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IN THE COURT OF APPEAL
CRIMINAL DIVISION

CASE NO 202200947/A4
[2022]EWCA Crim 1735

Royal Courts of Justice
Strand
London
WC2A 2LL

Thursday 3 November 2022

Before:

LADY JUSTICE MACUR DBE

MR JUSTICE HOLGATE

RECORDER OF KENSINGTON AND CHELSEA
(HIS HONOUR JUDGE EDMUNDS KC)
(Sitting as a Judge of the CACD)

REGINA
V
JACK NICHOLAS DANIELS

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NON-COUNSEL APPLICATION

J U D G M E N T

1. MR JUSTICE HOLGATE: On 4 November 2021 in the Crown Court at Canterbury before Her Honour Judge Brown, the applicant pleaded guilty upon re-arraignment to count 1, conspiracy to supply cocaine and to count 2, conspiracy to supply ketamine. The conspiracy period on the indictment ran between 29 March and 26 November 2020. On 3 March 2022, before the same judge, the applicant was sentenced to 7 years 8 months' imprisonment on count 1 and to 3 years 8 months' imprisonment on count 2, the second sentence to run concurrently with the first. He renews his application for leave following refusal by the single judge.
2. The conspiracy involved a co-accused, Andrew Talbot. The overall benefit of the conspiracy was put at around £125,000. The applicant used an encrypted EncroChat mobile telephone with the handle "simplyned" in order to arrange drug deals, payments and collections. We summarise the facts of the case by reference to the advice on appeal prepared by the applicant's counsel.
3. On 3 March the appellant exchanged messages with another EncroChat user discussing the supply of cocaine. On 3 April he exchanged messages with another EncroChat user discussing cocaine. The appellant was asking for work. Three days later the appellant was asked to give "D" £200 and discuss the consequences of being caught using EncroChat. On 7 April the appellant was asked about the availability of a box of ketamine and said that it would cost £8,000. Arrangements were then made for purchase and delivery. The appellant also referred to the sum of nearly £45,000 for collection.
4. On 5 May he sent messages about reloading. On 13 May he arranged for the sale of cocaine. Phone contact suggests that he involved Talbot.
5. On 27 May the applicant said that he was due to receive £28,000 on behalf of someone called D. On 29 May he provided a postcode for an exchange. The person with whom he

was exchanging messages provided a price of £36,500 consistent with the cost of a kilo of cocaine. The applicant asked if it was 10/10 and he was told that there would soon be a drought due to a seizure of 25 tons in Spain.

6. Interrogation of the co-accused's mobile phone revealed that he was recruited by the appellant. Messages during the period 3 July to 6 September between the appellant and Mr Talbot disclosed that they were principally concerned with the supply of ketamine. There was discussion about keeping the money from sale of cocaine and ketamine separate.

7. When the appellant was arrested £4,810 was found at his address. The officer in the case estimated the overall minimum benefit from the conspiracy as £125,000. The Crown said that the amount of drugs trafficked was more than 1 kilogram and less than 5 kilograms.

8. The PTPH in this case was held on 4 January 2021. The court was invited to preserve any credit for guilty pleas until the defendants had the benefit of legal advice regarding Dove J's ruling and ultimately the decision of the Court of Appeal in the case of *R v Coggins* which was concerned with the initial challenge to the admissibility of evidence obtained from Encrochat handsets. The Court refused to preserve credit. Not guilty indications were then advanced on behalf of both defendants. A trial date was fixed for 21 June 2021.

9. Mr Talbot pleaded guilty on 20 January 2021. The case was listed for mention on 18 March 2021. An application was made to adjourn arraignment pending the finalisation of the admissibility argument in *Coggins*. That application was refused and upon arraignment the appellant then formally pleaded not guilty.

10. On 14 May 2021 the original trial date fixed for 21 June was vacated and the case was relisted for trial on 14 March 2022. That trial date was vacated at the applicant's request

in the hope that the EncroChat material would be ruled inadmissible in the test case to which we have referred.

11. The applicant had nine convictions for 19 offences between 2005 and 2018. We accept that these were not to be treated as relevant convictions for the purposes of passing sentence in this case. The judge did not have a pre-sentence report. We agree that no such report is necessary in the circumstances of this case.

12. In her sentencing remarks the judge said that the applicant had been recruited by D whilst in prison. His involvement had been small to begin with, but he very quickly assumed a significant role as a key player. His role was towards the top of the significant range. The quantity of cocaine involved over the period of the conspiracy was between 2 and 3 kilograms. The range for the offence under count 1 was 6 years 6 months to 10 years, with a starting point of 8 years based upon a quantity of 1 kilogram.

13. In relation to count 2, the judge concluded that the applicant was towards the top of the chain. She said that his role fell on the cusp between leading and significant categories and so the starting point for the quantity of ketamine involved was about 5 years. She passed concurrent sentences and so the offence under count 2 aggravated the sentence for count 1. The aggravating features also included participating in a conspiracy and doing so whilst on licence.

14. After taking into account mitigating factors the judge concluded that after trial the sentence would have been 9 years 6 months on count 1 and 4 years 6 months on count 2. She said that the applicant had forfeited the right to credit for an early guilty plea when the only reason advanced was that he wanted to know the outcome to the legal challenge to the admissibility of EncroChat material. She said that the applicant was entitled to credit well above 10% but below 25%.

15. We summarise the grounds of appeal. The applicant says that the overall sentence was manifestly excessive or wrong in principle because firstly, the judge took a starting point just below the upper end of the range for count 1, namely 10 years. Secondly, the quantity of drugs involved was well below 5 kilograms. Thirdly, the judge was wrong to treat the applicant as falling within the leading category for the offence under count 2, and fourthly, the credit for plea should have been 25%.

16. We agree with the single judge that the proposed grounds of appeal are **un**arguable. As we have said, the judge's figure of 9 years 6 months was not a starting point but a sentence after trial. In particular, it was aggravated by the sentence on count 2. That sentence was consistent with a proper assessment of the quantity of drugs involved. It did not assume anything approaching 5 kilograms. The judge treated the applicant's role on count 2 as being on the cusp of between leading and significant, not a purely leading role. Her judgment in this respect cannot be faulted.

17. The criticism of the credit for plea is misconceived. The judge correctly applied the Definitive Guideline. In *R v Plaku* [2021] 4 WLR 82 at [10] this Court explained once again why the applicant's submission that a more generous credit for plea should have been allowed is wholly untenable. For these reasons this application is refused.

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

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