Neutral Citation Number: [2020] EWCA Crim 1719

Case No: 201904221/B3;201904320/B3;201904328/B3;201904364/B3;202001005/B3

IN THE COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM Northampton Crown Court
HHJ Crane
T20187131/T20187139/T20187140/T20197021/T20197036/T20197131

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 18/12/2020

Before :

LORD JUSTICE GREEN
MR JUSTICE JULIAN KNOWLES
and
HIS HONOUR JUDGE BLAIR QC
Recorder of Bristol

- -

Between :

REGINA
- and -
Bailey & Ors

(Transcript of the Handed Down Judgment.
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Official Shorthand Writers to the Court)

Mr Colin Charvill (instructed by **Stephen Moore & Co Solicitors**) for **Bailey**
Mr Jonathan Rosen (instructed by **Noble Solicitors**) for **Succo**
Ms Micaila Williams (instructed by **Bains Solicitors**) for **McLeish**
Mr Charles Burton (instructed by **Cobleys Solicitors Ltd**) for **Hall**
Mr Liam Muir (instructed by **Carter Osborne Ltd**) for **Radford**

The Crown was not represented

Hearing date: Tuesday 3rd November 2020

Judgment
As Approved by the Court

Lord Justice Green :

Introduction: The Articulation of Totality in Sentencing Remarks

1. There are before the Court five appeals by Bailey, Succo, McLeish, Hall and Radford. Each appellant either pleaded guilty to, or was convicted of, one or more counts of Conspiracy to Supply a Controlled Drug of Class A and/or B contrary to section 1(1) Criminal Law Act 1977.

2. Each Appellant has been granted leave to appeal against sentence. A ground of appeal common to a number of appeals concerns totality. This particular ground raises a point of interest from a procedural perspective. It arose from the fact that in the lengthy sentencing remarks about the position of each defendant, no specific reference to totality was made. The judge did however make a brief and general reference towards the end of the sentencing remarks, to the effect that she had taken totality into account in relation to each defendant.

3. When seeking permission to appeal, the Appellants argued that this was an improper and inadequate approach. There was a duty to spell out how totality applied in *each* case. It was not enough to make a single, isolated, fleeting reference to totality. This flowed from the Sentencing Council, Definitive Guideline on "Offences taken into Consideration and Totality" ("*the Totality Guideline*") which sets out a staged approach to the determination of totality. The single judge agreed that this was an arguable point. During argument before this Court, the Appellants elaborated upon this theme and advanced a variety of different points concerning how the issue should have been expressed in the sentencing remarks. All advocates, in effect, adopted the arguments of the others on this point.

4. To put the point into context it is also relevant to note that in the section of the sentencing remarks where the judge summarised the position of each defendant being sentenced she set out, in commendably concise but comprehensive form, all of the facts and matters that she considered to be relevant to the placement of the individual defendant in terms of the Definitive Guideline on Drugs Offences ("*the Drugs Guideline*") and all aggravating and mitigating factors.

5. Various Appellants have raised additional points of a nature specific only to them, over and above arguments about the way in which totality was expressed.

6. We address general issues about totality only once at paragraphs [33] – [43] below in the appeal of McLeish. Our conclusion set out there apply to all other Appellants who raised the same arguments.

The Sentences

7. On 6th November 2018 in the Crown Court at Northampton, Succo and McLeish pleaded guilty to Counts 1 and 3 on the joinder indictment.

8. On 25th March 2019, McLeish pleaded guilty to one count on Indictment T20197036 and Hall pleaded guilty to Count 4 on the joinder indictment.

9. On 23rd September 2019, Radford changed his plea to guilty on Counts 1 and 2 on the joinder indictment.

10. On 22nd October 2019, Bailey was convicted of Count 1 in relation to Class A drugs and Hall was convicted of Count 2 in relation to class B drugs.

11. On 1 November 2019 the following sentences were handed down: (i) Bailey was sentenced to 10 years imprisonment; (ii) Succo was sentenced to 6 year and 9 months on Count 1, and 3 years and 9 months on Count 3 consecutive, leading to a total sentence of 10 years and 6 months; McLeish was sentenced on Count 1 to 7 years and 6 months and on Count 3 to 6 years consecutive. He was given a concurrent sentence of 6 years on a further count. This led to a total sentence of 13 years and 6 months. Hall was sentenced to 8 years on Count 2 and to 3 years and 9 months on Count 4 consecutive, leading to a total sentence of 11 years and 9 months. Radford was sentenced to 8 years and 1 month on Count 1 in relation to class A drugs and 4 years and 6 months on Count 2 relating to the class B drugs leading to a total sentence of 12 years and 7 months.

12. There were 7 co-accused who received sentences of between 5 years and 10 years and 9 months.

The Facts relation to the Conspiracies

13. We shall summarise the facts relating to each count separately.

Count 1: Conspiracy 15th – 18th April 2018

14. On 17th April 2018 Radford and McLeish each delivered one kilogram of cocaine, one to Succo and one to Timothy Hartgrove. The supply to Timothy Hartgrove, was destined for Bailey. Surveillance evidence recorded extensive telephone contact between Radford, McLeish and Succo. Shortly before 3.45pm Radford was seen entering a black BMW, having come from his home address in Kettering.

15. He and McLeish then left an apartment together. McLeish was carrying a black Adidas bag. They travelled to meet a red Vauxhall van at just after 4.30 pm. McLeish got out of his vehicle and approached the van which was driven by Timothy Hartgrove. He leant inside and then returned to the BMW. He was still carrying the Adidas bag, but it appeared to be lighter than when he approached the vehicle. Four minutes later the BMW stopped in Regent Street in Kettering. Succo appeared and McLeish passed him the black holdall. Succo left the area on foot.

16. Timothy Hartgrove drove his vehicle to the car park of a bowling alley. Shortly afterwards police arrested him and searched his vehicle. A total of one kilogram of cocaine was recovered. Two mobile phones and an air pistol were also found in the vehicle. McLeish observed Timothy Hartgrove's arrest from inside the bowling alley and informed others involved in the enterprise.

17. On 17 April, Lewis Hartgrove, the son of Timothy Hartgrove, was located in Birmingham. At 3.43 pm McLeish spoke to him and within seconds of the call finishing, Lewis Hartgrove called his father, Timothy Hartgrove. That call was said by the prosecution to be Lewis Hartgrove arranging with his father for him to collect the cocaine from McLeish with the intention of delivering it to Bailey.

18. Timothy Hartgrove was arrested. In a prepared statement he said that he had received a phone call from an unknown person saying that his son owed them money and that he was instructed to meet the unknown person at a public house. When he got there a man put two packages and a phone in his vehicle. He was then told to go to the bowling alley. He said he had no knowledge of what was in the packages. He was found in possession of about £1,000 cash. He said that this was from gambling. He said he did not receive any recompense for doing what he did, and his son did not know anything about it.

19. The cocaine recovered was of a 76% - 79% purity with a value of £40,000 - £50,000. The number of McLeish was found stored in Timothy Hartgrove's phone and the phone showed contact with Bailey on two numbers. Police also recovered a handset which was shared by Timothy and Lewis Hartgrove. Bailey was in contact with that number as well. The drugs that had been supplied to Succo were not recovered.

Count 2: Conspiracy 13th – 15th May 2018

20. Count 2 related to a conspiracy to supply Class B amphetamine between 13th and 15th May 2018. It involved Radford, Hall and the co-defendant Michael Drain.

21. Radford was seen on surveillance evidence in Princes Avenue in Kettering. His vehicle was approached by a male pushing a wheelbarrow. Two boxes containing amphetamine were put in Radford's vehicle. Radford then met with Drain and the boxes were placed in the rear of Drain's vehicle. Drain headed north but at some point, Radford and Hall cancelled the delivery of the amphetamine, and Drain was recalled to Northamptonshire. The police were unable to recover much evidence in respect of the phone contact between the defendants on that day as both Hall and Radford were using encrypted phones. Drain was stopped on the A14 by the police. In his van were two boxes containing 24 blocks of amphetamine valued at between £120,000 and just under £180,000. There was a total of just over 47 kilograms of drugs. The drugs were in heat-sealed packaging. They were of low purity.

Count 3: Conspiracy 11th – 13th June 2018

22. Count 3 related to a conspiracy to supply cocaine between 11th and 13th June 2018 and involved McLeish, Succo and a co-defendant Parllaku.

23. On 12th June 2018, McLeish received a quantity of cocaine from Parllaku which was then delivered to Succo for him to store and prepare. When police subsequently searched Succo's address they found just under half a kilogram of cocaine at 52 % purity and items consistent with the premises being used for the preparation and onwards supply of cocaine. A tick list was found at McLeish's address and an envelope with Succo's telephone number on it. There was evidence of telephone communication between McLeish and Parllaku and between McLeish and Succo consistent with the arrangements for and the carrying out of this transaction.

Count 4: Conspiracy 20th – 26th September 2018

24. Count 4 related to the supply of cannabis by Hall between 20th and 26th September 2018. When he was arrested text messages on his phone revealed cannabis dealing. During the trial for one of the conspiracies regarding the cocaine and amphetamine, Hall gave

evidence about his cannabis dealing including as to its duration. He said he had three sources of cannabis and a contact in England who had a direct contact to Amsterdam. About 20 - 30% of the high-grade cannabis he sold was obtained from California. He had an Aquarius encrypted phone with a Dutch SIM to communicate with his contact and to receive pictures of products directly from Amsterdam. He had two other suppliers growing locally who provide cannabis on an eight-week cycle, with three to five kilograms from each of them at each harvest. He was earning £2,000 to £2,500 a week from his cannabis dealing. The cannabis was kept at more than one safe house. He would sell it in bulk and in smaller deals. He used runners to collect money. The phone messages showed dealing over a short period of the charge

Indictment T20197036: Conspiracy 1st July – 1st September 2018

25. The fourth conspiracy to supply cocaine related to a period between 1st July and 1st 2018 and involved McLeish and co-defendants Plaku and Jones. During the conspiracy there were 16 supplies. An initial seizure was made of around a quarter of a kilogram of cocaine with a value of around £50,000. The overall value of the conspiracy depended on what was supplied on each occasion, but the estimated potential value was possibly £0.5m.

26. On 31 August 2018, surveillance officers saw Jones who had been sent by McLeish to the address of Plaku, who was a wholesale distributor of cocaine. Jones took just under a quarter of a kilo of cocaine at 83% purity from the premises. He was arrested shortly afterwards. The cocaine had not been diluted since entering the UK, indicating that those involved in receipt and supply were either importers or very close to that level. Jones was arrested. His telephone revealed connections to Plaku and McLeish. Officers attended at Plaku's address and found telephones and significant quantities of cash. Plaku's phones had connections to Jones and an onward connection to McLeish. Analysis of Plaku's phones revealed that he was a wholesale supplier of drugs. Some of the messages were in Albanian and indicated an international element with Plaku close to the point of supply.

27. We now address the appeals of each Appellant separately. As set out above we deal with the general arguments about totality once, in relation to the appeal of McLeish

<u>McLeish</u>

28. McLeish pleaded guilty to three count: Counts 1 and 3 on the joinder indictment and Count 1 on the separate indictment. The total sentence, after plea, was 13 years and 6 months imprisonment. The judge made the sentences on Counts 1and 3 on the joinder indictment consecutive, but that on Count 3 on the separate indictment concurrent.

29. In her sentencing remarks the judge found that McLeish had a leading role. He was to be sentenced for multiple offences. He directed and organised, bought, and sold on a commercial scale. He had substantial links to and influence over others in the chain. He had close links to the original source and there must have been an expectation of substantial financial gain. There might have been others above him in the chain but that did not preclude him from being in a leading role.

30. In relation to the April conspiracy, he was a leading role, Category 1. In relation to the 12th June conspiracy, he was a leading role, Category 2/3 harm. In relation to the

conspiracy over July and August 2018, he was a leading role, Category 2. Aggravating features were his previous convictions. He was 36 years old with 7 appearances for 19 offences including driving matters, criminal damage, assault or ill-treatment of a child, breach of a non-molestation order, harassment, battery and threatening violence to enter premises. He had no previous drugs offences. He was on licence at the time of the first conspiracy. He was not on bail at the time of the third conspiracy but was under investigation by the police. His personal mitigation was that he had a young son who lived with his own mother and a daughter who was nearly one year old. There would be an impact on those children. He was entitled to 25% credit for plea.

31. The first ground of appeal is that the judge failed to give sufficient weight to the principle of totality. There is no indication in her treatment of McLeish that she applied totality to him.

32. The second ground of appeal is that the judge failed to give sufficient credit for plea. The exception at paragraph F1 of the Sentencing Council Guideline on Reduction in Sentence for a Guilty Plea ought to have been applied to produce a 33% reduction, rather than the 25% reduction allowed by the Judge.

Totality – General Observations

33. We take each point separately. We start with totality. We start with some general observations.

34. First, whether a judge has applied totality is a question of substance and not form. The fact therefore that the judge made a single generalised statement towards the end of her sentencing remarks to the effect that she had considered totality is perfectly adequate. Sentencing remarks are not intended to amount to a test of drafting; they are intended to be succinct explanations of the facts and matters that have affected the judge's judgment as to the sentence to be imposed. During questions from the court no counsel or advocate appearing on the appeal ultimately disagreed with this proposition. Were it otherwise, appeals would be brought against perfectly proper sentences upon the basis of bad drafting or poor expression.

35. Second, in relation to totality, the Totality Guideline makes plain that the purpose behind a judge taking totality into account is to ensure that the final sentence is just and proportionate. During argument there were suggestions that a judge should expressly use the expression "*just and proportionate*". We disagree. There is no magic in words. What matters is whether the final sentence is just and proportionate, taking into account all the relevant facts and matters. On an appeal, a court should be able to identify whether this is so from the judge's recitation of relevant facts and aggravating and mitigating circumstances and from an assessment of how this is calibrated against the Guideline.

36. Third, a number of advocates suggested that the application of the totality principle was designed to lead to the judge applying an appropriate *reduction* to the sentence. Again, we disagree. Totality is designed to ensure that the sentencing exercise is not formulaic. As the Guideline points out it is "*usually*" impossible to arrive at a just and proportionate sentence simply by adding up together notional sentences. Totality thus assists the judge to arrive at the correct sentence; it is not about reducing sentences as opposed simply to getting to the correct final sentence.

37. Fourth, many of the arguments advanced before us focused upon the fact that the judge had imposed consecutive sentences when it was said that had she applied totality she would have applied concurrent (reduced) sentences, or, at least that she would have mitigated the length of the consecutive sentence. The Totality Guideline makes what seem to us to be the obvious point that there is no inflexible rule that sentences should be structured as concurrent or consecutive: "*The overriding principle is that the overall sentence must be just and proportionate*". It follows that merely because a judge imposes consecutive sentences is not, in itself, indicative that totality has not be been adequately considered.

38. Fifth, various arguments were advanced that the stages set out in the Totality Guideline under the heading "*General Approach*" (in relation to determinate sentences) should be referred to expressly in the sentencing remarks. Once again, substance must prevail over form. The stages or steps set out in the Guideline are intended to guide how the judge should "*consider*" the structuring of the sentence to arrive at a just and appropriate end result. The steps set out are not drafting instructions.

39. It follows that when this court is considering a judge's conclusion on totality, it will consider whether the judge has taken the correct matters into account and whether in the final analysis the sentence, in the round, is just and equitable. The Totality Guideline provides a structured approach to guide judges in this endeavour. Our conclusions on the law are not, of course, intended to discourage any judge who wishes to provide fuller explanation or reasoning; but the essential point is that what matters on an appeal is the final sentence and whether that is just and proportionate and not the articulation of the chain of reasoning which led thereto.

40. We turn now to the specifics of the position of McLeish. As set out above, the judge took account of all relevant matters and did not take into account any irrelevant matter. She considered: his role in the conspiracy, the level of harm, the duration of the conspiracy, previous convictions and their nature, whether offences were committed whilst the appellant was on licence and/or on bail at any relevant point in time, and personal circumstances.

41. In the grounds of appeal a variety of points are made as to the evidence, or more accurately the lack of evidence, concerning matters said to be relevant to mitigation. Unparticularised assertions are made that there was not, for instance, sufficient evidence to support a conclusion that this was commercial trading, or that there was insufficient evidence to show "*substantial*" influence. The thrust of the arguments is to seek to minimise the role and importance of McLeish and to suggest that the judge exaggerated the importance of his position. We do not accept these submissions. They in effect invite us to reject the judge's carefully considered conclusions on the facts and substitute our own more generous interpretation of them. Whilst exceptionally this court will (when the position is very clear and the judge below has made a plain error in the evaluation of evidence) correct an evidential error, it is not the true function of this court to reject a judge's fact finding. We endorse the observations of the Court in *R v Hoddinott* [2019] EWCA Crim 1462 ("*Hoddinott*") at paragraph [25] to similar effect. In this case, the judge set out the key facts and then drew inferences relative to the Sentencing Guideline from those facts as found. Those findings seem to us to be unassailable: such as McLeish's involvement in the operations and who he was controlling or reporting to and as to the scale, value and purity of the drugs etc.

42. As to the structuring of the sentence, we note that the judge did in fact expressly state (transcript page 8A) that she made the sentence, on the separate indictment count 3, concurrent because of totality. By the very language that the judge used, she obviously chose the structure of the sentence with totality in mind.

43. Standing back, we can identify no error of assessment in relation to totality or otherwise. We reject this ground of appeal.

Credit for Plea

44. We turn now to the issue about discount for plea. This is a short point. McLeish indicated and entered his plea on two counts on 1st November 2018 at the PTPH and therefore would be entitled to 25% discount, which is what he was given. It is said that this was the first sensible time at which any pleas could have been advanced. He entered a plea on 25th March to another count on a basis which was not accepted. That basis was later withdrawn.

45. It is said that in this case there is an argument for more credit and perhaps even 33%. Reliance is placed upon the dictum in *R v Sanghera* [2016] 2 Cr App R (S) 15 to the effect that in some complex multi-defendant cases it might be proper to give extra credit to the defendant who, as it were, first breaks cover and enters a plea. It is said that McLeish is such a person.

46. We do not accept this argument. We note that McLeish was not the first to jump. Succo also pleaded at the same time. There is no evidence that being in the first wave of those who pleaded caused any other defendant to follow suit. In many multi-handed cases there will be one or more defendants who are in the vanguard of those entering a plea; after all someone has to be the first. But this does not mean that, *by this fact alone*, they are *inevitably* entitled to more than the standard credit for plea. We would also point out that the Court of Appeal in *Hoddinott (ibid)* cast considerable doubt upon the force of what was, in any event, very much a tangential point in *Sanghera*. In *Hoddinot* at paragraph [29] the Court (*per* Holroyde LJ) pointed out that the Totality Guideline post-dated *Sanghera* and explained:

> "29. Fifthly, we observe that counsel were correct to abandon reliance on the passage which we have quoted from Sanghera. The Sentencing Council's Definitive Guideline on Reduction in Sentence for a Guilty Plea, which came into effect after Sanghera, makes it clear that the maximum credit which can be given for a guilty plea is one-third. If a defendant is entitled to full credit, and the court is persuaded that weight should be given to the fact that he was the first to plead guilty and by doing so encouraged others to plead guilty, that might be treated as a mitigating factor justifying some reduction in the sentence which would otherwise be appropriate before credit is given for the guilty plea. But whether such a reduction should be made will be a fact-specific decision and Sanghera did not lay down any fixed rule applicable to all cases. In the present case, the very fact that more than one defendant sought to argue that he had "led the way" in pleading guilty, shows the weakness of the argument. In

our judgment, in the circumstances of this case, this was a point to which very little, if any, weight could be given."

47. The chronology that we have briefly summarised makes clear that the Appellant was entitled to 25%. In view of *Hodinott* this seems to us to be entirely proper. For these reasons the appeal in the case of McLeish is dismissed.

Succo

48. We turn to the appeal of Succo.

Totality

49. The first point made on behalf of this Appellant is the broad totality point. Counsel appearing for Succo argued that the judge should have spelled out with some degree of clarity how she had applied the stages that the Totality Guideline identifies. As we have already explained there is no obligation on sentencing judges to set out in their remarks how they have applied the Totality Guideline. What matter is the substance of the final sentence and whether it is just and proportionate.

50. In relation to Succo, the judge held that he played a significant role, upper end. He was trusted by McLeish with large quantities of drugs at import level purity which he was going to dilute for onward sale. There was evidence he became involved due to his own drug addiction. However, his role was beyond that of a small drug street dealer funding his own addiction. He played an important role entailing large quantities of drugs that he had facilities to adulterate. In relation to the April 2018 conspiracy, he played a significant role upper end, Category 1 harm. In relation to the June 2018 conspiracy he played a significant role upper end, Category 2/3 harm. The possession of a knuckle duster was an aggravating factor. He was aged 36 with previous convictions comprising 3 appearances for 3 offences. None were recent. They were public order offences, breach of a community order and a caution for drugs. Mitigation was therefore the lack of relevant previous convictions. The Judge took account of the fact that his criminality was due to some extent that he was supplying a drug he was addicted to. Personal mitigation was that he had children aged 4 and 13, there would be an impact upon them. His partner had health issues. He had used the time spent in custody on remand positively. He was entitled to 25% credit for plea.

We make the same general points about totality as we have in made in relation to McLeish. On the facts, the judge took into account all relevant considerations of both an aggravating and mitigating nature. She carefully placed the offending into the structure of the Drugs Guideline. The arguments advanced to us ignores the rounded analysis of the judge. We can identify no error in that analysis which would justify us interfering in the sentence imposed.

Credit for Plea: "Likely" Indications

51. At the hearing new counsel appeared for Succo. Mr Rosen, who had been instructed the night before the oral hearing, sought permission to raise a new point concerning the credit accorded to the applicant. We granted time for the point to be researched and written submissions lodged and indicated that we would decide the issue on paper, when giving judgment. We have considered the point. It is arguable and raises a

procedural point of some practical significance. We grant permission to appeal and we grant an extension of time to advance the appeal.

52. The ground was framed in the following way: The learned Judge erred in fact in only granting credit of 25% per cent for the guilty pleas which were indicated at the first hearing in the Northampton Magistrates Court on 5th October 2018. Accordingly Succo should have been entitled to a full one-third credit for the guilty pleas entered at the Crown Court at the first available opportunity.

53. The basis of the argument was as follows. The Better Case Management form shows that in the section "*Part 1 - To be completed by the parties before the hearing*", in answer to the question "*Pleas (either way) or indicated pleas (ind only) or alternatives offered*", to each of the two charges the following was recorded - "*G (indicated)*". It is argued that Succo was charged with indictable only matters and could only therefore indicate his future pleas at that stage and this was hence an unequivocal indication of his intention to plead guilty.

54. In section 2 of the form headed "*to be completed by DJ(MC)/legal ad*visor", in answer to the question "*Insofar as known, Real Issues in the case (concise details will be sufficient)*", the answer given is: "*None – guilty plea likely at CC*". The Form is undated, but it is inferred that it was completed at the one and only appearance at the Magistrates Court on 5th October 2018.

55. Mr Rosen acknowledges that case law is now clear that to benefit from maximum credit for a guilty plea to an indictable only charge, any indication of plea at the Magistrates Court must be unequivocal. He properly drew out attention to the recent judgment in *R v Lee Hodgin* [2020] EWCA Crim 1388 and then sought to distinguish it. That case considered earlier authorities. It is said that *Hodgin* and the cases cited therein were handed down after the instant case had been sent to the Crown Court but in any event did not lay down a immutable rule that use of the word "*likely*" will render equivocal an otherwise clear and early plea. He argued that in *Hodgin* a version of the case management form (as had been used in *R v Jason Raymond Hewison* [2019] EWCA Crim 1278, judgment handed down 10th July 2019) had asked what the "*likely*" plea would be in the case of indictable only offences. This demonstrated that practice, at least around the time of and prior to the decision in *Hewison,* was therefore fluid and that even if the form in the instant case did not use the expression "*likely*" it was a term then widely in use. The entry by the legal advisor recording "*None*" to the question "*Real issues*" evidenced that the indication given was unequivocal notwithstanding the legal advisor has then written "*guilty plea likely at CC*".

56. Reliance is also placed upon The Key Principles of the Definitive Guideline "*Reduction in Sentence for a Guilty Plea*". This makes clear that although a guilty person is entitled not to admit the offence and to put the prosecution to proof of its case, an acceptance of guilt: (a) normally reduces the impact of the crime upon victims; (b) saves victims and witnesses from having to testify; and (c) is in the public interest in that it saves public time and money on investigations and trials. A guilty plea produces greater benefits the earlier the plea is indicated. In order to maximise the above benefits and to provide an incentive to those who are guilty to indicate a guilty plea as early as possible, this guideline makes a clear distinction between a reduction in the sentence available at the first stage of the proceedings and a reduction in the sentence available at a later stage of the proceedings.

57. In the instant case it is argued that the key principles are met by the indication given at the lower court. There was no additional expenditure or time wasted on Succo's behalf between the sending and his appearance at the Crown Court. The difference between 25% credit afforded and the one-third credit Succo should have been granted, renders the sentence passed manifestly excessive.

58. We turn to our conclusions.

59. It is worth setting out the considerations which underpin the position of the Court in *Hodgin*. There the Court emphasised the need for an unequivocal indication of plea at the Magistrates Court. This is understandable. A form which indicates a "*likely*" plea is not unequivocal since it leaves open the possibility that the guilty plea will not materialise before the Crown Court and this being so it also leaves the Prosecution to continue with its preparations lest the guilty plea does not emerge or if it does it is then tendered with a basis of plea which is unacceptable to the Crown. The Court in *Hodgin* acknowledged the difficulties that advocates face before the Magistrates Court in proffering full advice to defendants, especially in large scale multi partite conspiracies: "*It may be dangerous to do so. Definitive advice and instructions have to be given and received in a more measured way, with time to reflect and consider all relevant issues prior to the PTPH*." (ibid paragraph [44]). The Court nonetheless added (ibid paragraph [45]) that whilst it understood "… *the practicalities of the situation which the appellant and his solicitor faced at the magistrates' court*" the Court could not overlook that on the facts there was, later on, only limited admissions in the basis of plea (ibid paragraph [46]).

60. At paragraphs [48] and [49] the Court observed:

> "48. In the present case, although we accept that conspiracy can sometimes be a difficult and complex matter for a solicitor to explain to a defendant, the appellant here can have been in no doubt whatsoever that he was involved in a very substantial number of the burglaries listed in the charge he faced, and that he had agreed with others to commit those burglaries. He knew what he had done. He was plainly guilty of conspiracy. Mr Weate confirmed in his oral submissions that there had been pre-interview disclosure by the police the previous day before the appellant gave a "no comment" interview. We note form the police case summary (MG5) that in that interview the appellant was asked about each of the burglaries. He knew perfectly well what the allegations were.
>
> 49. We think that in these circumstances he could and should have given an unequivocal indication at the magistrates' court that he would plead guilty to the offence of conspiracy, even if the precise basis of his plea would have to be decided when the prosecution case was served. It was not a case where it would be unreasonable to expect a defendant to indicate a guilty plea because, for example, the prosecution had not determined what charges it was going to bring, or the proposed charges were vague and uncertain. Here the charge in the magistrates' court set out in very full detail the burglaries he was alleged to have

> conspired with others to commit. Indeed, we note that the charge was much more informative in that sense than the count in the indictment to which he pleaded guilty, which merely alleged (quite properly) that the defendants had, between certain dates, conspired together with others to commit burglary."

61. The general importance of clear and unequivocal pleas at the earliest stage is very clear. But even in *Hodgin* the Court did not adopt a mechanistic approach whereby use of the word "*likely*" inevitably disqualified a defendant from a full discount for plea. The Court considered the individual facts and circumstances though it is right to record that the Court took a fairly rounded and robust view and was influenced by the fact that, even if details remained to be resolved, the defendant "*knew perfectly well what the allegations were*".

62. How do these principles apply on the facts of this case? We see the force in Mr Rosen's submission that on the facts this case is unlike *Hodgin*. Their defence solicitor had written on the BCM form: "*Likely guilty plea*", whereas in Succo's case he wrote: "*G (indicated)*". The use of the phrase "*indicated*" in this context is, in context, used only because the Magistrates court cannot record a guilty plea on indictable only offences – they are only able to record an indication. The Magistrates court's HMCTS employed legal adviser recorded the "*Real issues*" in the case being "*none*", but then – potentially inconsistently - added the words "*guilty plea likely at CC*". We consider it proper to attach weight to the indication given by Succo's legal representative. We do not consider that the potentially inconsistent entry made by the Court officer undoes the notification by the instructed solicitor that indicated an actual future guilty plea. In our view the present appeal is on a par with *Handley* [2020] EWCA Crim 361 explained in paragraph [36] of *Hodgin.*

63. For whatever reason the point was not taken before the sentencing Judge who, therefore understandably, accepted that the plea made in the Crown court was to be taken as the critical point of reference for determining the level of discount for plea. No criticism attaches to the Judge.

64. We therefore allow the appeal to this extent. We conclude that a full one third credit should have been given. We therefore quash the sentence of 10 years and 6 months and substitute in its place a sentence of 9 years and 4 months.

Radford

65. We turn now to Radford. It is also argued for Radford that the Judge erred by not properly applying the principle of totality. The written grounds do not specify in what way the Judge erred, save to say, that more of a discount could have been given. The Judge held that he would have expected financial gain. He was trusted by Hall and McLeish to work with them and for them. He therefore worked with two of those who were at the top of the operations. He had some operational and managerial functions. He was at the top end of significant role. In relation to the 28th April 2018 conspiracy, he was top end playing a significant role. This was Category 1 harm. In relation to the May 2018 amphetamine conspiracy, he was top end significant role, Category 1. There were no aggravating factors. He was still young, aged 26. He had one offence of battery in 2014. Mitigating factors were lack of relevant previous convictions, his age and he

had children for whom there would be an impact. Other personal circumstances were outlined in mitigation. He was entitled to 10% credit for plea.

66. We reject the arguments about totality. The judge correctly identified the aggravating and mitigating factors. The analysis was rounded and balanced and the sentence was squarely within the Drugs Guideline. There was no error in the sentence imposed which fairy reflects the involvement in issue. We dismiss the appeal.

Bailey

67. We turn now to Bailey. He was convicted after a trial on a single count of participating in a single short-lived conspiracy. He received a sentence of 10 years.

68. The Judge found that Bailey was the intended recipient of the one kilogram of cocaine being transported by Timothy Hartgrove. He had an expectation of financial gain. The scale of the operation was commercial. He was directing Lewis and Timothy Hartgrove. He was top end significant role, Category 1. No aggravating factors were present. He was aged 32 with no previous convictions. He was a family man with children and there would be an impact upon them. There were positive character references and a history of employment. He was not entitled to any credit, having been convicted at trial.

69. We consider that there is one point applicable to Bailey. The Judge found that there were no aggravating factors but that there were some relevant mitigating factors: absence of previous convictions and good character references. Yet, the Judge imposed a sentence at the starting point under the Drugs Guideline, of 10 years. It is possible, bearing in mind the facts as found, that the Judge regarded Baileys role as "*top end significant role*" and this might have been a shorthand for a conclusion that the aggravating factors justified some upward movement from the starting point before taking account of mitigation. On the other hand, as advanced by counsel, this is not, in the final analysis, how the Judge expressed her conclusions on the evidence which otherwise she did with evident care and precision. On balance we consider that the fairest course is for us to reflect the exact sentencing remarks of the Judge and not seek to speculate as to what might be read between the lines. This being so absent aggravating factors and with mitigating features present, there is no stated reasoning explaining why the Judge did not come down from the starting point. To this extent we treat this as an error of approach. We consider that a sentence of 8 years and 6 months is a proper sentence having regard to the acknowledged mitigation and to the sentences imposed upon others. We therefore allow this appeal. We quash the sentence of 10 years and substitute a sentence of 8 years and 6 months.

Hall

70. We turn finally to Hall. The Judge found that Hall was the director of the amphetamine enterprise in May 2018. He was a professional and sophisticated drug dealer. He used technology and other individuals to avoid detection. His played a leading role, directing and organising, buying and selling on a commercial scale with substantial links to and influence on others in the chain. He had close links to the original source regarding the cannabis and expectation of substantial financial gain. In relation to the amphetamine conspiracy this was a leading role, Category 1 and in relation to the cannabis conspiracy, leading role, Category 3. His position was aggravated by previous

convictions. He was 31 convictions with three appearances for six offences. In 2006, he had three convictions for possession with intent to supply cocaine, amphetamine and cannabis. In 2008, he had convictions for possessions with intent to supply cocaine and a failure to surrender. In 2018, he had a conviction for being drunk and disorderly. In mitigation, he had a partner whose letter the judge had read. He had a four-year-old son and a teenage son upon whom there would be an impact. He was entitled to 25% credit for plea for the cannabis but was convicted after trial for the amphetamine.

71. It is argued for Hall that the total sentence failed to take into account the principle of totality. We have already addressed this. We reject this argument. As to the specific position of Hall, the judge made clear and comprehensive findings of fact. These are incapable of challenge. Given his role and his previous convictions, the sentence imposed was squarely within the discretion of the Judge and the Drugs Guideline. The sentence was neither excessive nor manifestly so. We dismiss the appeal.