

IN THE COURT OF APPEAL
CRIMINAL DIVISION
ON APPEAL
FROM BIRMINGHAM CROWN COURT
(HIS HONOUR JUDGE BUTTERFIELD)



Case No: 2024/03474/A3

[2024] EWCA Crim 823

Royal Courts of Justice
The Strand
London
WC2A 2LL

Tuesday 9th July 2024

B e f o r e:

VICE PRESIDENT OF THE COURT OF APPEAL CRIMINAL DIVISION
(Lord Justice Holroyde)

MR JUSTICE BRYAN

MRS JUSTICE THORNTON DBE

R E X

- v -

TAYYAB IQBAL

Mr A Payne appeared on behalf of the Applicant

Mr J Dunstan appeared on behalf of the Crown

APPROVED JUDGMENT

MR JUSTICE BRYAN:

1. On 14 October 2022 in the Crown Court at Birmingham the applicant pleaded guilty to one count of conspiracy to supply Class A drugs (cocaine). Thereafter, on 20 March 2023, having pleaded guilty before the Birmingham Magistrates' Court, the applicant was committed for sentence, pursuant to section 14 of the Sentencing Act 2020 in respect of an offence of possessing a Class A drug with intent to supply (heroin).
2. On 8 September 2023, the applicant (then aged 32) was sentenced by His Honour Judge Butterfield to 16 years' imprisonment on the count of conspiracy to supply cocaine, and to a concurrent term of six years imprisonment on the charge of possession with intent to supply heroin.
3. The applicant renews his application for leave to appeal against sentence following refusal by the single judge.
4. Turning to the facts of the applicant's offending. From 26 August 2021 the applicant rented a unit at Faraday Drive Industrial Park near Bridgnorth. He told the landlord that he intended to conduct his business of selling frozen food from there and he put up a sign to that effect. There was no evidence that the unit was ever used for that purpose.
5. In September 2022 there were a series of WhatsApp messages between the applicant and his wife referencing postcodes and a message referencing a token which included a photograph of a torn £5 note, which matched a token that was subsequently found on 14 September. On 11 September there was a discussion about another postcode and about how other tokens could be used. The applicant said that he was risking his life "for you lot", presumably meaning for his family.
6. There was evidence of the applicant driving a black BMW to the industrial park on two occasions in September, firstly on 9 September where he was at the industrial park for around an hour and a half from about 5.30 pm. He drove out of the industrial park but then returned with another vehicle after about four minutes. The two vehicles were parked in the same place as the one that was used by the applicant and the co-defendants Andrew Worby and Onasis Depass on 14 September. A black holdall was put into one of the two dark cars. This appeared to be a handover of Class A drugs, although the type of drug could not be identified.
7. A second trip on 10 September was evidenced by WhatsApp messages between the applicant and his wife in which he said that he was going to the unit in Bridgnorth, that another person would follow him there and that he would keep his wife updated on his arrival.
8. On 14 September the co-defendant Worby drove a Mercedes van from West Yorkshire which activated an ANPR camera at 1.00 pm. The co-defendant Depass was a passenger in the vehicle. Worby drove to Faraday Drive and parked up outside the industrial park. At about 2.45 pm the applicant drove straight past them in his black BMW and went into the industrial park. He reversed to the roller-shuttered door of his unit, got out and went inside through another door. After about five minutes he appeared in the doorway, remotely opened the boot of the BMW and had a look around. He then went back inside the unit and reappeared carrying a full, heavy black plastic bag which he put into the boot of the BMW. This was all captured on CCTV. He secured his unit and drove out of the industrial park and stopped in front of Worby's van. He went over towards the van. Depass got out of the vehicle and Worby stayed inside. Depass went with the applicant to the boot of the BMW, took the heavy bag from the boot, carried it over to the van and put it in the back. The

applicant walked over to the driver's side of the van, took possession of a white carrier bag and went back to the BMW.

9. The van was stopped by the police using a stinger at around 3.30 pm that afternoon. Depass was detained and refused to give his name. Two green bags were found in the back of the van, one of which was full of blocks of compressed cocaine powder wrapped individually into 25 blocks, each containing one kilogram of cocaine. The purity of the cocaine ranged from 66 per cent to 81 per cent. The wholesale value was around £625,000 with a potential street value of around £2 million. There was expert evidence before the court, to which we will return, that the packaging put the drugs close to the point of importation. Three mobile phones were seized from the cab of the van. Depass and Worby were arrested. Worby said that he was just the driver for his boss.

10. The applicant returned to his address in Lyndon Place, Birmingham. He took the white carrier bag into his home. He had two telephones in his hands. The police arrived at around 6 pm, but the applicant did not answer. When it became apparent to the applicant that the police were in attendance he smashed an iPhone and tried to put it out of reach on top of a wardrobe. It was found that the applicant had damaged it sufficiently so that its contents could not be successfully examined. The shopping bag was found in a cupboard. It contained bundles of cash, totalling £19,570, wrapped with elastic bands and some heat-seal packaging. In the centre console of the BMW driven by the applicant the police found half a £5, matching the WhatsApp image sent to his wife earlier in September.

11. The police searched in unit at the industrial park. They found a black Volkswagen Passat which had an area at the back where a hide had previously been. They also found two Toyota Verso cars, both with metal hides in them, one of which was an electronically operated hide with a lid beneath two drop-down seats in the rear of what was a seven seater vehicle. On 15 September the police recovered, from within the hide in that car and from within the unit, two packages containing 55.7 grams and 13.4 grams of heroin at 18 per cent and 17 per cent purity, valued at £2,000 but with a street value of around £7,000. The VW Passat was valued as a used car at £14,500, and the Toyotas at £4,500 each. However, they would have been worth considerably more to anyone involved in drug trafficking with their sophisticated hide devices.

12. The applicant was aged 32 at sentence, being born on 31 December 1990. He had two convictions for four offences. In 2010 he received a community order for three offences of simple possession of Class A drugs. In 2021 he received a sentence of 12 months' imprisonment, suspended for 24 months for one offence of making false representations.

13. The Learned Judge considered the applicant's offending was Category 1 leading role under the Drugs Guidelines (which has a starting point of 14 years' custody and a range of 12 to 16 years' custody). However, in terms of harm, the Learned Judge rightly noted that Category 1 is based on a representative weight of 5 kilograms, whereas here there was five times that amount. The Learned Judge had express regard to the wording of the guideline which provides:

"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."

14. As to role, the Learned Judge was "in no doubt whatsoever that [the applicant was] appropriately categorised as a leading role". He stated that "just about every description the guideline has for that role is ticked by" the applicant. The Learned Judge identified that the offending was aggravated by the applicant's successful attempt to dispose of incriminating material by smashing his phone, as well of the fact that he was being sentenced for a conspiracy, and that the sentence passed also had to take account of the charge of possession with intent to supply in relation to no little amount of heroin. In terms of mitigation, the Learned Judge had express regard to an element of delay, the state of the prison population, and the personal mitigation as identified in the Defence Sentencing Note, as well as the associated documents that had been uploaded to the digital case system ("DCS").

15. The Learned Judge passed a sentence of 16 years' imprisonment on the cocaine count (after full credit for an early guilty plea) and a concurrent term of six years' imprisonment in respect of the charge of possession with intent to supply heroin.

16. Following refusal by the single judge, the renewed grounds of appeal which have been advanced before us by Mr Payne are that the sentence passed was manifestly excessive in that the Learned Judge erred by:

- (1) Adopting too high a starting point by reason of characterising the applicant as having a "leading role", rather than a "significant role"; and/or
- (2) Failing to give sufficient and transparent credit for mitigation.

17. In relation to the first ground, Mr Payne submits that the evidence was inconsistent with the applicant undertaking a significant, as opposed to a leading, role in that there was insufficient evidence that he was directing or organising buying and selling on a commercial scale, or had influence on others in a chain, or had an expectation of substantial financial advantage (though the expectation of significant financial advantage was conceded). It is said that there is no evidence that the applicant was negotiating drugs deals on behalf of himself or anybody else. It is also suggested that it is seldom that the head of an organisation delivers drugs in a vehicle registered to them, or to be involved in the use of tokens. It is pointed out that the applicant did not know his co-defendants and that there was no prior contact between them. Mr Payne also refers to *R v Johnson* [2022] EWCA Crim 1575 to suggest that there are factual similarities suggestive of a significant role, but with the applicant being less culpable than Mr Johnson, with the result that a lesser sentence should have been passed.

18. So far as the second ground of appeal is concerned – and whilst Mr Payne acknowledges that the Learned Judge did have regard to delay, the state of the prison population, the absence of relevant previous convictions and mental health matters relating to not just the applicant but also his young son – it is submitted that it is not clear what reduction was made for the available mitigation and it is suggested that insufficient reduction was made. Reference is also made to the applicant's own cocaine use and suicidal thoughts to paint a picture of a Class A drug user who had his own struggles mentally, who had not been in custody before, who had lost his own father whilst on remand, and who was unable to attend his funeral.

19. We are grateful to Mr Payne, who appears *pro bono*, for the assistance he has given the court on the renewed application.

20. We consider that the Learned Judge was right to categorise the applicant as having a leading role. In this regard, a number of the factors identified in the drug guidelines applied.

First, the applicant had close links to the source. In this regard, and contrary to the submissions that Mr Payne advanced, we are satisfied that the Learned Judge was entitled to accept the evidence of the drugs expert, Mr Dorans, that the consignment was packaged in a way that would be expected of a consignment close to importation, and the applicant was in possession of a very large amount of cocaine therefore in its import packaging in the context of his sham freezer business, which was clearly being used as a cover (a further factor indicating a leading role). He had rented the industrial unit, had paid every month's rent for 12 months, and had organised the features of the non-existent business, including the presence of a refrigerated container and signage, paying some £16,800 for the rental of the unit. Whilst it is said that the business was only a sham, we do not see the relevance of such a distinction. Why go to all this trouble and expense, renting a unit with signage and a refrigerated unit, unless the sham business was being used as a cover for his role in the drug importation and distribution.

21. The applicant also looked after three cars which were professionally equipped for the use in transporting illegal commodities, one of which was registered in his name. It is also notable that he was involved in more than one wholesale transfer and was, as he said to his wife, "risking his life". As the prosecution point out, his role was above the level where the drugs were being cut, in circumstances where they were still in their import packaging.

22. The expenditure of so much money on the sham business also links in with the fact that the Learned Judge was entitled to conclude that the applicant had an expectation of substantial, and not merely significant, financial advantage. As well as what he had paid for the unit (showing ready access to substantial sums to disburse on a non-existent business), he was driving a BMW worth £39,000 and was transporting and storing cash, whilst living in a reasonably high standard of accommodation. To the extent that the trappings of a luxury lifestyle were absent, that was perhaps wise given that the applicant had no legitimate source of income at all.

23. A leading role does not require the person to be the "Mr Big" at the very top of the tree. What is required is the presence of factors such as those present in this case, indicative of a leading role. Ultimately, in terms of role, every case turns on its own particular facts, and for that reason we did not find it helpful to compare the facts of this case with others, including those of *R v Johnson*. We are satisfied in the circumstances identified by the Learned Judge, and as set out above, that the Learned Judge was right to characterise the applicant's role as a leading role.

24. The Learned Judge had to sentence for a leading role in a conspiracy in respect of amounts of drugs five times the indicative quantity, and a sentence in excess of 20 years' imprisonment was appropriate, before considering aggravating and mitigating features. An increase was necessitated to take account, first, of the successful destruction of evidence; and secondly, that the applicant was being sentenced on the cocaine count to reflect the totality of the offending, including the further offending of possession of heroin with intent to supply.

25. As for the available mitigation, all the matters relied upon by the applicant were referred to by the Learned Judge either expressly, or by reference to the material that was before him on the DCS. They justified a modest reduction in the context of what was serious drugs offending. A sentence after reduction for such mitigation to 21 years' imprisonment (14 years' imprisonment after full credit for a guilty pleas) to reflect the totality of the applicant's offending would have been appropriate. We consider that the sentence passed of 16 years' imprisonment (24 years' imprisonment before full credit for the guilty plea) was manifestly excessive.

26. Accordingly, we grant leave to appeal against sentence, quash the sentence that was passed on Count 2 and substitute a sentence of 14 years' imprisonment. Save in that respect, the sentence remains as before. To that extent only, the appeal is allowed.
