

This Transcript is Crown Copyright. It may not be reproduced in whole or in part other than in accordance with relevant licence or with the express consent of the Authority. All rights are reserved.



IN THE COURT OF APPEAL
CRIMINAL DIVISION

ON APPEAL FROM THE CROWN COURT AT OXFORD
HIS HONOUR JUDGE MICHAEL GLEDHILL KC T20230025

CASE NO: 2023 04387 A4

[2024] EWCA Crim 1666

Royal Courts of Justice
Strand
London
WC2A 2LL

Tuesday 17 December 2024

Before:
LADY JUSTICE ANDREWS
MR JUSTICE BRYAN
MR JUSTICE SAINI

REGINA
v
UJEZA KURMEKAJ

MR TIM NAIK appeared on behalf of the Appellant

A P P R O V E D J U D G M E N T

MR JUSTICE BRYAN:

1. On 3 November 2023, in the Crown Court at Oxford (His Honour Judge Michael Gledhill KC), the applicant pleaded guilty to conspiracy to do an act to facilitate the commission of a breach of UK immigration law by a non-UK National (contrary to section 1(1) Criminal Law Act 1977). On 17 November 2023, HHJ Gledhill KC sentenced the applicant to 7 years and 6 months' imprisonment.
2. The Judge informed the applicant that she was likely to serve two-thirds of the total sentence before being eligible for release. The sentence passed of 7 years 6 months' imprisonment was a standard determinate sentence (defined as a "fixed term" sentence by section 237 of the Criminal Justice Act 2003 ("the CJA 2003")). The requirement that the offender serve two-thirds of such a sentence before release applies where the sentence of imprisonment for 7 years or more is imposed after 1 April 2020 for an offence listed in Schedule 15 of the CJA 2003 for which a life sentence could have been imposed (section 244ZA(4) CJA 2003).
3. Conspiracy to do an act to facilitate the commission of a breach of UK immigration law by a non-UK national is not an offence listed in Schedule 15 and, due to the date the applicant entered into the conspiracy, the maximum sentence was 14 years (the maximum sentence for the offence was increased from 14 years' imprisonment to life imprisonment by the Nationality and Borders Act 2022, but only in relation to offences committed on or after 28 June 2022). Accordingly, the applicant will be eligible for release after serving half her sentence. We state this purely for clarity as to the position. Where a judge gives an indication as to the time that will be served, and falls into error in that regard, such indication is not binding and there is no need to seek leave to appeal to correct the indication given at the time of sentence. The applicable provisions as to release will simply be applied correctly in due course.
4. The applicant applies for leave to appeal against sentence, the application having been referred to the full court by the single judge, who also granted a representation order for counsel, Mr Naik, who appears before us today.
5. The background concerning the applicant is as follows. The applicant is an Albanian national. On 1 March 2022, she arrived in the UK on a small boat and claimed asylum. She was placed in a hotel by the immigration authorities. On 3 July 2022, she contacted the police and made a complaint of exploitation. She was interviewed by officers from the National Referral Mechanism ("NRM"), and she told them that after about a month of her arrival in this country, she had been taken from a hotel by a group of men and forced to work in a brothel for two months. She escaped whilst on a visit to a hospital. The NRM considered the allegations and eventually decided that the applicant had been a victim of modern slavery.
6. However, in the meantime, and whilst her case was under consideration, the applicant committed the index offence. The majority of the evidence against the applicant came from the contents of a mobile phone which was seized from a room that she occupied in Banbury. In total, four mobile phones were seized but the National Crime Agency were only able to gain access to one. The memory of the phone attributed it to the applicant, and it contained multiple incoming and outgoing messages relating to people smuggling, including photographs of people in small boats crossing the Channel and discussions about arrangements and payments for such crossings. The messages covered a long period and they started before the applicant moved to Banbury. The mobile phone evidence was supported by surveillance evidence from October 2022 that showed the applicant was acting with freedom at the relevant times. She had access to cars, telephones, large sums of

money, and was able to come and go freely from her home.

7. The surveillance evidence covered five days in the week leading up to the applicant's arrest on 19 October 2022. On 11 October 2022, the applicant was seen at a business called The Posh Car Wash in Banbury. It was a business where she spent much time during the week and where she appeared to have some kind of supervisory role. She was seen to travel in an Audi motor vehicle with a man to visit two other car washes in Norfolk where they spoke to the men who were working there. On 12 October 2022, she arrived at The Posh Car Wash as a passenger in a Mercedes car. She was seen at the car wash using a telephone. On 15 October 2022, she was at the car wash again, using her phone and speaking to the drivers of the Audi and the Mercedes, leaving in the Mercedes.
8. On 17 October 2022, she was at the car wash again and this time, she was driving the Audi herself. She was seen to hand a white plastic bag to one of the workers at the car wash. She was also seen to use a key to open the safe at the car wash and to remove a bundle of £50 notes, one of which she gave to a man in a car. She later left in the Mercedes. She was seen using her phone regularly throughout the day. On 18 October 2022, she was seen walking in Banbury, coming and going from her house and using a telephone.
9. The applicant had moved into a rented room at 75 Middleton Road, Banbury, on 26 September 2022. The room had a locked door to which she had the only key. She told the landlord that she owned The Posh Car Wash. She was not allowed to bring anyone else into the room she rented and she agreed to that condition.
10. Just after 6 am on 19 October 2022, officers attended 75 Middleton Road and arrested her, in her rented room, where she was alone. The room was searched and four iPhones were seized, along with £4,000 in cash and 10 grams of cocaine. The applicant was interviewed under caution. She made a short, prepared statement in which she said that the money seized was hers but that the drugs were nothing to do with her. She said that she had saved the money from her job as a cleaner and denied any involvement in criminality. She was asked about her involvement in people smuggling and other matters, and she thereafter made no comment.
11. The memory of one of the seized phones contained multiple selfie-type images of the applicant from as early as July 2022, together with pictures of her identity documents and other documents relating to her. Her name was used in some of the messages. The phone also contained a number of photographs sent to the phone as messages, which clearly showed migrants, all of whom appeared to be young men, in transit. The men were pictured in various locations, including on small boats on the sea. There were also photographs of small black inflatable boats on dry land. There was a total of 48 images in this file, and the earliest was from the middle of June 2022. Many of the images showed multiple men.
12. The phone also contained images of locations in England and on the near-continent and maps of the area around the French and Belgian coast and of the English Channel. Some of the maps showed route plans to locations on those coasts. There were 74 images of this type, covering a period from mid-June to mid-September 2022. The phone also contained a number of images of Albanian identity documents, sent to the phone in June and July 2022. Most of the images were of men, but there were also images of women. There were 37 such files. The phones also contained WhatsApp conversations relating to people smuggling, and these included images of transaction slips showing money transfers made in Albania. There were also many conversations directly relating to the organisation of the transit of migrants showing that the applicant had been in regular contact either directly with migrants or with people on the Continent who were in charge of them.

13. The applicant discussed where the migrants were and where they needed to go. There were multiple conversations about Channel crossings, and on 1st August 2022 the applicant was asked, "Could not be any chance, do you think, for tomorrow as the weather is good for crossing?" The applicant replied, "It has to do with what the sea is like but I don't know, have to ask him tomorrow." On 25 July 2022, the applicant asked someone, "Could you send me the number of people that are at the hotel?" and "It's quite possible that the crossing will take place tomorrow". On 25 July 2022 the applicant had a discussion with a number of people about a crossing and was told that there were 14 Albanians and 56 foreigners but the crossing could not happen because the waves were too big.
14. One message from 18 June 2022 showed four men at sea in an inflatable dinghy and the message, "Finally gone today at 8.27". In the messages, the applicant was referred to as "English girl" and in another message, she said of herself, "I am the girl of the route". In another exchange, a migrant told the applicant that he had been caught by the police and she said, "Delete chats with me". In another message, she asked for the name of the person she was speaking to when he said that he owed her money. The amount of money per person was discussed in other messages and appeared to be 5,000. The currency was not specified but was presumably in Euros.
15. Some of the people the applicant was speaking to in the messages were clearly in transit; others were back in Albania but arranging transit. On 29 July 2022 the applicant was asked, "Do you want the money before my brother leaves?" She replied, "Yes". The applicant asked to be sent images of ID cards. She was sent photographs of locations which seemed to be in France. She said she did not want photos but rather location data. One message from 17 July 2022 came from people who said they were in the sea and needed help. The applicant told them to call 999. Other people contacted the applicant to say they had arrived in the UK and were being taken to hotels by the Immigration Service.
16. The phone also contained voice messages. Some of the messages involved demands of payment, sometimes very forcefully. In other messages, the applicant talked of sending money home to Albania on a regular basis. There was also a number of text conversations between the applicant and specific individuals who were in transit. On 16 September 2022, the applicant told someone whose name was saved as "XH" in her phone to get to Calais on Monday. The applicant gave XH a telephone number to ring. On 11 September 2022, she spoke to someone saved as "X" who was in Calais but was having trouble finding the taxi. She told him to look for the station. The discussion continued into the next day and there was a long exchange about payment for various parts of the transit process. The message showed that "X" eventually crossed the Channel on 23 September 2022, along with five other Albanians. There were similar exchanges with other numbers, all saved as "X" or similar, throughout September and August 2022.
17. The applicant had no previous convictions, and the Judge chose to sentence the applicant without a pre-sentence report.
18. In his sentencing remarks the Judge noted that the applicant had been trafficked to the United Kingdom, referred herself to the NRM, but that even before the NRM had determined that she was a victim of modern slavery, she had become involved in a criminal gang whose purpose was to bring a large number of foreign asylum seekers to this country, many of them being Albanian, her fellow countrymen, the irony being that the applicant, a victim of modern slavery herself, was happy to become involved with a criminal gang, and she did so with enthusiasm, and that in a period between June and October 2022 she was involved in bringing at least 50, predominantly men, to this country over the Channel.
19. The Judge noted that at any stage during that period of months the applicant could have

walked away from the others involved and she chose not to do so, he said because of the money that she was making, with all the trappings of wealth that came with it, including very expensive cars. She even told her landlord that she owned the car wash that she was seen at so often, and the sort of money she was making was shown by the amount of money that was found in cash in her rented room. She had no regard to the safety of the illegal immigrants and the judge had no doubt that had any of them died she would have taken no responsibility for their deaths. He noted that she had received a message from an asylum seeker saying that the party were in difficulties on the sea. As the judge put it, this was not something that she found difficulty in answering - she told them to dial 999.

20. The prosecution put the applicant's role in the criminal gang as being significant, and when looking at whether or not she was higher in the conspiracy, the Judge concluded that she was an important cog in the wheels of this machinery, at the very top of significant role. She was the direct link between the organisers, and the asylum seekers; she knowingly played an important role in the undermining of the United Kingdom's immigration laws, and for no reason other than money.
21. The Judge noted that at the time the applicant joined the conspiracy, the maximum sentence was 14 years' imprisonment. Nineteen days later, Parliament increased the maximum sentence to life imprisonment. As the prosecution had only chosen to charge her with one offence, spanning the period before and after the increase in the maximum sentence, the maximum sentence was 14 years, and as such the Judge considered the applicant was very fortunate not to face a longer sentence.
22. The Judge applied the applicable principles from the relevant appellate authorities (including the aggravating factors identified in *R v Le and R v Stark* [1999] 1 Cr App R (S) 422). First, in terms of whether the offence was isolated or repeated, the applicant's involvement was repeated many times over several months. Secondly, the duration of involvement in the criminal conspiracy was at least four months. Thirdly, she did not have similar previous convictions. Fourthly, the motivation was commercial not humanitarian; she was not helping people out of kindness, but on a commercial basis for money. Fifthly, she dealt with at least 50 illegal immigrants. Sixthly, these persons were strangers, not family or friends. Seventhly, in terms of the degree of organisation, she was an important member of a highly organised and professional criminal gang. Eighthly, there was no evidence that she had exploited others.
23. In terms of mitigation, and in addition to a lack of previous convictions, the Judge identified that the applicant was a 32-year-old intelligent woman, who had had difficulties at home in Albania in her family life, and who had been forced into an arranged and abusive marriage from which she had escaped. He also noted that when she left Albania she had had to leave her daughter. The Judge also referred to the NRM finding that she had been a victim of modern slavery.
24. The Judge arrived at a sentence of 10 years' imprisonment before 25% credit for guilty plea, passing a sentence of 7 years and 6 months' imprisonment.
25. The grounds of appeal against sentence for which leave is sought are that the Judge (1) failed to take proper account of the appellant's mitigation and/or (2) erred in setting a minimum sentence of 10 years' imprisonment (before credit for guilty plea) and/or (3) passed a sentence that was manifestly excessive.
26. The Advice on Appeal elaborates upon these points. In relation to mitigation (which mirrored the mitigation submissions made to the Judge), it is said that the applicant was vulnerable, and that after her initial escape she was contacted by the "tentacles of the same

organisation" and faced repayment of unpayable debt. She did not feel that she had a choice or that the approaches would ever end; and she accepts that she agreed to play a role to minimise the perceived risk to her or her daughter. Whilst it was not suggested that she was under duress or kept hostage, it is said she did not make a significant financial gain save for repayment of her inflated debt, she lived in a sparse one-bedroom rented room and she did not own a vehicle, though she had access to lifts or occasional use of the vehicle albeit at the request of others, and occasionally she worked at the same car wash as her brother.

27. It is said that the Judge erred in characterising the applicant's involvement as "enthusiastic" and motivated by money. It was submitted that the existence of a precise large quantity of cash, supported it being money to be paid up the chain and not hers to access in whole or in part. It was submitted that far from being able to walk away, the applicant had made a choice that was near impossible to walk away from. It was said that none of the "trappings of wealth", such as access to vehicles, in fact belonged to her or were free for her to access.
28. It was acknowledged that the applicant was rightly categorised as an important cog and a direct link and go-between placing her in a significant role, below that of leading role. Reference was made to the recent case of *Nazr Jabar Mohamad* [2022] EWCA Crim 875, in which a sentence of 11 years 6 months' imprisonment (before credit) was upheld in relation to a leading role.
29. In referring the application for leave to appeal sentence to the full court, the single judge stated that he was concerned as to whether there was adequate information before the court for the sentencing. He noted that the majority of the offending took place after the applicant had made her complaint to the NRM, and that the applicant had never made any reference to involvement in immigration crime when speaking to the NRM. The single judge ordered a pre-appeal report, and that dated 23 August 2024 is before us. In addition to that, those acting on behalf of the applicant have obtained a psychological report in relation to the applicant dated 31 October 2024, which is also before us.
30. The matters that the applicant told the author of the pre-appeal report are broadly consistent with the matters raised in the Advice on Appeal, save that the applicant says that the £4,000 found in her rented room was her money which she made cleaning, and she does not agree that she played a significant role. She expressed remorse for her behaviour and for her role in exposing others to danger, but in the context of the fact the applicant is clearly depressed, the author considered that much of her regret seems to be about the unhappy life she has led. The report also addresses the applicant's time in custody, and whilst she is not adjudication or incident free, overall she has been following the prison regime well, and she had been on an Assessment, Care in Custody and Teamwork ("ACCT") plan due to her depression, and she would have had access to mental health support. The applicant was assessed as a medium risk of serious harm to the public and children, but unlikely to cause harm unless she was engaged in people trafficking for financial gain. In circumstances where the applicant was serving a substantial immediate custodial sentence, and was liable to be deported on release, the author was not in a position to propose any alternative sentencing outcome.
31. In the psychological report of Jodi Symmonds dated 31 October 2024, Ms Symmonds expresses the opinion that the applicant would meet the criteria for a diagnosis of PTSD, depressive disorder and anxiety disorder (albeit it is not suggested that such conditions reduced her culpability in relation to the offending itself). She also addressed the account the applicant gave her in relation to the offending. Ms Symmonds expressly states that the applicant "did not state that she had been trafficked and exploited or seek to offer her account in such a way". However, Ms Symmonds expresses the opinion that "the earlier

experience of having been trafficked, exploited and coerced provided the means through which the organised crime group continued to utilise coercive tactics to acquire the applicant's compliance within her offence". In this regard she relies upon what the applicant said to her, including that the gang had said to her that she just needed to translate with Albanians, that she still needed to pay and "it was this or going back into sex work. They said think of your daughter". Ms Simmonds concludes:

"In my opinion, should [the applicant's] account be taken as true, all these constituent elements of the Modern Slavery Act 2015 are indicated in [the applicant's] account of her experiences."

Discussion

32. We are grateful to Mr Naik, who appears on behalf of the applicant, for the quality of his submissions.
33. Turning first to the question of the appropriate sentence before consideration of available mitigation, we consider this was very serious immigration offending, that by its very nature usually calls for a deterrent sentence, as has been repeatedly emphasised in the relevant authorities. There were also numerous aggravating factors in the present case which required a significant uplift from any notional starting point.
34. The guideline case in this regard remains *R v Le and R v Stark* (supra) (a case when the maximum sentence was 7 years compared to 14 years at the time of present offending, now life imprisonment). In giving the decision of the court, Lord Bingham LCJ said:

"There are indeed a number of features which may aggravate the commission of this offence. One aggravating feature plainly is where the offence has been repeated and the defendant comes before the court with a record of violations of this provision. It is also an aggravating feature where the offence has been committed for financial gain, and it is an aggravating feature where the illegal entry has been facilitated for strangers as opposed to a spouse or a close member of the family. In cases of conspiracy it is an aggravating feature where the offence has been committed over a period, and whether or not there is a conspiracy, the offence is aggravated by a high degree of planning, organisation and sophistication. Plainly the more prominent the role of the defendant the greater the aggravation of the offence. It is further aggravated if it is committed in relation to a large number of illegal entrants as opposed to one or a very small number. Lastly, of course, the maximum must cater for the case in which the defendant has contested the charge and so failed to earn the discount which a plea of guilty would have earned. The more of those aggravating features that are present, the higher the sentence will be..."

35. As will be seen, and as the Judge addressed, almost all of these aggravating features were present here (save only for no previous violations), and the Judge was entitled to make the finding he did as to the role and involvement of the applicant based on the evidence before him, concluding that her role was a significant role and towards the top end thereof. A sentence in excess of 10 years' imprisonment (but below the then 14-year maximum) before consideration of personal mitigation would be entirely apposite for someone

performing the applicant's role with the concatenation of aggravating factors that were present.

36. It was then necessary to consider available mitigation (including the applicant's guilty plea). The Judge had express regard to the matters relied upon in the notice of appeal (which had been advanced before him by way of mitigation) and arrived at a sentence of 10 years' imprisonment (before credit for guilty plea).
37. Having regard to the applicant's traumatic upbringing, the applicant's vulnerability and the recent finding that the applicant had been the victim of modern slavery in the form of sexploitation which, put at its lowest, provided the immediate context for the serious immigration offending that the applicant then took part in over an extended period of time, we consider that the preferable course would have been for the Judge to adjourn sentencing to obtain at least a pre-sentence report, and potentially a psychological report as well. Unlike the Judge, we have had the benefit of both such reports.
38. We have had careful regard to the content of the pre-appeal report and the psychological report. We do not consider that such reports justify a conclusion that the Judge erred in the findings of fact that he made. It remains clear that the applicant had a complete freedom of movement, and was free to do, and did do, work of her own: she worked at the car wash, she did cleaning herself and she travelled in, and on occasions herself drove, expensive cars. There was some £4,000 found at her rented room. Whether this is the product of her involvement in the conspiracy or her own cleaning work, either way it shows the high degree of autonomy she had, which was not consistent with the applicant being a victim of modern slavery in relation to the conspiracy itself. In addition, in this context, the applicant has never suggested before that she was effectively threatened that, "it was this or going back to the sex work", which is surprising if such a threat was made. In this regard we have already noted that in the notice of appeal it is expressly acknowledged there was no suggestion of duress, and that was confirmed to us today by the applicant's counsel. We do not consider that the evidence, taken as a whole, would justify the conclusion that in her involvement in the conspiracy the applicant was the victim of modern slavery. On the contrary, the weight of the evidence is that the applicant enthusiastically undertook her role, which was very much more than that of a translator, and which was carried on over an extended period of time.
39. Nevertheless, we consider that if the Judge had had the benefit of a pre-sentence report and a psychological report, he would have recognised that the applicant was particularly vulnerable to persuasion to participate in the conspiracy and that, having regard to the applicant's mitigation as a whole, a greater reduction in sentence was appropriate and should have been made. We consider that on the particular facts of the case the sentence passed of 10 years' imprisonment (before credit for guilty plea) was manifestly excessive.
40. On the basis of all that is now known, we consider that an appropriate reduction to reflect the available mitigation was one to 8 years' imprisonment (6 years after 25 per cent credit for guilty plea).
41. We accordingly grant leave to appeal against sentence, quash the sentence of 7 years 6 months' imprisonment and substitute a sentence of 6 years' imprisonment.
42. To that extent the appeal against sentence is allowed.