IN THE COURT OF APPEAL

CRIMINAL DIVISION

[2024] EWCA Crim 227

No. 202202237 B1
202202238 B1

Royal Courts of Justice

Friday, 16 February 2024

Before:

LADY JUSTICE WHIPPLE
MRS JUSTICE STACEY
HIS HONOUR JUDGE PICTON

REX
V
AHMED SABBAGH-PARRY

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J U D G M E N T

LADY JUSTICE WHIPPLE:

Introduction

1 On 11 April 2022, in the Crown Court at Liverpool before HHJ Brandon, the applicant (who was then 36) was convicted of two counts of conspiring to supply class A drugs, those are Counts 1 and 2 on the trial indictment, and one count of conspiring to supply class B drugs, which is Count 3 on the indictment. That followed six-day trial which had started on 4 April 2022.

2 On 12 April 2022, before the same court, the applicant was sentenced to 19 years' imprisonment on Counts 1 and 2 to run concurrently with a five-year term of imprisonment on Count 3.

3 The case as a whole has a chequered history which is encapsulated in some introductory paragraphs to a ruling on disclosure dated 21 December 2021 given by the trial judge. In para.4 to 7 of that ruling, under the heading "Background", the judge set out matters in this way:

> "4. This will be Mr Sabbagh-Parry's second trial in relation to allegations of conspiracy to supply class A and B drugs. It is the prosecution case that the defendant was the head of an organised crime group supplying controlled drugs from Merseyside to South Wales. The defendant vehemently denies the allegations and claims, in essence, that he is the victim of a police 'set up' (although his defence is wider than this and I have endeavoured to clarify it at the hearing). A trial began in January 2020, involving nine defendants, but this did not conclude due to a combination of the surging Covid pandemic and delays during the trial caused in part by this defendant's decision to dispense with the services of his legal team during the course of the trial. There have been two subsequent trials of the co-defendants, which I have heard. The trials have taken place piecemeal, largely because of the restrictions on space within courtrooms during the pandemic. Having now heard three trials, I am very familiar with the evidence in the case.

5. Following the discharge of the jury on 19 March 2020, Mr Sabbagh-Parry indicated that he did want to be represented at his trial. I granted an application for leading and junior counsel to represent him. Since then, he has dispensed with the services of three leading counsel and their juniors. His reasons are set out in his various communications to the court, uploaded to the DCS. Essentially he has formed the view that his case is far too complex for any legal team funded by Legal Aid to manage. He had retained the services of a solicitor to carry out certain limited functions, including the instruction of an expert witness. On the morning of 15 December 2021, Mr Sabbagh-Parry informed the court that he had also dispensed with the services of his latest solicitor, notwithstanding that he was aware that by doing so, he would also lose a means of accessing the Digital Case System and the method of communicating with the prosecution via secure email. The defendant has been told that without a solicitor he would not have access to the DCS and that he was not eligible to receive a secure email address which would enable him to communicate with the Crown Prosecution Service via email. It was clear from the submissions that he has made both orally and in writing, that he was of the view that if he did not have a solicitor, the prosecution would have no option but to communicate directly with him. I have received a further email from the defendant on the morning of 20 December 2021, which will be uploaded to the Digital Case System. It is apparent from that email that the defendant remains unrepresented.

6. Since the last trial, both when represented and unrepresented, the defendant has written regularly to the court, either in person or via family members acting on his behalf. … Mr Sabbagh-Parry has also prepared a lengthy document (hereafter 'defence bundle') … . This document, running to almost 300 pages, is handwritten and contains:

- An amended defence statement.
- Handwritten extracts from Archbold (recently supplemented by typed extracts)
- A lengthy list of requests for disclosure of material by the prosecution.
- A section entitled 'DER' (Defence evidence requests) in which the defendant requests from the prosecution various items.

- A further section entitled 'S8' which seeks to consolidate the extensive requests for disclosure into one section, adding further detail to add to the points made in the requests section and which invites the court to consider an application under S.8 of the CPIA for disclosure.

- Various applications to exclude evidence.

- Sections setting out Mr Sabbagh-Parry's case theories, entitled:

    - Lies within the prosecution case - deception within the prosecution case.

    - The prosecution failed to provide evidence with A & U.

    - The way that prosecution abused their powers.

    - Stops and arrests - ASPs and others.

    - DC Cain dodgy behaviour -- attribution weaknesses and the dodgy manner in which it was built.

    - The way the prosecution were going against the evidence.

7. This document has been supplemented by the various emails and letters received from or on behalf of Mr Sabbagh-Parry, including the ones sent on each day to the court during the three-day hearing between 15 and 17 December 2021. The defence bundle and the various emails and letters contain the submissions made by the defendant as to the disclosure of material and the exclusion of evidence."

4 In terms of representation, the applicant was represented by the time of the conclusion of the final trial and for the purposes of sentence, but since then he has not been represented, largely as a matter of his own choice.

5 The applicant now renews his application for an extension of time of 64 days for leave to appeal against conviction, having been refused on the papers by Johnson J as the single judge. He also applies to amend his notice of appeal and to make an application for bail. The applicant also applies for an extension of time of 63 days for leave to appeal against sentence. That application has been referred by Johnson J to the full court. Johnson J

granted a representation order for counsel only on the referred application. However, the applicant has indicated several times that he does not wish to be represented by counsel at today's hearing and so he represents himself.

6 Earlier this week, we refused the applicant's request to be brought to court for the hearing as being disproportionate, but we ruled in the interests of justice that he should be permitted to address the court for 15 minutes via prison video link. He has done that this morning and has ably outlined key parts of his applications.

Facts

7 The facts of this case are very well known to the applicant and are set out in the Court of Appeal Office Summary, which has already been supplied to the applicant. Aspects of that summary are disputed, but in the main the key features of his case are as follows.

8 In summary, conspiracies to supply heroin, cocaine and cannabis existed between 14 June 2018 and 3 July 2019. An Organised Crime Group ("OCG") based in Liverpool had been supplying class A class and class B drugs on a commercial scale in Merseyside and had been transporting the drugs into South Wales for distribution in Cardiff.

9 The applicant was interviewed on three occasions about his alleged involvement in the OCG. He exercised his right to silence in those interviews, save for producing two short statements denying the offences.

10 The prosecution case was that the OCG had two limbs under the "hands-on" leadership of the applicant and was part of the three conspiracies to supply drugs into South Wales where the applicant would go when required. The applicant had for a time a flat in Liverpool city centre, but his family home was in London. The applicant had used a number of phones, including three "spoofing" devices, and was said to have been in contact with others involved around key dates when drugs were being supplied to South Wales. He had also

been at safe houses around the time of key movements of drugs. It was common ground that the applicant had a legitimates business, but the prosecution maintained that this did not negate the opportunity for the applicant to run the drugs operation.

11 To prove the case, the prosecution relied on circumstantial evidence compiled from covert surveillance, vehicle stops and property searches which resulted in the seizure of drugs and cash, evidence of lifestyle, movement of vehicles based on ANPR data, telecommunications evidence and cell site analysis.

12 Between June 2018 and March 2019, the police regularly covertly monitored the applicant and his interactions with his co-defendants in two safe houses, albeit they were not physically or forensically linked to any drug seizure. There was other evidence of association between the applicant and others said to have been involved.

13 The prosecution also relied upon evidence of the applicant's bad character which the prosecution contended showed propensity to commit offences of this type.

14 The defence case was that the applicant had not been party to any conspiracy and on the available evidence that inference could not be drawn. It was accepted there had been conspiracies involving others, but the defence contended that they did not need his assistance. Innocent explanations were advanced for the evidence on which the prosecution relied, and which it was claimed had been wrongly used. It was argued the police had started with him and worked backwards with a flawed line of reasoning and conformation bias in order to frame him. ANPR data had been requested but wrongly refused. In its absence, it was claimed to be impossible to link journeys and phones to the applicant. Call patterns were disputed. Cell site evidence was criticised as being imprecise and potentially misleading. A disputed identification of the applicant on Croxteth Road on 15 November 2018 was criticised on the basis that it arose from poor-quality footage. It was argued that the so-called "lifestyle" evidence was deficient and other connections,

geographical or personal, were of no relevance. The applicant's previous convictions were characterised as "old" and it was asserted that he was a working family man. The applicant gave detailed evidence covering all these issues and more. He explained his failure to answer police questions on the basis that he feared for his own and his family's safety.

15 The issue for the jury was whether the applicant was (1) a party to an agreement in any or all of the three different conspiracies relating in turn to cocaine, heroin and cannabis and (2) at the time of the agreement whether he intended that drugs (as per each count considered) should be supplied to other people, either by supplying the drugs personally or by assisting or encouraging others to do.

The Trial

16 The case is unusual not only for its chequered history, but also for the significant number of rulings required of the judge during the course of the trial and the preparation for it. We summarise those ruling because they have some relevance to the application for leave to appeal against conviction.

17 One issue was the stance adopted by the prosecution in respect of certain information concerning the exact position of ANPR cameras. There were disclosure requests pursued by the applicant that were resisted by the prosecution. When the judge stated that in respect of two particular vehicles the information should be disclosed, the prosecution elected not to rely on the evidence to which the request related. Accordingly, the judge came to rule that the information requested need not be provided.

18 The contested disclosure issue generated an application under s.8 of the Criminal Procedure and Investigations Act 1996. The judge provided a detailed ruling, to which we have already referred, addressing the multiplicity of issues raised by the applicant.

19 The judge also had to rule on defence applications to exclude evidence, adduce acquittals and in respect of contested case management decisions. The judge provided a written ruling addressing all of these matters. She noted in the course of that ruling that the applicant's arguments did, in certain respects, lack any legal foundation and in other regards amounted to little more than speculation.

20 The judge also had to rule upon a contested bad character application. The legal argument was developed at a time when the applicant was still represented. The prosecution wished to introduce previous drug trafficking convictions and the judge ruled in their favour. She addressed all the defence arguments in the course of so doing, but concluded that the evidence had potential relevance should the jury be satisfied that the applicant had a tendency to deal in drugs.

21 The judge was also required to resolve disputes as to the wording of the sequence of event chart relied on by the prosecution. In some respects, she accepted defence points, but in others she found for the prosecution.

22 Further legal argument concerned the contested identification of one of the alleged co-conspirators named Bradley Stainer. A meeting said to be relevant to the drug supply activities in which Stainer was said to have participated had featured in earlier trials by agreement, but later objection was taken (again at a stage when the applicant had the benefit of representation) and required the judge to provide two rulings, the second following a voir dire. The judge accepted the defence arguments and excluded the contested evidence.

23 A consequence of the decision in respect of Stainer was to cause the defence to argue that the convictions of other alleged co-conspirators should be excluded and in that event, the jury should be discharged, the evidence having previously been admitted by agreement and opened by the prosecution. The judge did not accept the defence submissions, holding

that it was not a closed conspiracy, the applicant's defence was not "closed off" as was argued on his behalf and the evidence was properly before the jury.

24 On 17 March 2020 the judge had to address an issue in respect of some inadmissible evidence given by DC Cain reporting a complaint that had been made about the applicant by a third party. The judge concluded that whilst the jury should not have heard the evidence, the damage done could be sufficiently addressed by a direction to them to take no account of that evidence, and the jury were so directed.

Conviction application

25 The applicant's original grounds of appeal were contained in an advice from counsel. Those grounds overlap the renewed application and we set them out in full:

> 1. The learned judge erred in admitting the defendant's previous convictions for drug dealing.
>
> 2. The learned judge erred in failing to discharge the jury after the identification of Stainer was excluded.
>
> 3. The learned judge erred in failing to discharge the jury after DC Cain's misrepresentations.
>
> 4. The learned judge failed to direct the jury in respect of cell site evidence.

26 The prosecution served the Respondent's Notice to which the applicant has responded at some length.

27 These papers came before the single judge who provided comprehensive reasons addressing the points advanced in respect of conviction:

> "1. Previous convictions (paras 93-105 of grounds; and see also counsel's grounds at paras 39-49): The charge was conspiracy to supply drugs. The applicant denied

involvement in the drug dealing. His previous convictions (including conspiracy to supply a class A drug) showed that he had a propensity to deal drugs. They were relevant to an important issue in the case. It does not matter that they were irrelevant to other issues. The judge gave a careful written ruling asking the correct questions (X216). She had regard to the age of the convictions (but correctly pointed out that this was not a single old conviction). She was right to allow the convictions to be adduced in evidence. The evidence of the conviction of the co-defendants for conspiracy was relevant to prove the existence of the conspiracy. The judge correctly dealt with these issues in her written legal directions (X278 at paragraphs 135-139).

2. Not discharging jury after excluding identification of Stainer (paras 106-118): The judge gave written reasons for her decision not to discharge the jury (X240). There is no arguable error in the judge's approach. The prosecution had sought to allege that the man that the co-accused had met when drugs were handed over was Steiner. The evidence of identification was excluded. It remained the prosecution case that the co-accused met a (unknown) man when drugs were handed over. The exclusion of the identification evidence did not prejudice the applicant.

3. Not discharging jury after evidence of DC Cain (paras 119-120): DC Cain gave evidence that was factually inaccurate. This was appropriately addressed by way of an agreed fact and by very clear directions from the judge (X259 at paras 50-53).

4. Cumulative effect of 1-3 (paras 121-126): The judge was right to admit the evidence of the past convictions and not to discharge the jury for the reasons given above. There was no overwhelming prejudice. The ethnicity of the jury members is not a ground for impugning the trial process or the verdict. The judge's legal directions were neither biased nor misleading. They were accurate and fair and clear.

5. Cell-site evidence (para 127): The judge's legal directions (at paras 92-95) carefully addressed the way in which the jury should approach the cell-site evidence and did not contain any error.

6. Breach of rules (paras 128-130): No abuse of process application was made, and the applicant has not now identified anything which would provide an arguable basis for a successful abuse of process application.

7. Pressure on defence team (paras 131-134): The applicant has not established an arguable case that any inappropriate pressure was put on the defence."

28 The single judge did not consider it necessary to secure the further material to which the applicant had referred in his letter of 15 September 2022 on the basis that the safety of the convictions could be tested by reference to the material which was already before the court. The single judge concluded that the factors relied on by the applicant, individually and cumulatively, did not even arguably render his convictions unsafe.

29 Since being notified of the single judge's decision, the applicant has submitted substantial volumes of material in support of this renewed application. Some of the points he makes echo what was in counsel's grounds and other points are either differently expressed or completely new. The applicant's own grounds of appeal against conviction are rather more discursive than counsel's and we set them out in full:

"1. The learned judge erred in not ordering the disclosure of the precise ANPR locations and ANPR material.

2. The learned judge erred in admitting the full cell site address in the SOE. Furthermore, the prosecution misused those addresses. Also, the judge did not and could not direct the jury in regards of the cell site evidence.

3. The learned judge and the prosecution erred in not insuring that the defence understands the charges and that they faced (in particular Count 3 of the indictment (Cannabis)), also erred in allowing the Count 3 to be added to the indictment as the evidence did not reflect the charge. Case ref: 202202237/202202238 ASP.

4. The learned judge erred in her answer to the jury’s question raised during their deliberation and the only question they raised during their deliberation which related to Shamsan’s guilty plea for the Count 3 cannabis.

5. The learned judge erred in admitting the co-defendants pleas, and erred in ruling that the basis of pleas was inadmissible after those pleas were ruled admissible.

6. The learned judge erred in admitting the co-defendants' convictions.

7. The learned judge erred in admitting the defendant's previous convictions for drug dealing.

8. The learned judge erred in not discharging the jury after the identification of Stainer was excluded.

9. The crown's failure to comply with their CPIA duties had caused an adverse inference and prejudice against the defendant, also had disadvantaged the defence case in relation to the 14/09/18 event - 9 in SOE.

10. The crown's failure to comply with their CPIA duties had caused an adverse inference and prejudice against the defendant, also had disadvantaged the defence case in relation to the 9/11/18 event - 13 in SOE.

11. The crown's failure to comply with their CPIA duties had caused an adverse inference and prejudice against the defendant, also had disadvantaged the defence case in relation to the 11/11/18 event - 13 in SOE.

12. The crown's failure to comply with their CPIA duties combined with the judge's confusing legal directions had caused an adverse inference and prejudice against the defendant, also had disadvantaged the defence case in relation to the 15/11/18 event and trip - 14 in SOE.

13. The crown's failure to comply with their CPIA duties had caused an adverse inference and prejudice against the defendant, also had disadvantaged the defence case in relation to the Haitham Shamsan individual.

14. The learned judge erred in not discharging the jury after DC Cain's misrepresentations.

15. The crown's failure to comply with their CPIA duties had caused an adverse inference and prejudice against the defendant, also had disadvantaged the defence case in relation to the attribution of the ASP disputed phones to the defendant.

16. The crown's failure to comply with their CPIA duties had caused an adverse inference and prejudice against the defendant, also had disadvantaged the defence case in relation to the 12/02/19 and 07/03/19 incidents ('The 2-incident').

17. The crown's failure to comply with their CPIA duties had disadvantaged the defence case in relation to the defence's entrapment argument. Case ref: 202202237/202202238 ASP 7.

18. The learned judge erred in not ordering the disclosure of co-defendants phones downloads and the disclosure of the case evidence globally, also the prosecution had failed their CPIA duties in not disclosing such evidence.

19. The prosecution had purposely misleading the court and the defence on various relevant occasions.

20. The crown's failure to comply with their CPIA duties ('Disclosure') had caused an adverse inference and prejudice against the defendant, also had disadvantaged the defence case.

21. The crown's failure to comply with their CPIA duties ('Retaining and keeping evidence') had caused an adverse inference and prejudice against the defendant, also had disadvantaged the defence case in regards of.

22. The crown's failure to comply with their CPIA duties ('Investigating reasonable lines of enquiries') had caused an adverse inference and prejudice against the defendant, also had disadvantaged the defence case.

23. The learned judge erred in not ensuring pre-trial issues were solved pre-trial which had caused the defence to be put under extreme unfair pressure during the trial.

24. The learned judge erred in not treating the defendant fairly as a litigant in person, which had forced the defendant to obtain a legal team, which had take away the defendant's right to advocate for himself.

25. The defence legal team did not and could not represent the defendant accordingly.

26. The adverse inferences and the overwhelming prejudice that the defendant faced renders the trial unsafe.

27. Abuse of process as whole which includes the combination of the Grounds raised in this application."

30 The court has been provided with a 240-page bundle as well as other documents. The court has also received emails from the appellant dated 24 January and around about 29 January 2024.

31 In oral submissions before us today the applicant has concentrated on certain aspects of these grounds, noting grounds 1 and 27 in particular, as well as alleged disclosure failures. We are grateful for his submissions.

32 The approach of the applicant demonstrates a quite extraordinary level of industry on his part. It would appear that the applicant equates volume with strength in terms of the points he seeks to advance. The written submissions are dense and, frankly, unhelpful in their length. We have considered all the material the applicant has chosen to produce and we have laboured to understand the various points he seeks to make.

33 We have come to the sure conclusion that there is no merit in any of his grounds of appeal against conviction. Without descending to a level of detail comparable to that adopted by the applicant, which would be disproportionate and unnecessary given the stage which we have reached in this application, we set out the following brief points which adopt the numbering of the grounds as they appear above:

1. The judge was correct not to order precise ANPR locations for the reasons the judge gave in her ruling.

2. The judge admitted the appropriate detail of the cell site material for reasons she set out in her ruling.

3. The defence would readily have understood Count 3 and the evidence justified the inclusion of that count in the indictment.

4. In so far as there was an error in the answer to the question from the jury, it was not a material one and could not undermine the safety of the convictions.

5. This point was dealt with by the single judge and there is nothing more that needs to be said.

6. As above.

7. As above.

8. As above.

9. There is nothing that persuades us that the prosecution did other than comply with their disclosure obligations.

10. As above.

11. As above.

12. As above. In our judgment the judge's legal directions were impeccable.

13. As above.

14. This point was dealt with by the single judge and there is nothing more about that should or needs to be said.

15. There is nothing that persuades us that the prosecution did other than comply with their disclosure obligations.

16. As above.

17. As above.

18. As above.

19. There would appear to be no substance or specificity to this complainant for which we can find no foundation.

20. There is nothing that persuades us that the prosecution did other than comply with their disclosure obligations.

21. As above.

22. As above.

23. We are not persuaded that the judge did anything other than manage the case to an extremely high standard both before and during the trial.

24. We do not perceive there to be any substance in this generalised complainant. The issues as to representation were all of the applicant's own making. The judge made every allowance for the fact that the applicant chose, at times, to represent himself. The trial process was fair.

25. This complainant lacks any substance or foundation.

26. The only adverse inferences that the judge's legal directions allowed for were the ones correctly left to the jury to assess.

27. The single judge has addressed this issue and there is nothing in this generalised complainant. There is nothing further for us to comment on.

34 In summary, the prosecution was properly brought and the trial process was fair. The trial judge took great care in her rulings on the applicant's various applications, considering each one on its merits and taking the points raised by the applicant seriously. This was a difficult trial which she managed with fairness and patience.

35 We identify no merit whatsoever in the points which the applicant seeks to advance as part of his challenge to his conviction. Given that there is no merit in the underlying grounds, there is no purpose in granting the extension of time that is sought. In those circumstances,

the application for an extension of time is refused and the application for leave to appeal against conviction is also refused.

Sentence application

Sentencing remarks

36 The judge sentenced the applicant to a term of imprisonment of 19 years. In her sentencing remarks, she recorded that the applicant was 36 years old with 10 convictions for 20 offences spanning the years from 2001 to 2009. The relevant convictions include the possession with intent to supply class A drugs (both heroin and cocaine) in 2004, possession with intent to supply a class B drug (cannabis) in 2009 and conspiracy to supply a class A drug (heroin) in 2009.

37 The judge acknowledged the authorities on the impact of the pandemic. She observed that:

> "The sentences for each conspiracy will reflect not only the role of [the applicant] but an uplift to reflect that which [he] actually did, and ... that he did it in order to advance the interests of an operation which has inflicted harm on the public going well beyond what he himself achieved."

38 Having heard four trials in all (including two involving the co-conspirators), the judge thought she was well placed to make a decision as to the applicant's role and the scale of the operation. She said the sentences on Counts 1 and 2 reflected the totality principle and overall criminality. The conspiracy involved the OCG in Merseyside which had supplied drugs for ongoing sales to street-level users for just over a year. It had been:

> "… large, professional, sophisticated, well-organised ... planned, and ultimately largely successful. Great care was taken, particularly by [the applicant], to avoid detection by the police through the use of spoofing phones and repeated changes of cars and couriers to transport the drugs."

39 The applicant had been the only one to have used a spoofing phone and had used three of them. The seizure of adulterants at "safe houses" suggested that the OCG "retained control of the process and effectively acted as its own wholesaler providing adulterated drugs in dealer amounts to be sold to end-users, thereby no doubt maximising its profit."

40 The judge said that the conspiracies had involved at least 11 people (and probably considerably more); phones and people were replaced in an efficient organisation. The judge accepted the prosecution contention that there had been not less than 5.67kg of class A drugs (calculated on the seizure on 16 November 2018 and multiplied by 14 trips) and a total of 6kg of class B drugs. The judge was not persuaded by the applicant's submission that his involvement could not have begun until 13 September 2018 but that it had been throughout the indictment period. The judge accepted that it was a safe inference that not all the trips or all of the conspirators had been identified, but she would sentence on those weights. This placed Counts 1 and 2 in category 1. The applicant had a leading role, but the sentence would be scaled up to reflect the nature and size of the conspiracy. Count 3 would be placed in category 3. The judge determined that the applicant had been the controlling mind of the OCG and had micromanaged it. With regard to the applicant's previous convictions, the judge concluded that the applicant was a "part-time car trader and a career drug dealer". She had regard to mitigation, delay, that he had run a legitimate business and the impact on his family. Nonetheless, the judge concluded that 19 years was "the shortest term commensurate with the seriousness of these offences".

Grounds of appeal

41 The applicant's original grounds of appeal against sentence, drafted by counsel, are that in sentencing the defendant:

> (a) The judge took into account irrelevant matters of fact and failed to consider relevant facts.

(b) The sentence was manifestly excessive in the context of the sentencing guidelines.

42 As already noted, post notification of the single judge's decision the applicant submitted substantial volumes of material in support of this renewed application. The applicant now advances a further multi-limbed ground in relation to sentence:

> "(28) When sentencing the defendant:
>
> (a) The judge erred in calculating category 1 harm as the amount of drugs.
>
> (b) The judge erred in concluding that the defendant's role was a leading role.
>
> (c) The sentence is manifestly excessive in the context of the sentencing guidelines.
>
> (d) Matters relating to the deducting of the sentence were not taken into account accordingly and/or taken into account accordingly. Summary of evidence 3. The defendant was said to be the leader of an organised crime group supplying Class A and B drugs". (sic)

Discussion

43 The judge concluded that the offence should be categorised as category 1, leading role, which has a starting point of 14 years within a range of 12 to 16 years. There can be no sensible challenge to that conclusion. The only significant dispute as to the foundation for sentence was the period during which the applicant had been a party to the conspiracy. The judge gave compelling reasons for her conclusion that his involvement began before September 2018. We do not consider there to be any basis on which that conclusion can be impugned.

44 In our judgment, the only real issue in respect of sentence is whether the upward movement from the starting point to a level outside the category range was justified for the reasons the judge identified. The volume of class A drugs was just over 5kg. That is the Category 1 indicative amount. (The judge did not make any distinction between the different types of

class A drugs although Count 1 in fact related to cocaine and Count 2 related to heroin.) Taken together, she concluded that there were just over 5kg of class A drugs involved and she sentenced on that basis.

45 The judge identified the sophisticated nature of the leading role played by the applicant that could quite reasonably justify upward movement towards the top, if not to the top, of the category range. The applicant's previous convictions likewise merited upward movement even to a level above the category range. The fact that the class B offending, the subject of count 3, is to be reflected in the lead sentence was also to be taken into account and warranted upwards adjustment.

46 We note however that the guideline refers to the sort of cases that might merit sentences of 20 years or more as being ones "involving a quantity of drugs significantly higher than category 1". Here, the judge must have concluded that the aggravation took the sentence very close to the sort of length reserved for volumes of drugs "significantly higher" than the 5kg that put this case within category 1. Whilst we appreciate that the judge had an intimate knowledge of the case, and that she was sentencing for three counts, albeit ones very closely linked in terms of the conspiracies that were in existence each at the same time, we have concluded that a total sentence of 19 years was too long and should be assessed as manifestly excessive. In our judgment while a sentence above the category range was called for, it could not properly be by as much as three years.

Extension of time and leave

47 The application for leave to appeal against sentence has been referred to the full court by the single judge. We indicated to the applicant at the outset of today's hearing that we were minded to grant an extension of time and leave to appeal against sentence. We now formally grant those applications.

48 We quash the sentence of 19 years imposed on Counts 1 and 2 and replace those with terms of imprisonment of 17 years, each to be served concurrently. The sentence on Count 3 will remain as it was imposed.

Summary

49 In summary, we refuse an extension of time and leave to appeal against conviction. We grant an extension of time and leave to appeal against sentence. We quash the sentence of 19 years' imprisonment on Count 1 and 2 and substitute concurrent sentences of 17 years on each of those counts to be served concurrently. The sentence imposed by the judge is not otherwise altered. We refuse the application for bail and the application to amend does not need to be determined.

CERTIFICATE

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the Judgment or part thereof.

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