IN THE COURT OF APPEAL

CRIMINAL DIVISION

[2024] EWCA Crim 124

CASE NOS 202203799/A3, 202203618/A3 & 202300077/A3

ON APPEAL FROM THE CROWN COURT AT NOTTINGHAM

HHJ Warburton

Royal Courts of Justice
Strand
London
WC2A 2LL

Friday, 2 February 2024

Before:

LORD JUSTICE WARBY
MR JUSTICE BRYAN
MR JUSTICE GRIFFITHS

REX
V
NATHAN WILSON
ENDRIT FEJZULLAI
KRYSTZTOF BUDZISKEWSKI

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MR A WESLEY appeared on behalf of the Appellant Wesley
The case of FEJZULLAI was heard as a non-counsel application
MR A GOSCIMSKI appeared on behalf of the Applicant Budziskewski

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J U D G M E N T
(Approved)

LORD JUSTICE WARBY:

1. In December 2022, in the Crown Court at Nottingham, Her Honour Judge Warburton sentenced a number of individuals for their part in conspiracies by an organised crime group (OCG) to produce and supply controlled drugs of classes A and B and other, related offending. Some of those individuals had been convicted after a trial, presided over by Her Honour Judge Warburton. Others had pleaded guilty.

2. Today, the court has reviewed the cases of three of those who pleaded guilty. Nathan Wilson appeals by leave of the single judge against his sentence of five years and 10 months. Endrit Fejzullai and Kryzysztof Budziskewski were sentenced to 14 years six months and 15 years respectively. They renew their applications for leave to appeal against sentence after refusal by the single judge.

3. Wilson is represented by Mr Wesley and Budziskewski by Mr Goscimski. We are grateful for their submissions today and for their written submissions made some time ago. Fejzullai is not represented today. On Wednesday of this week he made a belated application to vacate the hearing of his renewed application on various grounds including alleged difficulties in obtaining funding for counsel. We refused that application as without merit. He does require an extension of time to renew his application but as the delay was largely due to administrative error and overlapping vacations and caused no prejudice, we grant the extension. We shall consider his application on its merits on the basis of the grounds settled by leading and junior counsel.

The facts

4. The charges with which we are concerned arose from two separate but related police operations, each of which gave rise to a separate indictment. The essential facts are these.

Operation Blazestone

5. "Operation Blazestone" unearthed an organised crime operation in the East Midlands involving the production, acquisition and supply of substantial quantities of cocaine and cannabis. The operation was conducted over a period of some 18 months to two years ending in September 2021 when most of those involved were arrested.

6. The indictment based on this operation named 21 defendants who fell into two groups. They were either active participants in or connected to the operation of the OCG, or they were customer-dealers of the group, obtaining significant quantities of drugs for onward supply.

7. Fejzullai was identified as the prime mover of the operation and the first defendant on the resulting indictment. Budziskewski was another principal figure and named as the second defendant. Wilson was one of the customer-dealers and named as the fifth defendant.

8. Budziskewski, who lived in Essex, supplied the cocaine to Fejzullai in the East Midlands. It was high purity drug, supplied by him in kilo or part-kilo blocks. It was passed on to customer-dealers in full kilos or in multiple ounces.

9. The cannabis was grown on a commercial scale at four rented properties in the East Midlands and another eventually in Sheffield and was supplied to the dealers in multiple kilos and half kilos.

10. The drugs were supplied to Wilson and other customer-dealers at two hub addresses in Riddings. Wilson was a regular customer who received and supplied both cocaine and cannabis. In addition, in January 2021, he introduced Fejzullai to another customer-dealer named Mark Chapman (who was the fourth defendant) with a view to the sale and supply of cocaine. Wilson indicated to Fejzullai that this would be an ongoing relationship with Chapman who was looking for regular wholesale supply of multi-ounce quantities of cocaine. For that introduction Wilson was paid £900. The amount of cannabis with which Wilson was himself involved was some 40 kilograms.

11. Bank records from accounts held by Fejzullai and two co-defendants showed very high levels of cash deposits and significant funds transferred between accounts, making it plain that the OCG generated very large quantities of cash, on the face of it well in excess of £500,000. Of the money paid in, over £46,000 came from customer-dealers, including Wilson. A good deal of the money paid in was spent on gambling sites.

12. On 28 January 2021, one of the grow houses was raided. Fejzullai and another were arrested nearby in a car brimful of large laundry bags stuffed with hastily cropped cannabis plants. Fejzullai had a recent gunshot wound to the leg which must have been connected with the drug supply activities. He was interviewed but released. Thereafter

he not only continued but escalated his involvement in the sourcing and supply of both cocaine and cannabis.

13. In August 2021, a second grow house was raided by the police but Fejzullai continued his dealings in both cocaine and cannabis, sourcing another grow house which became fully operational by the following month.

14. It was, as we have said, in September 2021 that the conspiracies came to an end. This was with the further arrest of Fejzullai and most of the others. Budziskewski was not arrested at that time but continued to deal in cocaine. On his arrest in December 2021 he was found to be in possession of a 1 kilogram block of cocaine of 81 per cent purity, concealed by wrapping and hidden in a cupboard at his home. Also in his possession were scales which traces of cocaine and caffeine for cutting the drug, and other drug dealing paraphernalia, together with £4,000 in cash.

15. In January 2022, at the plea and trial preparation hearing Fejzullai pleaded guilty to count 1 on the indictment, which alleged conspiracy to produce cannabis, and count 2, alleging conspiracy to supply that drug. He denied the remaining counts against him. Three months later however he pleaded guilty on re-arraignment to count 3, conspiracy to supply cocaine, and to counts 4 and 5, which were charges of converting criminal property contrary to the Proceeds of Crime Act 2002. His plea to count 3 was on a basis which the Crown did not accept. Accordingly, there was in due course a trial of issue, otherwise known as a Newton hearing.

16. At that hearing Her Honour Judge Warburton found that Fejzullai was the leader, orchestrator and overall director of the OCG in charge of the buying and selling of the drugs, with links to all the other co-conspirators and influence over those beneath him. He had an expectation of substantial financial profit. He had involved several others in the business and exploited the vulnerability of some of them. She found that the group had dealt in quantities of cocaine in excess of 6.5 kilograms, worth more than £250,000, and over 130-kilograms of cannabis.

17. Budziskewski pleaded guilty on a full facts basis at the plea and trial preparation hearing in January 2022 to counts 2 and 3 and to count 7. That was a charge of possessing cocaine with intent to supply, contrary to section 5(3) of the Misuse of Drugs Act 1971, reflecting what was discovered upon his arrest.

18. Wilson pleaded guilty to participation in the class B and class A conspiracies (counts 2 and 3) in April 2022.

Operation Galore

19. Operation Galore was concerned with a conspiracy referred to as the downstream side of the Operation Blazestone cannabis conspiracy. Count 1 on the Operation Galore indictment named Wilson, Anthony Allcock and two other defendants as participants in a conspiracy to supply cannabis between 1 January 2020 and 1 August 2020. The facts were that the conspirators used Allcock's house to warehouse kilo amounts of cannabis. In June 2020 a raid on the house recovered three kilos of the drug. Evidence showed that

Wilson had visited the house several times over the month or so before the raid, and on at least two of those occasions he was seen going or coming with bags full of cannabis.

20. Wilson pleaded guilty to count 1 on that indictment on 25 February 2022, two months before his guilty pleas in the Operation Blazestone case.

Wilson

21. Wilson was sentenced on 2 December 2022. He was 32 years old. He had previous convictions in 2015 and 2020 for possession of cocaine and cannabis but none for drug trafficking.

22. The judge took Wilson's role in the class A conspiracy as the lead offending, passing a sentence on that count to reflect the overall criminality. Concurrent sentences were passed in respect of the class B conspiracy on the Blazestone indictment and the similar charge in respect of the Operation Galore conspiracy, which everyone agreed was concurrent behaviour.

23. The judge applied the Sentencing Council guideline for the supply of a controlled drug. The appellant was sentenced on the footing that his role was that of a customer of Fejzullai in relation to both class A and class B drugs for over a year or so before he introduced Fejzullai to Chapman. The judge accepted that Wilson's role was different from that of others and that he had played no part in the relationship between Fejzullai and Chapman once he had made the introduction. But she said the reality of the matter

was that he had brokered the deal with Chapman, knowing the scale and extent of Chapman's operation and aware of Fejzullai's ability to source cocaine and to supply it to Chapman regularly in the quantity and the quality that Chapman was looking for. With that introduction, given the quantity involved, Wilson's part in the class A conspiracy was identified as falling within guideline category 2, lesser role, with a starting point of five years and a range from three-and-a-half to seven years imprisonment.

24. The judge identified five mitigating factors. Wilson's business had folded. He had spent a proportion of his time on remand in more onerous conditions with occasional lockdowns of 10 or 11 days. He had made good use of his time in custody. His inevitable incarceration would have an impact on family members. He had expressed regret and remorse. Balancing these against the aggravating factors, the judge said that the sentence after a trial for count 3 would have been one of four-and-a-half years. The class B conspiracy would have attracted a sentence of three years. That merited an upward adjustment of two years to the lead sentence, resulting in a notional sentence after a trial of six-and-a-half years. Reducing that by 20 per cent to reflect the guilty plea to count 3, the judge passed a sentence of five years and 10 months on that count. On count 2 the guilty plea attracted a 25 per cent reduction and the sentence was one of 27 months' imprisonment, concurrent. A further 27-month concurrent sentence was passed for the Operation Galore conspiracy.

25. The written grounds of appeal set out three grounds in support of the overall contention that the sentence was manifestly excessive. Those grounds have been argued this morning by Mr Wesley.

(1) He submits, first, that the judge adopted too high a starting point on count 3, before making appropriate reductions for mitigation. He argues that Wilson's only involvement in the cocaine conspiracy was to pass on a phone number in order to connect two dealers, in return for a modest reward. That, it is argued, was very much at the low end of the lesser role category and the starting point should accordingly have been at the bottom end of the category range, namely three-and-a-half years.

(2) Secondly, it is argued that the judge failed to apply an appropriate discount for the effect of Covid-19 on remand prisoners. Mr Wesley submits that the judge had indicated that she would apply such a reduction but either failed to do so or failed to give the point due weight.

(3) The third ground of appeal is that the judge gave insufficient credit for the guilty pleas. Mr Wesley submits that full credit should have been given for the pleas to the cannabis conspiracies because the appellant did not appear before magistrates, and it was not until the plea and trial preparation hearing that he had the benefit of legal advice. He also submits, perhaps more pertinently, that more than 20 per cent should have been allowed for the plea to count 3. He submits that the plea to that count was only delayed because of a lack of clarity in the Crown's case against the appellant on that count, an obscurity that was resolved in correspondence leading to the plea.

26. Before addressing the specific points advanced, we remind ourselves of some points of general application that have a bearing on this appeal and on the applications to which we

shall come shortly.

27. Although it is appropriate for judges sentencing for drug conspiracies to use the statutory guideline, it does not expressly govern such cases and should not be slavishly applied to them. There are several differences between the approach to sentencing a defendant for a substantive offence and sentencing him for the criminality involved in a conspiracy. A defendant who takes part in a conspiracy supports the overall enterprise. The amount with which that defendant is personally and directly involved is of lesser relevance. The assessment of harm must also take account not only of the quantities with which the conspirator actually dealt but also of what the conspirators intended or foresaw. That is particularly significant when a conspiracy is brought to an end by police action. Such a conspiracy is usually intended to continue into the future. See Pitts [2014] EWCA Crim 1615; Smith [2020] EWCA Crim 994; and Cavanagh [2021] EWCA Crim 1584.

28. Further, in the absence of a manifest error of principle this court will be slow to interfere with sentences imposed by a judge who has managed a case of conspiracy of this kind, has conducted trials and Newton hearings, and is therefore uniquely well-placed to assess the scale and nature of the conspiracy and the nature and extent of each person's involvement. The court is only likely to interfere if it can be shown that in sentencing a particular defendant the judge proceeded on an obviously mistaken factual basis or made an error of principle or, when assessing weight, formed a view which no judge could reasonably have formed. See Williams (Declan Craig) [2019] EWCA Crim 279, [2019] 2 Cr.App.R (S) 15 at paragraphs 3 and 4, and Hughes [2021] EWCA Crim 447 where those remarks were adopted by this court in a judgment given by Lady Justice Carr, as she then

was.

29. Turning now to the grounds of appeal:

(1) First, we do not regard the appellant's introduction of Chapman with the benevolence urged upon us by Mr Wesley. The judge found, and was clearly entitled to find, that the appellant brokered the deal. In other words he had direct, albeit shared, responsibility for the cocaine supply in which Fejzullai and Chapman thereafter engaged, and would have continued to engage but for the intervention of the police. The judge found as a fact that over the relatively short period between January 2021 and the dissolution of the conspiracy, some two kilograms of cocaine were supplied to Chapman. The intended scale of that supply was, as we have indicated, greater still: the parties envisaged regular wholesale supply of multi-ounce quantities.

(2) Secondly, we are not persuaded, either, that the prosecution case against this appellant was as limited as Mr Wesley submits or that the judge sentenced on that footing. Our reading of the prosecution note for sentence, in conjunction with the sentencing remarks, indicates otherwise. The appellant was sentenced for his part in the conspiracy generally, which included not only the introduction of Chapman but also his prior role and continuing role as a customer-dealer of cocaine over a period of more than a year. Relative to Chapman, the amounts involved were on a lesser scale but the appellant's involvement was nonetheless significant.

(3) Thirdly, it follows that not only was the appellant directly involved with cocaine of significantly more than twice the one kilo on which the Category 2 starting point is based, his conduct also had at least two characteristics of significant role. He had a good awareness and understanding of the scale of the operation and he involved

others in the operation for reward. The judge's approach was if anything somewhat generous.

(4) Fourthly, it is perfectly clear that the judge took account of the impact on this appellant of the prison conditions resulting from Covid 19. The weight to be given to that factor was a matter for the judgment of the judge. We see no basis for inferring or deducing that she gave it insufficient weight.

(5) As for the reductions for plea, again we see no grounds on which to interfere with the judge's conclusion. Her approach to the issue was careful and we can detect no error of principle. The appellant plainly could have indicated his pleas sooner than he did. He did not require legal advice to know that he had been involved in conspiracy to supply class B drugs. The same goes for count 3, where the plea came after the plea and trial preparation hearing. We do not accept that the appellant's guilty plea to this count was delayed because of a need to obtain clarity about the Crown's case against him. He pleaded not guilty at the PTPH on the plainly false basis that he had not been involved at all in the supply of cocaine. The correspondence that we have reviewed indicates that the real reason for this guilty plea was that the prosecution had demonstrated to him that this position was untenable.

30. We do not consider therefore that the sentence imposed on this appellant can reasonably be criticised as either wrong in principle or manifestly excessive. The appeal is therefore dismissed.

Fezjullai

31. We turn to the renewed application of Fejzullai.

32. He was also sentenced on 2 December 2022, at which time he was 38 years old. He was of previous good character. In his case also the judge took the cocaine conspiracy (count 3) as the lead offence and imposed a sentence on that count to reflect the overall criminality involved in the five counts to which Fejzullai had pleaded guilty, with concurrent sentences on the others.

33. The judge's findings of fact led her to categorise this applicant's offending as Category 1 leading role. The category starting point, based on five kilograms, is 14 years. Here the judge had found that at least 6.5 kilograms of cocaine was dealt with and that it was of high purity. That would naturally lead to an upward adjustment from the category starting point.

34. The judge identified three aggravating factors: the applicant's continued offending, despite his arrest and the August 2021 raid; the fact that two types of drug were involved; and the element of exploitation. Taking those into account she said the appropriate sentence after a trial would have been 15 years. She then reduced that figure to take account of mitigation. Four matters of mitigation were identified: his good character; the impact of incarceration would have on family members; his expressions of remorse; and the conditions in custody during Covid. The judge also took account of his apparent addiction to gambling. Those factors took the notional sentence after a trial on count 3 down to 14 years.

35. The judge then considered the other counts to which the applicant had pleaded guilty. She said that on counts 1 and 2 the appropriate sentence after a trial would have been six years. On counts 4 and 6 it would have been five years. The aggregate of those sentences is 11 years, The judge considered that having regard to totality the appropriate uplift to the lead sentence on count 3 was one of four years, making a total of 18 years after a trial.

36. On count 3, the judge said, the applicant would have been entitled to a reduction of 20 per cent for his guilty plea but that was reduced to 17 per cent because his basis of plea had raised triable issues on which he had mainly lost. The reduction for some of the other pleas which would have been 25 per cent was reduced accordingly. Applying the reductions arrived at in this way, the judge came to a sentence of 14 and a half years on count 3, with concurrent sentences of four years and eight months on each of counts 1 and 2, and concurrent sentences of three years and nine months on each of counts 4 and 5.

37. In support of Fejzullai's case that these sentences were manifestly excessive, the written grounds of appeal advanced four main points. First, that the starting point should have been reduced because the calculation was based on amounts purchased rather than amounts demonstrably supplied. Secondly, that the judge incorrectly aggravated the sentence on count 3 by a period of 12 months. It is said, among other things, that the judge double-counted the class B conspiracy by relying on it as an aggravating factor and a reason to increase the lead sentence. Third, that insufficient reduction was given for mitigation which is said to have been strong. And fourth, that an increase of four years to

reflect overall criminality was excessive. In support of this last point it is submitted that where a judge increases a lead sentence to reflect other offences the increase must be less where the lead offence is much more serious.

38. We have considered these grounds, the arguments advanced in support , and the observations of the single judge. We have reviewed the sentencing remarks and the other papers provided. Our conclusion is that none of the grounds is arguable. That is essentially for the same reasons as were given by the single judge.

39. In summary, it is impossible to argue that the judge should have adjusted the sentence downward from the category starting point of 14 years. The applicant had been involved with cocaine well in excess of the indicative quantity on which that starting point is based. This was a conspiracy not a count of personal supply. Moreover, as the drugs were purchased for the purpose of onward supply the suggested distinction is entirely artificial. The judge was plainly entitled to conclude that these matters, and the aggravating factors she identified, justified an increase to 15 years before taking account of mitigation. It cannot realistically be said that the applicant's mitigation entitled him to a greater reduction than that which was given. In any event, what matters above all is the outcome of the balancing process, namely the 14-year notional sentence. That is unimpeachable.

40. It cannot be said that the uplift of four years to reflect the other offending was too much. It represented a very significant discount from the 11-year uplift that would have resulted from the imposition of consecutive sentences. We are unable to follow the argument that

such an uplift should be tempered where there is a gulf in gravity between the offences. The further suggestion in the written argument that the uplift should have been less because the cannabis conspiracy was in some way intrinsic to the class A offence cannot be accepted. We reject the suggestion that there was any element of double-counting in the sentencing process.

41. In the result, there being no criticism of the reduction for this applicant's guilty pleas, the renewed application is refused.

The second application (Budsiskewski)

42. We turn to the case of Budziskewski.

43. He was sentenced on 12 December 2022. He was 26 years old and of previous good character. Again the judge took count 3 on the Blazestone indictment as the lead offence, adjusting to take account of the overall criminality. Again she placed the applicant's offending in Category 1 leading role, with a 14-year starting point. The aggravating factors were the applicant's involvement in two kinds of drug dealing and that his offending had continued after the September arrests. Those matters were deemed to be balanced out by the mitigation. This consisted of his previous good character, a delusional disorder which had had an effect on him when first remanded in custody, the impact of prison conditions during Covid, his good behaviour when in prison and the impact that custody would have on family members. The judge concluded that that left the appropriate sentence after a trial at 14 years.

44. On count 2 the appropriate sentence after trial would have been three years. Budziskewski's role in count 7 was Category 2 leading role for which a sentence after a trial would have been one of nine years. The judge in the event uplifted the sentence by six years to reflect the gravity of this other offending. The resulting overall sentence of 20 years was then reduced by 25 per cent to reflect the guilty plea.

45. The written grounds of appeal come down to what are essentially two related points. First, that the "starting point" of 20 years in respect of count 3 was outside the guidelines and manifestly excessive. Secondly, that the six-year increase from 14 years to 20 for totality was insufficiently reasoned and in any event excessive and unjustified.

46. In support of the first ground, Mr Goscimski has submitted that sentences of 20 years and more are reserved for massive importations and operations involving more than 100 kilos of class A drugs. In support of the second ground he submitted in writing that there was no sufficient explanation for the uplift and that the other two counts "cannot properly increase the starting point by six years" because they were not serious enough.

47. In his submissions today Mr Goscimski has focused very much on the latter point, arguing that it was not just and proportionate to increase the sentence as far as this judge did, and that we should stand back and conclude that the resulting sentence before and after reduction for plea was just too high.

48. We have reflected on those submissions but have concluded that there is no merit in

them.

49. We have described the reasoning process adopted by the sentencing judge. It was clear and full, more than adequate and, as the single judge said, conventional and legitimate. It is true that the sentence on count 3 exceeded the top of the guideline category range for a single offence of that category. But the main reason for that was that this sentence did not just reflect the offending that was the subject of count 3. It also had to reflect other, very serious criminality which was the subject of concurrent sentences. The 14-year starting point on count 3 is itself beyond criticism and is not criticised. The offending on counts 2 and 7 was properly categorised and the notional sentences arrived at reflected the applicable guidelines. The six-year uplift on count 3, before reduction for plea, was not an "increase for totality" as suggested. Quite the contrary. If consecutive sentences had been imposed on counts 2 and 7 the total sentence would have been increased by 12 years to 26 years before reduction for plea. The judge's six-year uplift therefore represented a very significant discount for totality. As Mr Goscimski has submitted this morning, the assessment of totality is not a science but an art or, as we would rather put it, a question of judgment.

50. In our opinion it is clear that the overall sentence in this case was rationally arrived at. It was clearly explained and it reflected a legitimate application of the relevant guidelines to the facts of the case. The judge's assessment of the appropriate uplift cannot be impugned and it is not arguable that the resulting sentence was other than just and proportionate.

Conclusions

51. Our conclusions overall are therefore these.

(1) The appeal of Nathan Wilson is dismissed.

(2) The applicant Fejzullai is granted an extension of time to renew his application for leave to appeal, but the renewed application is dismissed.

(3) The renewed application of Budziskewski is dismissed.

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

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