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IN THE COURT OF APPEAL  
CRIMINAL DIVISION  
[2023] EWCA Crim 1167



No. 202301273 A5  
No. 202301306 A5

Royal Courts of Justice

Wednesday, 16 August 2023

Before:

LADY JUSTICE ANDREWS DBE  
MRS JUSTICE CUTTS DBE  
MR JUSTICE WALL

REX

V

(1) ZACH HALL  
(2) RICHARD CRANSTON

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MR S MINIHAN appeared on behalf of the First Appellant.

MR M JAMES appeared on behalf of the Second Appellant.

THE RESPONDENT was not present and was not represented.

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J U D G M E N T

(Transcribed from poor-quality audio recording)

MRS JUSTICE CUTTS :

- 1 On 30 July 2021, in the Crown Court at Manchester, the appellant, Richard Cranston, pleaded guilty to Conspiracy to supply a controlled drug of Class A, contrary to section 1(1) of the Criminal Law Act 1977.
- 2 On 21 January 2022, in the same court, the appellant, Zach Hall, pleaded guilty upon re-arraignment to the same offence.
- 3 On 24 March 2023, Hall was sentenced to nine years and four months' imprisonment. Cranston was sentenced to six years' imprisonment. Both appeal those sentences with the leave of the single judge.
- 4 A co-accused, Daniel Degisi, pleaded guilty on re-arraignment to the same conspiracy. He additionally pleaded guilty to Being Concerned in the Production of a Drug of Class B, cannabis. He was sentenced on the same date as the appellants to a total of eleven years and eight months' imprisonment.

#### Facts

- 5 The appellants were concerned in a conspiracy to supply cocaine. The conspiracy ran from November 2020 to June 2021. The appellant, Hall, and the co-accused Degisi were part of an organised crime group, which obtained kilogram quantities of cocaine at import purity and provided it to wholesale purchasers, who included the appellant, Cranston, who would buy from the group in sub-kilogram amounts. There was evidence that the drugs were adulterated prior to their onward sale. It was the prosecution case, and not in dispute, that the co-accused, Degisi, was in control of the wider activities of the group but operated at a distance from those below him in the conspiracy. The appellant, Hall, managed the day-to-day operations of the group. He was responsible for the movement of kilogram quantities of cocaine into safe houses and for sales to dealers. He managed the drugs stored at the homes of his cousin, Michelle Richardson, and Jaymie Dawson, both of whom worked under him.
- 6 The appellant, Cranston, was a customer of Hall and Degisi. On several occasions, he travelled from his home in Buckinghamshire to collect large quantities of cocaine intended for onward sale in his own area. Cranston and Degisi had served custodial sentences overseas together between 2011 and 2014. They remained in contact via social media after their return to the United Kingdom.
- 7 It is unnecessary for the purposes of this appeal to further set out the detail of all the evidence in the case against each of the appellants. It is sufficient to say that the conspiracy was identified through surveillance and telephone evidence. The conspirators were in regular contact with each other by telephone over the course of the conspiracy.
- 8 In March 2021, Cranston drove north where he met with Hall. He was stopped on his return south and found to have two packages concealed inside his trousers, which contained a quarter kilogram of cocaine with a purity of 80 per cent and a street value of between £25,000 and £80,000. Hall's fingerprints were on the packaging.
- 9 In April 2021, police searched Richardson's address. They found drugs paraphernalia and just under 8 grams of high purity cocaine. There was a further 1 kilogram package of

cocaine of 84 per cent purity worth £40,000 wholesale or up to £300,000 if cut for street supply.

- 10 Later that same month, Dawson's home address was searched by the police. There they found a kilogram block of cocaine of 75 per cent purity, £15,000 in cash and drug supply paraphernalia. Digital scales found at that address had the fingerprints of Hall on them.
- 11 On each occasion the co-conspirators were arrested, Hall changed his mobile telephone.
- 12 Degisi, Cranston and Dawson were all arrested on 17 June 2021. The police could not locate Hall at this time. Officers visited an address which they found to be a cannabis farm with 18 fully-grown plants capable of yielding £6,000 worth of cannabis every three months. This was the cannabis offence to which Degisi pleaded guilty.
- 13 In interview, the appellant, Cranston, told police that he had met Degisi in prison in Malta and had collected drugs before on two occasions on the direction of others because he was in financial difficulty.
- 14 Hall was arrested at a caravan park in Blackpool on 28 June 2021. He later gave a prepared statement in interview denying any involvement in the conspiracy.
- 15 The prosecution represented that this conspiracy fell into Category 1 of the relevant sentencing guideline which has an indicative quantity of 5 kilograms. The conspiracy operated in the realms of acquiring and distributing kilogram-sized amounts of cocaine. On two occasions, just three weeks apart, homes under the control of the conspirators were found to contain full kilogram blocks of cocaine. The conspiracy operated over seven months and it was a proper inference that it involved a greater quantity of drugs.
- 16 The prosecution ascribed Degisi a leading role. Hall was said to be subordinate to Degisi, but he still had substantial links to and influence on others in the chain, together with an expectation of significant financial gain.
- 17 Cranston was a customer of the group. The prosecution case was that this work was being done for payment and with an understanding of the scale of the operation.

### Sentence

- 18 The appellant, Hall, was aged 27 years at the time of sentence. He had one previous conviction for seven offences arising from an incident of public disorder in 2015, which included offences of possession of weapons, battery and criminal damage. He had written to the recorder expressing his remorse for his offending, explaining the impact of his incarceration on his young child of whom he had full custody and expressing his intention to change his life around after his release from custody. In mitigation, he said that he had become involved in drug dealing as he owed money to others which needed to be repaid. He further relied on his lack of relevant convictions.
- 19 The appellant, Cranston, was aged 55 at the time of sentence. He had ten convictions for 14 offences. These included a conviction for being concerned in the supply of a controlled drug in 2007 in Italy for which he received a sentence of imprisonment and a further conviction for possessing drugs, including cocaine, in 2017 in Malta for which he was sentenced to 12 months' imprisonment suspended for four years.

- 20 There was a medical report on his behalf before the recorder indicating that this appellant was suffering from kidney stones and possible other medical issues for which he had been referred for further examination.
- 21 In mitigation, he relied upon the fact that he was involved in the care of his elderly parents, both of whom suffered from serious medical conditions. We are told today that, sadly, his mother has suffered a further stroke since the appellant has been in custody. He relied on the impact of his incarceration on his Chinese wife, who only had limited permission to remain in the country and spoke little English, upon the delay in the case and the conditions in custody during the COVID pandemic.
- 22 The co-accused, Degisi, was aged 37 at the time of sentence, he had eight previous convictions for 16 offences, which included in 2011 three offences of supplying cocaine in Malta for which he was sentenced to three years' imprisonment.
- 23 In his short sentencing remarks, the recorder identified that, in coming to the sentence of each defendant, he had to assess two issues. The first, that of harm, should be assessed by reference to the intended purpose of the conspiracy as well as with regard to the sentencing guideline for the supply of Class A drugs. In this case, he accepted that only 2.25 kilograms of cocaine were seized in the course of the conspiracy but observed that indications of the amounts involved were given from the finding of the two 1 kilogram blocks of cocaine in safe houses close in time. This led him to the view that the harm in this case was better reflected by Category 1 of the guideline.
- 24 In terms of culpability, the recorder said that he must have regard to the roles that each defendant played. In sentencing the co-accused, Degisi, he ascribed him a leading role in the conspiracy with the controlling mind of it. The sentencing range for Category 1, leading role, was between 12 and 16 years. He determined there should be an upward adjustment in his sentence to take account of his relevant conviction abroad in 2011. There needed, said the recorder, to be a further upward adjustment to recognise this co-accused's overall criminality, which included his involvement in the production of cannabis.
- 25 The recorder said that there should be:
- “a downward adjustment because of the range of sentence that is available for the level of harm and the level of harm in this case falls a little below the indicative level of harm in the sentencing guidelines”.*
- 26 Without specifying the actual notional starting point after trial or the level of any upward or downward adjustment, the recorder said that, making allowance for all those matters, he would have passed a sentence upon Degisi after trial of 13 years' imprisonment for the conspiracy. He afforded him 10 per cent credit for his plea as he had undertaken an unsuccessful *Newton* hearing. This led to the sentence of eleven years and eight months' imprisonment imposed upon him. The recorder imposed a concurrent sentence of eight months' imprisonment for the cannabis offence.
- 27 The recorder found that harm for the overall conspiracy in the appellant, Hall's case fell within Category 1 of the guideline. He ascribed him a significant role, having concluded that he had an expectation of substantial advantage from the enterprise. Without reference to aggravating or mitigating facts, the recorder then came to a notional sentence of eleven years' imprisonment after trial. He afforded 15 per cent credit to bring the sentence to the nine years and four months imposed.

28 The recorder sentenced the appellant, Cranston, on the basis that his direct involvement in the conspiracy was to make three trips, although he observed that he was in regular contact with his co-conspirators. He found that the harm was that of the conspiracy to which he had lent himself and, therefore, Category 1. He adjusted culpability in this appellant's case to reflect his role in the conspiracy, which he found to be an operational function. He found that this appellant had an expectation of significant financial advantage and had some awareness of the scale of the conspiracy. Without identifying any aggravating or mitigating factors, the recorder said that the least sentence that he would have imposed upon this appellant after trial was one of nine years' imprisonment. He afforded him full credit to reflect his indication of guilty pleas at the magistrates' court and in this way came to the sentence of six years' imprisonment.

### Appeal

29 The appellant, Hall, brings this appeal on two grounds. First, he submits that the recorder failed to take his substantial mitigation or the conditions in custody as a result of COVID into account in arriving at the sentence that he did. He relies, in particular, on the letter written by this appellant expressing remorse. Mr Minihan, who appears for this appellant, as below, submits that this sentence is manifestly excessive as a result. He points to the fact that the recorder made no mention at all of the appellant's mitigation, nor seemed to make any downward adjustment for the notional sentence after trial to reflect it. He merely afforded credit for plea.

30 Second, he submits that there is an unjustified disparity between his sentence and that of the co-accused, Degisi. Mr Minihan submits that Degisi was much more involved in the conspiracy, had a previous conviction for drug dealing and fell also to be sentenced for a further offence of cannabis production. If a notional sentence after trial of thirteen years' imprisonment was appropriate for him, he submits that the notional sentence of eleven years' for this appellant was too high, that the differences in their cases merited more than a two-year difference in their sentences. Mr Minihan submits that the recorder further failed to give the small downward adjustment that he gave to the co-accused, Degisi, for a quantity of drugs less than the indicative amount for Category 1.

31 The appellant, Cranston, also brings his appeal on two grounds. First, that the recorder adopted too high a notional sentence after trial in his case, which it is submitted did not properly reflect his role. Mr James, who appears for this appellant, as below, submits that the proper categorisation of this appellant's offending in the sentencing guideline was Category 2 harm and between significant and lesser role. He points out that this appellant was involved in only three trips between January and March 2021 with no other involvement in the sale of drugs. Although he accepts that there was clearly a financial reward and he had some knowledge of the scale of the operation, this appellant was effectively transporting the drugs. It is accepted that the appellant's 2014 drugs conviction was an aggravating factor but that was the only one. Mr James further submits that there should have been a downward adjustment for the quantity of drugs less than the indicative quantity for Category 1.

32 Second, it is submitted that the recorder failed to take account of the appellant's mitigation as we have set out above. Mr James points out that there is no mention at all of the appellant's mitigation in the sentencing remarks, which would suggest that it was not taken into account.

33 He submits that the combination of these features has led to a sentence which is manifestly excessive. Although Mr James did not in his written grounds rely on disparity with the sentence imposed on Degisi, he has raised such an argument in his submissions before us today.

### Discussion

34 Both appellants are right to observe that, save for a limited extent in the case of Degisi, the recorder in this case did not in his sentencing remarks make mention of any aggravating or mitigating factors in the case of any defendant. We consider the recorder fell into error in this regard. Rather, with little explanation as to why, he adopted a notional sentence after trial to which he applied credit for each appellant's guilty plea. We understand why, in those circumstances, there is concern about whether he did, in fact, take the mitigation in each case into account.

35 As the recorder did not explain how it was that he came to his final notional sentence after trial in each case, we have considered it appropriate to undertake the sentencing exercise in relation to each appellant for ourselves.

36 In relation to the appellant, Hall, we consider the recorder correct to have placed his offending within Category 1 of the guideline and to have ascribed him a significant role. There has been no criticism of that categorisation by Mr Minihan in his submissions to us today. It is right to observe that most, if not all, of the criteria which justifies significant role categorisation are to be found in this appellant's case. He had an operational or management function in a chain. If he did not directly involve others, he ran others in the operation. He had expectation of significant financial or other advantage and, in our view, considerable awareness and understanding of the scale of the operation. His role was pivotal to the conspiracy. Although the quantity of drugs actually found were less than the indicative amount for Category 1, there clearly were more drugs involved in the course of the conspiracy.

37 In our view, the appropriate sentence after trial would have been at the top of the range for the category and in the region of 12 years' imprisonment. We do not find any aggravating factors in his case and acknowledge his mitigation and the conditions in which he has been in custody. The recorder came to a notional sentence after trial of 11 years' imprisonment. Undertaking the sentencing ourselves, with a notional starting point of 12 years' imprisonment, we cannot see that a reduction of 12 months for mitigation would have been anything other than generous. We have considered the submissions on disparity with the sentence of Degisi but cannot accept that there has been such disparity here that right-minded and informed members of the public with full knowledge of all the relevant facts would consider that something had gone wrong in the administration of justice: the test set out by this court in *Crown v. Rudd* [2017] EWCA (Crim.) 2446. It might be said that Degisi was fortunate to have received the sentence that he did, but that does not render this appellant's sentence manifestly excessive and we do not consider it to have been so.

38 Turning to the appellant, Cranston, we consider the recorder correct to have placed his offending within Category 1 for the reasons he set out. He was party to a conspiracy to supply a significant amount of cocaine. We again agree with the recorder that his was a significant role. He could properly be said to have expectations of significant financial advantage, as shown in part by the value of the quantity and purity of drugs found upon him on one of his trips. He had some awareness and understanding of the scale of the operation.

- 39 The recorder recognised that he played a lesser role in the conspiracy and significantly reduced his notional sentence after trial as a result. We agree that a notional sentence after trial of nine years' imprisonment, at the bottom end of the range for significant role, was appropriate in his case. We consider that there should have been a considerable upward adjustment by reason of this appellant's previous conviction for drug dealing, which was a significant aggravating factor. There would then need to be a downward adjustment for this appellant's mitigation and prison conditions. We consider that these two adjustments effectively balance each other out and bring the notional sentence back to one of nine years before credit for plea, which was properly set at one third. That brings the appropriate sentence to one of six years' imprisonment: the sentence that this appellant received. For the same reasons as those given in relation to the disparity ground relied on by the appellant, Hall, we do not consider any disparity with the sentence of Degisi, if such exists, to be such that this appellant's sentence should be reduced.
- 40 By conducting our own sentencing exercise in relation to each appellant, we have reached the same sentences as those of the recorder. It follows that we are unpersuaded that either sentence was manifestly excessive and these appeals are both dismissed.
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**CERTIFICATE**

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This transcript has been approved by the Judge.