Neutral Citation Number: [2023] EWCA Crim 1505

Case No: 202201385 B5

IN THE COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM THE CROWN COURT AT MANCHESTER (CROWN SQUARE)
His Honour Judge Cross
T20200133; T20190756; T20190634

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 18.12.2023

Before :

LADY JUSTICE MACUR
MRS JUSTICE STACEY
and
MRS JUSTICE ELLENBOGEN

- -

Between :

ARAM SHEIBANI	**Appellant**
- and -	
REX	**Respondent**

- -
- -

Mr S Csoka (instructed by **Forbes Solicitors**) for the **Appellant**
No appearance or representation on behalf of the Respondent

Hearing dates : 18.10.2023

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APPROVED JUDGMENT

This judgment was handed down remotely at 10.30 am on 21st December 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

MRS JUSTICE STACEY :

1. There are 4 applications before the court:

   i) A renewed application for an extension of time of 302 days to seek leave to appeal against conviction for the drugs conspiracy (count 11) after refusal by the single judge;

   ii) An application to amend his grounds of appeal against conviction to add a further ground;

   iii) A renewed application for leave to appeal against sentence following refusal by the single judge; and

   iv) An application to amend his grounds of appeal against sentence to add a further ground.

   On 18 October 2023 we announced our decision that all applications were refused. These are the reasons for our decision.

2. On 17th February 2020 in the Crown Court at Manchester before His Honour Judge Cross, the applicant pleaded guilty to possessing a restricted item in prison. On the same day his trial on a 20 count indictment began. However it was adjourned part-hard on 23 March 2020 due to Covid 19 and on 18 June was officially vacated ("the first trial"). On 9th June 2021, following a retrial before the same court, he was convicted of all 20 offences: 10 offences of fraud, forgery and other offences of deception and dishonesty; 2 drug offences: conspiracy to supply a controlled drug of Class A and possession with intent to supply class A drugs; 5 counts of money laundering contrary to the Proceeds of Crime Act 2002; 1 count of perverting the course of justice and 2 counts of failing to comply with a notice issued pursuant to s.49 of the Regulation of Investigatory Powers Act 2000 (RIPA 2000).

3. On 10th June 2021, the applicant was sentenced by the trial judge to a total term of imprisonment of 37 years made up as follows: for the class A drug supply conspiracy (count 11) he was sentenced to 34 years imprisonment. For 5 offences of obtaining a money transfer by deception (counts 1, 2, 3, 4 and 5), 3 offences of fraud (counts 6, 9 and 10), 1 offence of forgery (count 7), and 1 offence of using a false instrument with intent (count 8) he received concurrent sentences of 7 years. For 2 offences of converting criminal property (counts 12 and 13) and 3 offences of possessing criminal property (counts 14, 15 and 16) he received concurrent sentences of 8 years. For possession with intent to supply class A drugs he was sentenced to a concurrent term of 3 years (count 17) and he received a concurrent sentence of 18 months for perverting the course of justice (count 18). For each of the two offences of failing to comply with a notice under s.49 RIPA 2000 (counts 19 and 20) he received a sentence of 18 months, consecutive to each other and to the 34 year term for class A drugs conspiracy. For the offence of possessing a restricted item in prison that he had pleaded guilty to on the first day of the first trial, he received a concurrent sentence of 6 months.

Summary of the facts

4. The Applicant was initially sent to the Crown Court on a number of different indictments for a number of offences of fraud, dishonesty, money laundering and the like and the 2 counts of breach of RIPA 2000. He was believed to have amassed a fortune and lifestyle to match on the proceeds of dishonesty, financial crime and tax evasion, which had commenced as mortgage fraud in 2003 by taking advantage of the property boom. The indictments were consolidated into a single 19 count trial indictment.

5. Following the discovery of additional evidence including the interrogation of the applicant's seized electronic devices, camera and safety deposit boxes, a month before the first trial, the crown sought to add a further count that between the 1st day of January 2010 and the 10th day of April 2019 he had conspired together with others unknown to supply Class A drugs (what became count 11).

6. The further count was added without objection three weeks after service of an updated detailed case summary setting out the significance of the evidence in support of the proposed new count. The applicant's then counsel were Mr Simon Csoka KC leading Mr Jonathan Rogers. No further particulars of count 11 were sought. No complaint was made that the Attorney General's consent was required by dint of the extra territoriality provisions in s.1A & 4(5) Criminal Law Act 1977 ("CLA 1977").

7. During the course of the first trial and thereafter, further evidence came to light that could not have formed part of the foundation of the original count.

8. At the re-trial the applicant continued to be represented by his junior counsel, Jonathan Rogers, who was now led by Nick Johnson KC as Mr Csoka was no longer available.

9. The evidence in support of the drugs conspiracy came from a number of sources. Some drugs were seized from the applicant's properties including a block of 78% purity 53g cocaine valued at £2,400 (wholesale) - £5,400 (street level), but the prosecution accepted that most of the drugs found were for social supply. The prosecution accept that much of the evidence was circumstantial. It also included:

    i) cash, bitcoin and paraphernalia seized from the applicant's addresses in Bowden and Kensington, London. 2 banknote counting machines able to count 1,000 banknotes per minute, designed and tested for high volume use found in his properties.

    ii) Cash and paraphernalia found in 3 safety deposit boxes totalling in excess of £1 million sterling in cash, and euros (€750,000 in €50 notes), dollars and crypto currency valued at over £130,000.

    iii) Cash that was confiscated that had been found in his luggage on his return from trips to Ibiza on two occasions totally £46,000 which had given a positive indication of the presence of cocaine.

iv) Unexplained cash deposits to the applicant's UK bank accounts approaching £500,000 and the applicant's extraordinarily lavish lifestyle and spending habits;

v) Skype messaging representing trafficking of multi-kilo amounts of the class A drug of MDMA and spreadsheets of dealer lists showing thousands of pounds of debts owed over the indictment period;

vi) Purchase of several 30 tonne industrial hydraulic presses and a video of cocaine production in Columbia using a similar press on the applicant's girlfriend's phone. Travel records of the applicant's trips to Columbia to known drug producing areas;

vii) Purchase of 4 vacuum packing machines and hundreds of heat seal bags bought over a 4 year period;

viii) His internet search and purchasing history of industrial scale drugs paraphernalia, and 11 cash counting machines only 2 of which have been found;

ix) Evidence of a trip to a safety deposit box centre 11 days before arrest to remove a large quantity of cash; and

x) 2 military grade EncroChat phones and military grade encryption of a USB. A destroyed EncroChat phone and an iPhone found in the U- bend of 2 different toilets on the search of the applicant's home at Trinity Apartments, that were destroyed while the police were outside making themselves known and trying to gain access to the property (which formed the basis of the count of perverting the course of justice).

10. There was a chronological overlap between the cocaine and MDMA manufacture, packaging and distribution consistent with a single wholesale conspiracy.

11. By the jury's verdicts the applicant was guilty of very high level criminality of committing frauds and tax evasion and class A drug dealing on a grand scale over many years. He amassed significant, unexplained wealth including houses and is linked to the ownership of 22 properties in the UK. There were properties in Spain, bank accounts in UK, Switzerland and USA, a fleet of luxury cars across the world (a Range Rover in Ibiza, a Bentley in USA and another Bentley in London, a Porsche Panamera and Gullwing Mercedes in Cheshire), high value watches, clothes and possessions, and paintings by world famous artists such as Banksy and Andy Warhol purchased with the proceeds of crime. His two homes, properties in Kensington, London and Bowdon, Greater Manchester, bought in 2015 were each worth £2.5million. There was an extraordinarily profligate and extravagant lifestyle, from many frequent business class flights around the world to a $45,000 bill for hair transplant treatment in Beverley Hills.

12. Meanwhile in his tax returns over the period from 1999-2010 he failed to declare any income in 6 of the 11 years and declared total earnings of an average of £7,500 in the other 5.

13. The applicant provided no information to assist the police – as well as destroying an iPhone and an EncroChat phone as the police were outside his door to execute a search warrant, he refused to hand over any PIN numbers or passwords to his electronic devices and other telephones, he gave no comment interviews and told his girlfriend not to co-operate with the police. Counts 19 and 20 relate to his two breaches of the order requiring him to provide the police with the PIN number to the iPhone which he was prohibited from having with him in prison after he had been remanded in custody.

The proposed grounds of appeal: conviction

14. Three grounds of appeal lodged 302 days late were originally relied on. Firstly, that there should have been a submission of no case to answer on count 11 which would have succeeded because no reasonable jury could be sure that there was a single conspiracy as alleged. Secondly the jury were not directed to consider whether a single conspiracy had been proved, and in particular, they were not directed that they each had to be sure of guilt in relation to the same conspiracy, not just any conspiracy to supply class A drugs in the 9-year period. The third ground was that the proceedings were a nullity because the consent of the Attorney-General was not obtained pursuant to sections 1A and 4 CLA 1977.

15. A further 5 months later, on 9 October 2023 the applicant applied for leave to amend his grounds of appeal to add a further ground that the judge erred in allowing the jury to draw an adverse inference from a "no comment" interview in respect of count 11, when there had been no interview about count 11 prior to charge.

16. A wide-ranging set of questions under the McCook procedure (*McCook* [2014] 2 Cr. App. R.7) were drafted and detailed responses received from trial counsel on the re-trial.

17. Trial counsel on the retrial explained that although the conspiracy was expressed broadly, they had obtained clarification and concessions from the prosecution as to its parameters which were consistently reflected in the final prosecution opening, the legal directions and summing up. The allegation was of a widespread conspiracy with unknown others to supply multi-kilo quantities of MDMA and cocaine at wholesale level only. It included the remanufacturing of kilo blocks of cocaine. No part of count 11 related to supplying to end users. The applicant was not himself dealing at street level, only wholesale, hence the separate count of social supply which did not form part of the conspiracy (count 17).

18. The Crown also confirmed that none of the pre-2010 criminal profits were alleged to be from the drug supply conspiracy, which assisted the defence in the cross-admissibility direction given to the jury. The concession by the Crown about the conspiracy and the applicant's role in it enabled his legal team to exclude evidence of private jet travel in exchange for cocaine.

19. The trial judge indicated that count 11 was sufficiently particularised when read alongside the prosecution opening and the concessions made by the Crown. The applicant's legal team also considered that it was sufficiently particularised and that any application to limit its scope would not succeed. The best approach was discussed with the applicant in conference at the start of and during the trial. He agreed to the

proposed strategy of exploiting the suggestion of a single conspiracy, along with perceived weaknesses in the prosecution evidence, through cross-examination and defence closing submissions.

20. It was the defence understanding and that of the trial judge that it was part of the prosecution case that the applicant had the moniker JoBerry38 in Skype messages which had been sent by him. The defence case was that other people used his device and he was not the one who had sent the messages which appeared to relate to wholesale supply of MDMA. The applicant had agreed with his legal team's approach in the trial to suggest he was not JoBerry rather than challenge that the messages referred to drugs and drug supply, which would lack plausibility since it was part of his defence that he was a member of the international party scene and familiar with drug use in the circles he moved in and was himself a heavy user of cocaine. The JoBerry conversation was part of the evidence of the count 11 conspiracy and was not bad character since it formed part of the facts complained of. The judge was clear in his summing up to the jury that the applicant disputed using the name JoBerry38 or sending the Skype messages.

21. In their answers to the *McCook* questions, the applicant's counsel explained why they considered there was a case to answer that there was the single identified drugs supply conspiracy from the direct and circumstantial evidence at the end of the prosecution case. There was a wealth of evidence from which a properly directed jury could conclude that there was the conspiracy alleged and the applicant had a leading role in it.

22. The judge's written directions on count 11, agreed with trial counsel were:

> "97. This is a relatively straightforward allegation. The fact that it spans a number of years and concerns itself with Class A drugs is not surprising. By this Count, the Prosecution allege a conspiracy to supply Class A drugs at a wholesale level, rather than a social or street supply level. Nor is it surprising no others are named. This count is properly drafted. It is neither too wide or lacking in particulars. It requires though for me to define and you to understand what is a conspiracy?
>
> 98. Let me give you an example of something away from the facts of this case. As you all know, it is a criminal offence to steal something, so it is also a criminal offence for two or more people to agree to steal something. An agreement to commit a crime is called a conspiracy. The agreement (or conspiracy) is itself a crime. Nor does a defendant have to be part of a conspiracy for the entire time. A defendant can leave and join a conspiracy.
>
> 99. Here the P say that the defendant was part of a conspiracy with others unknown. It is not necessary for the Crown to identify any such person or persons, just that one or more was part of the conspiracy with AS.
>
> 100. The agreement alleged here is to supply Class A drugs. Cocaine is a class A drug.
>
> 101. AS would be guilty if –
>
> a. there was a conspiracy and

b. AS was part of a conspiracy to supply and

c. the drugs were of class A"

The written directions then set out a very brief overview of the prosecution evidence, the applicant's evidence, summarised the parties' respective submissions and reminded the jury that they were not to speculate. The applicant's criticism is that at no stage did the judge direct the jury that they had to be sure of a single conspiracy and that in order to convict they must all agree on the same conspiracy.

Analysis and conclusion: conviction grounds

Ground 1

23. The parameters of the conspiracy were clearly delineated as a widespread single conspiracy to supply wholesale Class A drugs (mainly cocaine and also MDMA) over a 9-year period from 2010-2019. The applicant's experienced trial counsel ensured that it was framed with sufficient particularity by the prosecution and did not change throughout the trial, as reflected in all counsel's speeches and the judge's summing up, legal directions and route to verdict.

24. Although much of the evidence was circumstantial, on a consideration of the whole picture, there was sufficient evidence for a jury to be sure that the applicant was guilty as a leading participant of the conspiracy alleged. The evidence came from various sources, as set out above, together with the significant increase in unexplained income, reflected in a comparison of bank accounts to declared income and lifestyle evidence, from 2010 to 2019 and the evidence of a forensic accountant, Mr Beressi, that the consistent pattern of unaccounted for expenditure and cash was generated by wholesale class A drug dealing.

25. The evidence of Count 11 taken at its highest was capable of supporting the Crown's allegation of a single conspiracy to supply different Class A drugs, mainly cocaine but also MDMA, at a wholesale level and satisfied the test in *R v Galbraith* [1981] 1 W.L.R 1039. It was a matter for the jury and trial counsel cannot be criticised for failing to make a submission of no case to answer, which was bound to fail. Ground 1 is unarguable.

Ground 2

26. Ground 2 seeks to challenge the way that the prosecution put its case, its closing speech and the jury directions. There were two aspects. Firstly, that the conspiracy alleged was so broadly expressed that no reasonable jury could be sure that there was such a conspiracy during the 9 year period, and secondly that it was wrongly pleaded as a single conspiracy. If there was evidence of any conspiracies at all, it was of several, not a single one. There is some overlap with ground 1.

27. As set out above, contrary to the applicant's assertion, the parameter and scope of conspiracy was carefully delineated by the prosecution in response to the submissions and points made by the applicant's trial counsel: that the applicant was a wholesale supplier of cocaine and MDMA at the top of the chain and as such a participant in one, single overarching conspiracy with others. There was sufficient particularity to

enable the defence and the jury to understand the allegation as is apparent from the prosecution speeches, the defence speech and the judge's summing up.

28. Although the judge did not use the word "single" or "one" to describe the conspiracy in his written direction it was not strictly necessary for him to do so. The entire prosecution case had consistently been predicated on there being only one conspiracy, as had been made clear to the jury throughout the trial. It is clear from the *McCook* answers that trial counsel understood the parameters of the conspiracy alleged against their then client and it was neither too vague nor imprecise. The jury knew what was being asked of them.

29. As identified by the single judge, it is not wrong in principle to indict an individual for being a wholesale supplier of 2 types of class A drug at the top of a chain and a participant in one overarching conspiracy with others who have not yet been traced. The question is whether there is a sufficient evidential basis for such an accusation. In this case there was.

Ground 3 – extra-territoriality

30. Mr Csoka's argument was that these were proceedings covered by s.1A "CLA 1977" as a conspiracy to commit offences outside England and Wales, with the consequence that the proceedings could only be instituted with the consent of the Attorney General pursuant to s.4(5) of that Act. Consent had not been sought and the proceedings were a nullity (*R v Gordon S* [2015] EWCA Crim 1633 and *R v Welsh* [2016] 1 Cr. App R 8).

31. In support of the extra-territorial nature of the allegation Mr Csoka relied on the prosecution sentencing note that made a reference to "supply in Europe" and the fact that the prosecution alleged drug deals taking place in Scotland and Scottish bank notes being found at one or more of the applicant's properties; the international element of the conspiracy, including the trip to Columbia and film of cocaine production found on one of the applicant's devices, with a similar pressing machine to the ones that he had purchased in the UK; his activities in Ibiza and Spain; and the volume of €50 and €500 notes found, all of which used as evidence of a multi-national drug conspiracy. He relied on *R v Shabbir* [2010] EWCA Crim 970 and *R v Seymour* [2008] 1 AC 713.

32. The prosecution response was that there was no extra-territoriality when the count was added to the indictment. In answer to *McCook*, question 12, counsel for the re-trial stated that they had considered the common law approach to jurisdiction. The Crown Court had jurisdiction to try count 11 under the rules of international comity and no sensible objection could be made.

33. The difficulty with Mr Csoka's argument is condition 3 of the 4 conditions that must be satisfied for s.1A CLA 1977 to be engaged. It provides that:

> "1A(4) The third condition is that the agreement would fall within section 1(1) above [the definition of the offence of conspiracy] as an agreement relating to the commission of an offence, but for the fact that the offence would not be an offence triable in England and Wales if committed in accordance with the parties' intentions."

34. Since the alleged offence would be triable in England and Wales as most of it was alleged to have occurred within the jurisdiction, condition 3 was not met and in the absence of all 4 conditions being met, consent to prosecute was not required under CLA 1977. It was therefore correct for counsel on the re-trial to consider the common law position. For the reasons identified and set out by re-trial counsel, under international rules of comity and the common law participation in the conspiracy would be an offence triable in England and Wales. The authorities of *R v Shabbir* and *Seymour* do not assist Mr Csoka. The evidence in those cases related to exclusively extraterritorial drug supplies. Here there was evidence of the conspiracy being formed and engaged in within this jurisdiction with actions, supplies and payment here.

35. It is therefore not reasonably arguable that the Attorney General's consent to prosecute was necessary and that the proceedings were a nullity.

36. In any event, it is far too late to seek to raise it now, around 10 months after conviction, 302 days after the time for lodging an appeal. We also note that Mr Csoka was trial counsel at the first trial and failed to take the point at the time, which militates against granting the extension of time requested.

Ground 4

37. The further ground proposed is that the conviction was unsafe since the trial judge gave a standard s.34 Crime Justice and Public Order Act 1994 direction to the jury as to the ways in which the jury could draw adverse inferences from the applicant's failure to answer questions under caution in his police interview that did not exclude count 11. In fact, the applicant was not interviewed under caution on suspicion of involvement in a drugs conspiracy as at the time of his arrest and interview it was thought his crimes were financial. He was not reinterviewed before count 11 was added to the indictment. However it is not reasonably arguable that it renders his conviction on count 11 unsafe. The applicant gave evidence at his trial and had the opportunity to give his account then. His failure to mention in interview matters that he relied on at trial was a tiny part of the prosecution case, so small that it was not referred to at all in the prosecution closing speech. The judge's written direction as to what inferences could be drawn from his silence was given in generic terms and count 11 was not referred to. The applicant's no comment interview was not mentioned in the judge's summary of the evidence. The fact that the point was not taken by trial counsel, or noticed by the judge or the prosecution at the time, demonstrates its insignificance when set against the totality of the evidence. It is not reasonably arguable that it rendered the conviction unsafe.

38. Leave is required to lodge the grounds of appeal out of time. No satisfactory explanation for the lateness has been provided, especially bearing in mind that the applicant's appeal counsel was trial counsel at the first trial. Furthermore, since none of the proposed grounds is reasonably arguable, it would not be in the interests of justice to give leave to advance unmeritorious grounds. The applications to extend time are refused. For the sake of completeness, if leave to appeal out of time had been granted, leave itself would have been refused as none of the substantive grounds is reasonably arguable.

39. All applications in the appeal against conviction are therefore refused.

The proposed grounds of appeal: sentence

40. Grounds of appeal against sentence were lodged in time by counsel at the retrial on behalf of the applicant. The first ground was that the sentence of 37 years' imprisonment was manifestly excessive since the judge fell into error in finding the case to be truly exceptional so as to justify a sentence of 34 years on count 11. Secondly, while consecutive sentences for counts 19 and 20 were correct in principle, the total sentence of 37 years was manifestly excessive. Bearing in mind the principle of totality, the fact that generating and laundering the proceeds of the sale of drugs was a necessary part of such conspiracies and bearing in mind the applicant's role, apparent profits, age and antecedent history, the sentences should either have been concurrent or the consecutive term for count 11 should have been shorter.

41. Subsequent to the refusal of leave by the single judge, a further ground of appeal against sentence was proposed, that there was no certainty that the applicant was being sentenced for that which he was convicted of. Since the conspiracy was so wide in its scope, the conviction provided no assistance as to quantity, type of drug or the length of the conspiracy so as to enable the judge to arrive at the sentence that he did.

Sentencing remarks

42. In his careful and detailed sentencing remarks, lasting 44 minutes the judge set out his findings as to the scope of the conspiracy and the applicant's part in it. He found that the applicant operated in the drugs trade at the very highest level, at the very head of a very large scale conspiracy. He was very close to the source of both the production and the international distribution across Europe of class A drugs (cocaine and MDMA) which was vastly profitable. There were 11 cash counting machines, not all of which had been retrieved and other characteristics consistent with a top leading role. The conspiracy was not only to supply, but also to process and manufacture class A drugs and the applicant also had a network of others under his control.

43. The judge noted that the criminality of the conspiracy was not confined by the amount of drugs and money seized and that the applicant fell to be sentenced for the scope of the agreement, which in this case was highly ambitious. He noted that the conspiracy spanned a lengthy period of 9 years. He also found as a fact to the criminal standard that the applicant's dealings went beyond the direct evidence obtained by the police. He drew inferences about the scale of the operation from matters such as the 8 missing professional cash counting machines, the missing vacuum packing equipment and 30 tonne pressing machines which were known to have been purchased by the applicant which the judge found had disappeared into the applicant's network.

44. The judge considered that the drugs conspiracy was the lead offence generating the greatest profit and that possession with intent to social supply class A drugs (count 17) was insignificant in comparison to the conspiracy. There would be concurrent sentences for the fraud, money laundering and forgery convictions.

45. The judge carefully considered the relevant authorities (*R v. Pitts & Others* (2014) EWCA Crim 1615, *R v Cuni* (2018) 2 Cr.App.R (Sentencing) 18 and *R v Mulvey* [2019] EWCA Crim 1835) and had had a helpful sentencing note from the applicant's then counsel. He concluded that this was a case that was outside the guideline as it was a "truly exceptional" case, but he bore in mind the guidelines as a valuable

touchstone. He noted that the criminality of the conspiracy was not confined to the drugs recovered and that, in the applicant's case, the finance and lifestyle were key. He also reminded himself that he must be cautious in passing a sentence in the range of 30 years.

46. As to totality, although the mortgage fraud, dishonesty and forgery offences were separate from the drugs conspiracy, he had factored those offences into his sentence under count 11 and had therefore given concurrent sentences. The proceeds of crime money laundering offences were part of the drugs conspiracy, also attracting concurrent sentences under the guidelines. The judge noted that the two RIPA 2000 offences in respect of the applicant's refusal to give the PIN code for the iPhone he had illegally obtained in prison, and the offence of perverting the course of justice by destroying the iPhone and EncroChat phone on his arrest, each merited consecutive sentences. However, he declined to order a consecutive sentence for perverting the course of justice, in accordance with the totality principle. But for the RIPA 2000 offences, consecutive sentences were necessary for public importance and public policy given the menace of the possession of phones in prison and the refusal to obey court orders.

Analysis and conclusions

47. As noted by the single judge it is rare that those at the very top of the chain of command in the production, importation, distribution and supply of class A drugs are brought to justice. Appropriately harsh sentences will be imposed when they are. This was such a case. The sentencing judge was best placed to understand the scale and scope of the conspiracy having heard the evidence over 10 weeks in the re-trial. The evidence supported his conclusions as to the depth and size of the conspiracy over a 9 year period and the applicant's role at the pinnacle of the operation, entitling him to take the rare step of sentencing above the top of the range in the guidelines and beyond the normal ceiling of 30 years in the most serious cases. As he was obliged to do, he explained his reasons for so doing. It was, as the judge indicated, a truly exceptional case.

48. The drugs conspiracy offence was aggravated by the other offences for which the applicant fell to be sentenced, such as the mortgage frauds and associated dishonesty in counts 1 – 10 which were distinct and separate from the drugs conspiracy. The judge was entitled to treat them as aggravating factors, to be reflected in the lead conspiracy count, warranting concurrent sentences. A further aggravating feature was the way in which the applicant had involved his parents in his criminality.

49. As is acknowledged in the grounds of appeal, the judge was entitled to impose consecutive sentences for the prison offences – possession of the phone and for twice refusing to reveal its PIN number - and also for perverting the course of justice. But the judge had in mind the need for totality and was careful not to over sentence the applicant by only imposing consecutive sentences for the two RIPA 2000 offences. The applicant's failure to provide the PIN numbers were 2 significant breaches of a court order that impeded justice and police enquiries. It was aggravated by his conviction for perverting the course of justice.

50. There was precious little mitigation that could assist the applicant. He is a mature, intelligent man who chose to commit the crimes he was convicted and sentenced for.

He comes from a stable background. That he was himself a recreational drug user who supplied to friends to enhance his kudos and reputation is not a mitigating feature. He had previous convictions, which, whilst not for drug offences, were of some relevance to the latter. The offence of failing to stop after an accident was old (committed in 2000) but was of a piece with destroying evidence relevant to an investigation and breach of RIPA 2000 orders, as all hindered justice and police investigation. The Forgery and Counterfeiting Act 1981 offence of using a false instrument with intent committed in 2008 was also of considerable age, but bore some relevance to the dishonesty offences.

51. It is correctly pointed out that there is no evidence of the applicant being associated with any violence or weapons. However that is not so much a mitigating feature as the lack of an aggravating feature and as explained by the sentencing judge, the scale of the conspiracy and the applicant's top role in it were sufficient to merit the sentence imposed, even though the applicant was not implicated in any violence or weapons offences.

52. The additional proposed ground was lodged over 2 years after the applicant's sentence, well outside the time limit. The explanation for the delay – that it is a new point identified by the applicant's recently re-instructed counsel — is unsatisfactory. For the same reasons that the linked ground in the appeal against conviction is not reasonably arguable, this ground too is not reasonably arguable. The conspiracy was sufficiently clearly formulated, it was framed as a single conspiracy to supply different Class A drugs, mainly cocaine but also MDMA, on a wholesale basis over a 9 year period. Although the precise quantities involved are not known, it was on a very large, multi-kilo and international scale, as set out in the judge's detailed findings from the evidence that the jury must have accepted by their verdicts.

53. We acknowledge that 37 years is a very long sentence, well above the category range, but the sentence was justified on the facts of this case and suitably reflected the applicant's offending overall.

54. Leave to appeal and leave to extend time for ground three are refused.