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IN THE COURT OF APPEAL
CRIMINAL DIVISION



CASE NO 202300247/A2

Royal Courts of Justice
Strand
London
WC2A 2LL

Wednesday, 20 September 2023

Before:

LORD JUSTICE SINGH
MRS JUSTICE COCKERILL DBE
MR JUSTICE HILLIARD

REX
V
ABDUR SIDAT

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MR P PRIOR appeared on behalf of the Applicant
MR J BIDE-THOMAS appeared on behalf of the Crown

J U D G M E N T
(Approved)

LORD JUSTICE SINGH:

Introduction

1. The appellant appeals against the imposition of a Serious Crime Prevention Order with the leave of the single judge.
2. The procedural background is as follows. On 24 September 2018 in the Crown Court at Leicester, the appellant pleaded guilty to conspiracy to supply class A drugs and possession of cannabis. On 14 May 2019 in the Crown Court at Leicester he changed his plea on another matter to guilty of possession of a firearm with intent to cause fear. He was sentenced on 18 February 2021 to nine years and nine months' imprisonment for the first offence with six months concurrent and 27 months consecutive for the other offences respectively. He was ordered to pay a victim surcharge order.
3. On 16 December 2022 we come to the specific matter which now concerns this court. In the same Crown Court in confiscation proceedings it was found that the appellant had benefited in the sum of £51,320 for an available amount of £1,195. The judge, His Honour Judge Spencer KC, made a confiscation order in that amount with a collection order attached. The judge further imposed the Serious Crime Prevention Order which alone is the subject of this appeal.

The facts

4. The appellant was one of 15 people convicted following a police operation by the East Midlands Special Organisational Unit into the supply of class A drugs, known as Operation Trent. The drugs had been brought from the north of the country into Leicestershire and were then diluted from a high import purity level with cheap adulterants. The drugs were processed, stored and packaged in safe houses before being supplied to other dealers and to users.

5. Evidence from a drug expert was that the activities of the accused were highly professional, efficient and profitable. There was evidence that by the time the investigation started it was a well-established and active group. There was a hierarchy of sorts and some of the defendants were more active than others. Some were involved for longer periods than others. Most were clearly aware of the full nature of the conspiracy. Two men named Khan and Mayat were the heads of the organisation and had previous convictions for supply of class A drugs. They were active and displayed the lavish products of their conduct. The indictment covered a period of about a year. Khan and Mayat accepted that the group was responsible for selling 20 kilograms of class A drugs.
6. At a later stage, other defendants named Makodia and Hoger took on more responsibilities. This appellant was said to be "significantly involved" in the group, the storage, adulteration and onward distribution of the drugs. He was also responsible for holding a fully functioning weapon. He was involved in "many many" calls. He was found to be high in the operation.

Material legislation

7. The material provisions of the Serious Crime Act 2007 are to be found principally in section 19. Subsection (1) provides that subsection (2) applies where the Crown Court is dealing with a person who (b) has been convicted by or before the Crown Court of having committed a serious offence in England and Wales. Subsection (2) provides that the Crown Court may, in addition to dealing with the person in relation to the offence, make an order if it has reasonable grounds to believe that the order would protect the public by preventing, restricting or disrupting involvement by the person in serious crime in England and Wales. Subsection (5) provides that an order may contain (a) such prohibitions, restrictions or requirements and (b) such other terms as the court considers

appropriate for the purpose of protecting the public by preventing, restricting or disrupting involvement by the person concerned in serious crime in England and Wales.

8. We should also note that section 16(1) provides that a Serious Crime Prevention Order must specify when it is to come into force and when it is to cease to be in force.

Subsection (2) provides that an order is not to be in force for more than five years, beginning with the coming into force of the order.

The judge's ruling

9. In deciding to grant the prosecution's application for a Serious Crime Prevention Order in this case, the judge directed himself to the test set out in section 19(2) of the 2007 Act.

He also directed himself to the test set out by this court that there must be a real or significant risk that the appellant would commit further serious offences. We will return to that in due course.

10. Counsel for the appellant had exhorted the judge to look at what the appellant's role had been in the offending but the judge said that he should instead focus on that statutory test.

He said that the appellant had been involved in a serious drugs conspiracy which involved over £1 million-worth of class A drugs and he had possession of a shotgun. He also had a relevant previous conviction, albeit of some age. Addressing the test of whether he had reasonable grounds to believe that an order would protect the public, the judge said that he had ample grounds on the basis of the instant convictions, the nature of those convictions and the appellant's previous conviction. The judge made a Serious Crime Prevention Order for a period of five years in the terms of the draft which had been provided. It would be for a duration of five years rather than three because he had reflected during the proceedings, in that respect the appellant was "the author of his own downfall."

The grounds of appeal

11. On behalf of the appellant, there are two grounds of appeal advanced by Mr Prior. First, that the order was too long in its duration, that is five years. It is observed that an order for three years was made in the case of two of the defendants in this case, although it is accepted that a period of five years was imposed in respect of six other defendants.
12. The second ground of appeal is that in any event the terms of the order were too broad. It is submitted that the broad restrictions which the Crown sought to place on the appellant are neither reasonable nor proportionate to address the specific risks which he poses. At the hearing before us Mr Prior has emphasised that in his submission the judge did not carry out the careful exercise of measuring the precise risk which the appellant posed and tailoring the measures imposed in the order to meet those specific risks. He has submitted that the appellant was not a sophisticated participant in this drugs conspiracy. The fact that he had previously been convicted of a drugs offence showed that he had not learnt his lesson and made himself a more sophisticated participant. For example, he used his own home for "warehousing" of the drugs. He used his personal phone in this conspiracy, rather than (as many do) use a "burner" phone.
13. The terms of the order covered a variety of matters which we will mention briefly in order to give a flavour of the appellant's submissions complaining about them. For example, there was a restriction on the use of a telephone handset and other communication devices. It is submitted that there is no evidence of the appellant using more than one mobile phone and there was no sophistication to his offending to justify restrictions on televisions, games consoles, computers, domestic appliances or fax machines. Then complaint is made about the cash restriction. He was confined to £300

in cash. There is no evidence, it is submitted, of the appellant enjoying a lavish lifestyle or making substantial cash sums from his involvement in these offences. Much of the benefit was given to him in drugs. Next, attention is drawn to the premises restriction. It is pointed out that the appellant had used his own address and there is no merit, it is submitted therefore, in imposing a restriction on other premises he might acquire in the future. Then there is complaint made about the business restriction. It is submitted that the appellant did not in fact use a business as a front during the course of his involvement in this offending. It is submitted that if the appellant did wish to use a legitimate business in the future then there would be restrictions placed upon his activities, for example he might not be able to have a business phone line, although it would appear that he would be able to apply to have the order varied if that indeed were a real concern in the future. Finally, complaint is made about the vehicle restriction. It is submitted the appellant did not, in this offending, use, hire or borrow any vehicles for himself or others.

14. We have had the advantage of written grounds of opposition filed in the Respondent's Notice for which we are grateful. Mr Bide-Thomas for the prosecution has appeared at the hearing before this court today but ultimately, although we are grateful to him, we did not feel the need to call upon him.
15. In his written submissions, Mr Bide-Thomas submits that the judge had well in mind the statutory test in section 19(2) of the 2007 Act and the guidance which has been provided by this court to which we shall return. He reminds this court that the sentencing court was concerned with future risk and submits that on the balance of probabilities there was such a risk. The complaint that the order was too long, whereas others were shorter, could be explained by the fact that the appellant had opposed its imposition and the judge therefore heard fuller facts and submissions. It is submitted that the terms of the order

are proportionate and that it is too narrow to consider only the exact involvement this appellant had. It was intended to prevent, restrict or disrupt future involvement in class A drug supply. It is submitted that the specific restrictions to which we have made reference were all important and proportionate measures; they did not impose onerous conditions.

The legal framework

16. Authoritative guidance about the making of Serious Crime Prevention Orders under the Serious Crime Act 2007 ("the 2007 Act") was given by this court in R v Hancox and Duffy [2010] EWCA Crim 102, [2010] 2 Cr.App.R (S) 74 by Hughes LJ, the then Vice President of the Court of Appeal Criminal Division. For present purposes it will suffice if we set out some of the salient points. First, like other forms of preventative order, a Serious Crime Prevention Order is not an additional or alternative form of sentence; it is not designed to punish. It may be imposed if, but only if, the test set out by section 19(2) is met: see paragraph 12.
17. Secondly, the vital provision is section 19(2). The order may be made if, but only if, the court has reasonable grounds to believe that an order would protect the public by preventing, restricting or disrupting involvement by the defendant in serious crime as defined in section 2 and schedule 1 in England and Wales. It follows that the court when considering making such an order is concerned with future risk. There must be a real or significant risk, not a bare possibility, that the defendant will commit further serious offences: see paragraph 9.
18. Thirdly, proceedings relating to a Serious Crime Prevention Order are civil proceedings and the court is not limited to evidence which would have been admissible in the criminal prosecution. The question whether there are reasonable grounds for believing that an

order would protect the public by preventing, restricting or disrupting involvement in serious crime is a matter not of disputed fact but of judgment and assessment of future risk: see paragraph 4.

19. Fourthly, while an order made by the Crown Court may be appealed to this court, the jurisdiction on appeal is limited to review. This court does not substitute its own view for that of the judge. It will quash or vary the order if satisfied that it is wrong or is unjust because it was made after serious procedural or other irregularity: see paragraph 8.
20. Fifthly, if an order is made it may contain such provisions as the court considers appropriate for the purpose of protecting the public by preventing, restricting or disrupting involvement by the defendant in serious crime in England and Wales. Such orders can only be made for the purpose for which the power is given by statute and, most importantly, they must be proportionate: see paragraph 10.
21. In that paragraph, as Mr Prior reminded this court at the hearing, Hughes LJ cited the earlier decision of the House of Lords in a Human Rights Act case EB(Kosovo) v Secretary of State for the Home Department [2008] UKHL 41, [2009] 1 AC 1159 in the opinion of Lord Bingham of Cornhill at paragraph 7. Hughes LJ noted that the necessity for orders to be proportionate follows from the fact that they will almost inevitably engage Article 8 of the European Convention on Human Rights, that is the right to respect for private life.
22. What this means is that it is not enough that the order may have some public benefit in preventing, restricting or disrupting involvement by the defendant in serious crime. The interference which it will create with his freedom of action must be justified by the benefit and the provisions of the order must be commensurate with the risk. None of that legal framework is in doubt, nor should its importance be undermined. Nevertheless,

what is called for is the exercise of judgment. This is not a precise scientific or arithmetical calculation, measuring, for example, a specific risk and then with scientific precision assessing what particular measure may be required to meet that specific risk. There is a broader exercise of judgment which is called for by the statute.

Application of the relevant principles to this case

23. We remind ourselves of the limited role played by this court in appeals against a Serious Crime Prevention Order. In our judgment the judge was well-placed to exercise and form the judgment which he did in this particular case. Turning to Mr Prior's main submission, the crucial point, as it seems to us, is that the court is not restricted or confined to seeking to prevent activities which the defendant has already been guilty of in the past. Since the focus of a prevention order is forward looking, to prevent future risks, it is entirely possible for there to be proportionate measures taken which are not precisely tailored to prevent exactly what the defendant has done in the past. There is also the obvious risk that if a Serious Crime Prevention Order is drawn too narrowly, by reference to exactly what the defendant has done in the past, the defendant will simply adjust his methods of working to avoid what he did in the past but carry on committing serious crimes.
24. Turning to the complaint made about the duration of the order in this case, as we have noted the maximum length of such an order is by statute five years. In the present case, as the Respondent's Notice reminds this court, six of the other defendants had orders of that length, although two had orders for three years in duration. Furthermore, this defendant, as Mr Prior acknowledges, had the distinguishing features of a prior relevant conviction and, in our view, it was also relevant that he was involved in the firearms offence. In our judgment this amply justified the judge in making the order for the duration of five years in this case.

Conclusion

25. For the reasons we have given, this appeal is dismissed.

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

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