be, as we have noted, on a "very much larger" scale than in *Ali*. The conspiracy in which the applicant was involved, for example, lasted for some three and a half years, whereas the conspiracy in *Ali* focused on April 2015, with the suggestion that it had been in effect from the beginning of that year, or "possibly earlier" – in other words, a period of a few months at most.
21. Among other factual distinctions between the instant case and *Ali*, the judge noted that the conspiracy in *Ali* involved undercover reporters pretending to be criminals, which was not the case here. This was relevant to the harm caused by the conspiracy. Inevitably, given the much greater length of time that this conspiracy endured, the scale of the this conspiracy was greater than the conspiracy dealt with in *Ali* in terms of illegal migrants involved, the number of smuggling events, and the considerable financial benefits unlawfully gained by the applicant. Accordingly, there was considerably higher culpability and considerably higher harm in this case.
22. The judge was clearly aware of the statutory maximum sentence for the applicant's offence. She gave reasons that were open to her for concluding that 12 years' imprisonment was the appropriate starting point in the applicant's case. It is not arguable that she was wrong.
23. No complaint is made about the judge's deduction for mitigation, or the reduced discount for the applicant's guilty plea following his lack of success at the *Newton* hearing.
24. Given the limited factual basis on which the applicant's co-accused, Mr Ullah, was sentenced, there is no merit in the argument that the applicant's sentence was manifestly excessive by reason of disparity with the sentence passed on Mr Ullah.
25. For these reasons, we refuse the applicant's renewed application for leave to appeal against sentence.

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

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