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IN THE COURT OF APPEAL

CRIMINAL DIVISION

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Royal Courts of Justice
Tuesday, 7 March 2024

Before:
LORD JUSTICE WILLIAM DAVIS
MR JUSTICE WALL
MRS JUSTICE DIAS

REX
V
PAUL MICHAEL MOUNT
STEFON BEEBY
MICHAEL JOSEPH POPE
ANTHONY PAUL SAUNDERSON
STEPHEN RAYMOND SHEARWOOD
DARREN OWENS
KIERON IAN HARTLEY

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Mr. B. Stuart appeared on behalf of Paul Mount.
Mr. R. Howart appeared on behalf of Stefon Beeby.
Michael Joseph Pope was not represented.
Mr. S. Csoka, K.C. appeared on behalf of Anthony Paul Saunderson.
Mr. J. Nutter appeared on behalf of Stephen Raymond Shearwood.
Mr. O. Cook appeared on behalf of Darren Owens.
Mr. A. Hill appeared on behalf Kieron Ian Hartley.
Mr. N. Daley and Ms. N. Cornwall appeared on behalf of the Crown.

J U D G M E N T

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LORD JUSTICE WILLIAM DAVIS:

Introduction

1 On 12 August 2022 in the Crown Court at Liverpool His Honour Judge Denis Watson, King's Counsel, conducted a substantial sentencing exercise in relation to an indictment which in total contained 11 counts. Most of the counts charged conspiracies to produce or to supply drugs, whether of class A or class B. In relation to two defendants there were counts relating to the acquisition or supply of prohibited weapons.

2 We are concerned today with seven of those whom the judge sentenced. Although the majority pleaded guilty to the counts in respect of which they fell to be sentenced, the judge had heard a trial of some of these defendants and others. Of those who appear before us, five (Paul Mount, Anthony Saunderson, Darren Owens, Kieran Hartley and Stefon Beeby), have leave to appeal against their sentences. Two more (Stephen Shearwood and Michael Pope), were refused leave to appeal by the single judge. They now renew their applications for leave. Mr Shearwood is represented by counsel, Mr Julian Nutter. We deal with Michael Pope as a non-counsel application.

3 The principal conspiracies with which we are concerned were to produce (count 1), and to supply (count 3) amphetamine in a form designed for administration by injection. Although amphetamine generally is a class B controlled drug for the purpose of the Misuse of Drugs Act 1971, when it is injectable it is a class A drug. We were told that there has been no previous reported case in relation to sentencing of those convicted in relation to amphetamine in its injectable form. That is despite the fact that the relevant provision in the relevant schedule in the Misuse of Drugs Act has been in place since the introduction of the Act. One issue for us to consider will be whether the judge took the correct approach to sentence to the injectable amphetamine. Also significant in relation to the appellants convicted of counts 1 and 3 is whether the judge's conclusions as to the amount of injectable amphetamine involved in those conspiracies was supported by the evidence. This was a fact specific exercise.

4 In respect of the appellants Mount, Saunderson, Owens, Hartley and Beeby, the only issues on appeal relate to the sentences imposed in respect of counts 1 and 3. Each of those appellants was convicted of other counts, whether drug related or relating to firearms. The grounds of appeal in the case of each of those appellants raise no issue with the various sentences imposed on those other counts.

5 The applicants Shearwood and Pope wish to argue that the sentences imposed upon them in relation to a different count, namely count 5, were manifestly excessive. Count 5 charged a conspiracy to supply class A drugs, namely cocaine and heroin. This is a count of which Mount, Saunderson and Kelly were also convicted.

6 The evidence in this case came substantially but by no means entirely from the content of messages passing between the conspirators using encrypted EncroChat devices. As is well-known, the EncroChat application was widely used by those in serious professional crime for a number of years up to 2020. Those using it believed, at the time quite correctly, that what was said using that application would not be retrievable by the authorities. In 2020 the server used to support the application was fatally compromised by French investigators. Not only did this mean that it could no longer be used by criminals to communicate securely, but also the authorities were able to access large amounts of historic material relating to criminal activity. The case with which we are now dealing is one of hundreds of similar cases.

7 The judge's sentencing remarks, with which we will deal in some detail shortly, dealt comprehensively but concisely with the circumstances of the offending with which he had to deal. The sentencing hearing occupied approximately two hours, in the course of which the judge analysed with care the activities of these appellants and applicants by reference to all of the evidence, but in particular the EncroChat messaging. The core argument of Mount, Saunderson and Owens is that the judge's findings of fact in relation to the

conspiracies to produce and to supply injectable amphetamine were not justified on the available evidence. As a result, the starting point he identified in relation to those counts was wrong. Hartley and Beeby argue, amongst other things, that the judge's assessment of their role in the conspiracies was wrong. They also rely on the attack on the judge's findings of fact, since their sentences were dependent on the sentences imposed on the principal offenders. As we have indicated, the applications by Shearwood and Pope raise different issues. We will deal with those separately after our consideration of the appeals for which leave has been given.

8 Paul Mount is now aged 40. He has a significant criminal history. In 2009 he was sentenced to 32 months' imprisonment in Scotland for being concerned in the supply of controlled drugs. In 2013 in Liverpool he was sentenced to 8 years' imprisonment for causing really serious harm with intent. In 2015 he was sentenced to a consecutive term of 21 months in relation to the smuggling of articles into prison. By the time of these conspiracies he was at liberty but he was on licence.

9 Saunderson is now aged 44. He has a relevant conviction in 2014, when he was sentenced to 9 years' imprisonment for conspiring to supply cocaine. He was at liberty during the period of the conspiracies. He was on licence throughout that time.

10 Owens is approaching his fiftieth birthday. In October 2015 he was sentenced to 6 years' imprisonment for conspiring to supply cannabis and amphetamine. He was still on licence in respect of that sentence when he was involved in the conspiracies.

11 Kieran Hartley now is aged 34. He has no previous convictions. Stefon Beeby is aged 43. In 2005 he was sentenced to 7 years' imprisonment for conspiring to supply MDMA. In June 2016 he was sentenced to 40 months' imprisonment for possession of cocaine with intent to supply. The dates of the conspiracies with which these various appellants were charged and convicted per the indictment were from July 2019 to February 2021. The

evidence principally concerned the period October 2019 to July 2020.

The sentencing remarks – general overview

12 The judge began his sentencing exercise by a general overview of the position. He said the case concerned a large group who had manufactured and supplied vast quantities of class A and class B drugs. Two of the defendants (Mount and Saunderson) had involved themselves in dealing with prohibited firearms. The judge described the quantities of amphetamine manufactured as vast. The main production site was at outbuildings at a building known as Wood Cottage, somewhere near Chester. The amphetamine, he concluded, was specifically designed so it could be administered by injection, in which event it was a class A drug. The production of the drug was on a large commercial scale, involving complex industrial chemical processes which required specialist apparatus. The process required skill, determination and hard work, and the sourcing and obtaining of specialist chemicals. None of the defendants are or were trained chemists. They worked hard so that their lack of formal training did not prevent them from achieving what they did, which was to manufacture very large quantities of high grade injectable amphetamine which was then distributed widely across England and into Scotland.

13 The judge identified that the manufacture of amphetamine and supply of what had been manufactured was not the only criminal enterprise. Some of the defendants were involved in arrangements to supply very large quantities of heroin and cocaine. That was count 5 on the indictment. Other class B drugs, such as ketamine and cannabis were to be supplied and produced.

14 The judge said that there came a point at which the conspirators concluded that the base at Wood Cottage became compromised. They became suspicious about surveillance. They decided to close the operation down, which was done quickly. People were sent to salvage as much as of the equipment and of the chemicals as possible. Premises at a place called the Box Works in Bootle on Merseyside were identified. Significant amounts of raw materials

were taken there. As was clear from the evidence, it was not actually possible to resume production there. The judge said that, from everything he heard during the trial and from the entirety of the messages, he was satisfied some production had begun at an alternative site which the authorities had never been identified. Further, the closure of Wood Cottage did not prevent the trade in cocaine and heroin and other drugs continuing.

15 The judge said that he first had to assess the quantity of amphetamine actually produced and supplied. Next, he had to consider how much amphetamine in addition to that had been agreed to be produced or supplied. Third, given that amphetamine could either be class A or class B, he needed to determine how much of the amphetamine produced was designed for injection.

16 In relation to quantities, the judge said that he found assistance from considering what he described as the Encro messages. The retrieved messages started in late March 2020 and ran through to some point in June of 2020. From those messages the judge found that the various defendants had converted a total of 2.6 tonnes of a particular chemical, which had produced 939 litres of amphetamine oil and 709 kilograms of amphetamine sulphate paste. The messages show that there were further plans made to produce a further quantity of amphetamine from 5.6 tonnes of raw material, which would have produced just over 2,000 litres of free base oil and 828 kilogrammes of amphetamine sulphate paste. Those were the conclusions he drew from the totality of the EncroChat messages.

17 Next, he considered what could be concluded from what was found at the Box Works i.e. the premises where production was planned but was never carried through. At the Box Works the police recovered 8 kilogrammes of amphetamine. This was at the end of June 2020. They also found significant amounts of starter chemicals and sufficient raw materials to produce 385 kilogrammes of pure amphetamine sulphate which would be likely to produce over 3,000 kilogrammes of street purity amphetamine.

18 The judge was anxious to avoid double counting. He noted that the messages indicated that 828 kilogrammes were to be produced. He acknowledged this quantity would probably have come from the chemicals found at the Box Works. Therefore, that 828 kilogrammes had to be deducted from the 3,000 kilogrammes to which he had referred.

19 He considered what had happened to the 709 kilogrammes of amphetamine paste which messaging established had been produced. He concluded that almost all of that was produced after April. He asked himself whether the references in the messages to 709 kilogrammes of amphetamine was a record of the entire historical amounts produced over the previous six months. He rejected that as inherently implausible. EncroChat messaging was real-time commentary about what was being produced at the time the messages were being written. The judge referred to other features which supported that conclusion, in particular, particular messages passing between an EncroChat handle called Frost Jacket and members of the conspiracy, referring in one message to 120 kilogrammes of amphetamine, and in another, Saunderson saying "They do 250 a week". The judge inferred that this was a reference to kilogrammes.

20 The judge found that production or manufacture began in 2019 and was already running efficiently by November of that year. He said that he had to try and determine the time at which the goal of those who ran production was that the amphetamine should be suitable for injection. The EncroChat messages beginning in late March 2020 showed that at that point that goal was a continuing part of the agreement.

21 In the course of the sentencing hearing the judge referred to the fact that he had given any defendant who wished to give or call evidence as to when it became the plan that amphetamine should be designed for administration by injection and how much of that kind of amphetamine was actually made the opportunity to do so. No defendant took that opportunity. He referred to a report from a Mr Morgan, an apparent expert in drug use, which established that injecting amphetamine, relatively speaking, was not common. As the judge said, that did not alter the fact there were users of amphetamine who believed rightly

or wrongly, that they would get a better high from intravenous injection. The judge said that from the content of the messages and all the evidence given over two trials, he was sure that by the start of April 2020 the organisers of the conspiracy intended what they were to be supplying would be injectable amphetamine.

22 The judge found that it was unnecessary for him to determine how much amphetamine was in fact injected by users. What was important was the intention of those producing or supplying it. The intention was that amphetamine would be suitable for injection. That form of the drug commanded a higher price. The organisers and those involved in the conspiracy were indifferent as to whether it was injected or not. The judge found that from the beginning of April 2020, at the latest, the amphetamine being produced was designed for administration by injection. Referring back to the 709 kilogrammes, he concluded that not less than 600 kilogrammes of that quantity was designed for administration by injection. Therefore, the conspiracy was concerned with a Class A drug of that quantity. That was 30 times the indicative weight for category 1 in the Sentencing Council Drugs Guideline. In the guideline the indicative weight for category 1 in relation to amphetamine is 20 kilogrammes.

23 Summarising, the judge said that the conspiracies in counts 1 and 3 involved 600 kilogrammes of class A amphetamine which had already been supplied; 828 kilogrammes of class A amphetamine, which was to be supplied, and the possession of the chemicals needed to make a further approximately 2,000 kilogrammes of class A amphetamine.

24 He noted that submissions had been made to him that where injectable amphetamine, as a matter of fact, was not taken intravenously, it should not be treated as a class A drug. As the judge pointed out, that is not what the statute says. It refers to any preparation designed for administration by injection. The judge found that what matters, by reference to the statute, is the intention of those producing or supplying the amphetamine. How the

end user chose to use the drug would not be determinative. In fact, the judge referred to the messages by way of complaints about problems with injecting amphetamine that had been supplied, which he described as a powerful piece of evidence about the actual end use.

25 Submissions were also made to him that amphetamine was some lesser form of class A drug, not in the same category as cocaine and heroin, for instance. As he observed, the problem with that was the legislation is crystal clear: a class A drug is a class A drug. There is differentiation between them within the Drugs Guideline by reference to the indicative weights which is how harm is categorised. Thus, cocaine and heroin fall into category 1 harm where the indicative weight is five kilogrammes. For amphetamine the indicative weight is 20 kilogrammes.

26 Counts 2 and 4 related to amphetamine not designed for injection. The judge found that amphetamine manufactured prior to April 2020 and the freebase oil produced fell into this category. In relation to count 5, the judge concluded that this was wholesale dealing of cocaine and heroin on a massive scale. He looked at the messages on EncroChat and concluded that between April and June some 83.5 kilogrammes of cocaine had been supplied, and between 82 and 97 kilogrammes of heroin. There were references to other transactions. The judge did not include those in the figures he gave because he could not be sure as to what amounts were involved.

27 The judge went on to consider other drugs which were being supplied which were referred to in other counts. They are irrelevant for our purposes. It is unnecessary for us to review his reasoning in relation to those drugs.

28 The judge then considered how he should apply the Sentencing Council Drugs Guideline. He observed that the quantities went beyond anything contemplated in the table of indicative weights in the guideline. He concluded that the rubric in relation to quantities of drugs greater than those referred to in the table was relevant:

> "Where the operation is on the most serious and commercial scale involving a quantity of drugs significantly higher than category 1, sentences of 20 years and above may be appropriate, depending on the role of the offender."

29 He observed that sentences within the guideline are set without reference to any previous convictions. Previous convictions, particularly if they are relevant drugs convictions, would constitute a substantial aggravating factor. He observed that personal mitigation would be relevant to the sentencing exercise in any case where it arose, but as he put it, "For a crime as serious as that involved in virtually all of these cases, the part it can play is much more limited."

30 He did not overlook the serious impact that there would be upon defendants and their families in the event of very long sentences. He reminded himself that some of those he was sentencing had young children, but he repeated the words of Hughes LJ, as he then was in the case of *R v Boakye* [2012] EWCA Crim 838:

> "The position of children can be a relevant consideration when considering sentencing, but it will be rare that their interests can prevail against society's plain interest in the proper enforcement of the criminal law, and the more serious the offence, generally the less likely it is that they can possibly do so."

As the judge put it, families and the young children of defendants such as those with whom he was dealing joined the list of those already adversely affected by the criminality of those who deal in dangerous drugs. He noted that most, if not all, of the defendants had been on remand during the period of particularly stringent COVID restrictions. He rightly observed that this was of very limited impact for those facing longer sentences.

31 He turned to how he would distinguish between defendants. He said that it was going

to be likely that some defendants would serve similar sentences to others and yet had played different parts. He was anxious to stress that sentences apparently identical to other sentences do not necessarily represent similar criminality. If the assessment of harm and culpability in a particular case would lead to the same sentence as in another case, that would be justified.

32 He referred to the submissions that had been made that some of those involved or convicted had only been linked to a drugs run on a few particular days. The judge said that those submissions ignored the fact that, whatever the acts of an individual, the involvement in the conspiracy is the joining of that wider agreement and the intention to further the wider aims of the agreement. By that route the culpability of an individual and the gravity of the offence are increased.

33 The judge said this:

> "I have taken some time to reflect on the evidence at both trials so as to assess properly the hierarchy of criminality which is appropriate and reflects the comparative criminality of all the defendants. Having heard the evidence at both of the trials, I regard myself now as far better placed to assess the scale of the operation and the roles of those involved than I was before I heard the evidence from just reading the papers."

That passage is an excellent distillation of the advantage the trial judge had over those coming afterwards in assessing the appropriate sentence in each case. It does not mean that his assessment is not amenable to review or adverse consideration. Rather, it means that what his assessment of both general and individual factors in relation to sentence must carry significant weight.

Sentencing remarks – individual defendants

34 The judge began with Saunderson. The judge described him together with Mount and Owens as being at the top of the conspiracies with a leading role. Saunderson directed and organised the production of amphetamine, whilst buying and selling other drugs on a commercial scale. He had set up the production of the amphetamine. That put him in the equivalent position of an importer of drugs that were not capable of manufacture.

35 In relation to counts 1 and 3, the quantities of amphetamine supplied, planned and potentially produced involved around 180 times the indicative quantity of 20 kilogrammes in relation to category 1 harm. Count 5, the count relating to heroin and cocaine, involved a minimum of 165 kilogrammes of class A drugs. That was 33 times the indicative weight. In relation to the amphetamine not linked to potentially injectable amphetamine, the amounts were described by the judge as "similarly monumental".

36 The judge also dealt with the categorisation within the relevant guideline of the other offences with which, for the purposes of the appeals, do not us when considering the sentences imposed in the cases of Saunderson, Mount and Owens. He said that he took counts 1 and 3 as the lead offences for all the drugs offending. The sentence on those counts also reflected the conspiracy to supply more than 150 kilogrammes of heroin and cocaine. He passed the headline sentence on those counts. That was a sentence of 31 years' imprisonment on both count 1 and count 3. He passed concurrent sentences on all the other drugs related offending, including a sentence of 26 years in relation to the conspiracy concerning heroin and cocaine. He then imposed a consecutive sentence in relation to a firearms offence, which on its own would have justified a sentence of 8 years. But due to totality, the judge reduced that to 4 years, making 35 years in total.

37 The judge then turned to Mr Mount. He considered the features personal to him, which in his view, were of little or no effect, given the gravity of the offending. In relation to participation in conspiracies, he considered that his position was indistinguishable from that of Saunderson. The analysis that he applied to Saunderson applied equally to Mount.

Mr Mount's sentences were identical to those imposed on Mr Saunderson in respect of counts 1 and 3 (31 years' imprisonment) and count 5 (26 years' imprisonment). The firearms offence in Mr Mount's case was less serious than the firearms offence committed by Saunderson. On its own, the offence would have justified a sentence of five years, six months' imprisonment. The judge reduced that to three years' imprisonment to be served consecutively. The reduction was to ensure that the overall sentence was just and proportionate. The total sentence in Mr Mount's case was 34 years' imprisonment.

38 Mr Owens was involved on the production side of the amphetamine business, communicating regularly with chemical and equipment suppliers. Mr Owens was also in contact with customers. He provided information in relation to expected yield, strength and prices. The judge said Mr Owens had a business which used vehicles. Mr Owens was able to use the vehicles linked to that business as a cover for travelling, particularly to the Wood Cottage premises during lockdown, which began in the later part of March 2020. When Wood Cottage became unviable as a place of production, Owens provided the means of transport to move out equipment and drugs to other premises.

39 Mr Owens was somebody who had previous experience in relation to amphetamine which meant that, amongst the conspirators, he was the expert in its production. He ranked alongside Saunderson and Mount at the pinnacle of the conspiracies in relation to amphetamine. On the other hand Mr Owens had had no involvement either in the conspiracy concerning cocaine and heroin or in any firearms offence. Mr Owens had pleaded guilty on the first day of the trial listed in January 2022. There had been a delay in any pleas being tendered because there had been a dismissal application and Mr Owens tended his pleas relatively shortly after that.

40 The aggravating features were the fact that Mr Owens was on licence, he was involved over an extended period of time and he used encrypted telephones. The judge took counts 1 and

3 as the lead offences, just as he had in the case of Mount and Saunderson. In respect of credit for plea, the judge noted there had been no indication of plea in relation to any count until very shortly before the first day of the trial in which he was to take part. The judge said that even if he had been waiting for the outcome of the dismissal application, there was nothing to stop him entering pleas to all the other counts on which he appeared and to which he did in due course plead guilty. The judge took a global view and determined that the reduction for the pleas of guilty should be approximately 15 % across all offences He did not apply different reductions to sentences on different counts. The judge determined that the proper sentence on counts 1 and 3, had Mr Mount had a trial, would have been 28 years. After reduction for the plea of guilty the sentence imposed was 24 years' imprisonment. Concurrent sentences were passed on other counts.

41 The judge then dealt with the appellant Hartley. He was somebody who had worked alongside Mr Owens who was de facto his father-in-law. The judge accepted that Mr Hartley was a step down from Mr Owens. However, Mr Hartley was still in a leading role because he was at Wood Cottage as much as anybody else. He had been involved in organising the buying and selling of amphetamine on a commercial scale. He had detailed knowledge of prices and yields. He had an expectation of substantial rewards from the conspiracies. He was in contact with both suppliers and customers. He pleaded guilty to some of the counts on the indictment albeit at a very late stage either at the start of the trial or midway through the trial. In relation to the principal counts involving production and supply of injectable amphetamine, he had been convicted by the jury. The mitigation relied on was: his lack of previous convictions; his lack of any involvement in heroin or cocaine or firearms; he was a working man who had a good job; he was a family man with young children. As with the other appellants, the judge took counts 1 and 3 as the lead offences. In Mr Hartley's case the judge determined, there being no reduction for plea, that the appropriate sentence was 23 years' imprisonment. He dealt with the other lesser offences to which Mr Hartley had pleaded guilty with concurrent sentences.

42 Moving on to Mr Beeby, the judge said that he had been involved in the production of amphetamine at Wood Cottage from at least October 2019. He had travelled to those premises regularly. He assisted with transport because he had a 7.5 tonnes heavy goods vehicle which could be used to move chemicals and heavy equipment. He also had an involvement in installing some of the electrics at Wood Cottage and had done welding work there. The judge found that he had his own supply network to people he supplied in the North-east and Scotland. He was involved directly in the rapid dismantling of the equipment on 1 May at Wood Cottage, when it was abandoned at short notice. He had stored some of the plant and equipment removed from Wood Cottage.

43 His counsel's submission was that the point at which he entered his pleas entitled him to a reduction of 25 per cent. The judge, whilst not agreeing with that, concluded that he should have very close to that level of reduction. The judge referred to the basis of plea, to which we shall turn when we consider the grounds put forward by Beeby. The judge concluded that it revealed that Beeby had played what he described as a higher end significant role with a trusted operational management function within the hierarchy and an expectation of significant financial gain. His position was aggravated by his previous conviction, and, whilst he was not on licence at the time he was involved in the conspiracies, he was only just out of his licence period. He committed these offences very shortly after his previous sentence had come to an end.

44 The judge referred to the mitigation as being the lack of involvement in heroin and cocaine or firearms. He took counts 1 and 3 as the lead offences. Giving what he regarded as the appropriate reduction for plea on a sentence after trial of not less than 20 years' imprisonment, he reduced the sentence (as subsequently corrected) to 15 years and 6 months. Again, other sentences were imposed concurrently with which we are not concerned.

45 The judge finally considered the cases of Mr Pope and Mr Shearwood whose applications for leave to appeal were refused by the single judge. Mr Pope's principal offence was the conspiracy to supply cocaine and heroin. The judge described him as a rung down from Saunderson and Mount. Nonetheless, he was involved in sourcing and supplying drugs on a commercial scale, with messaging showing him able to source up to 15 kilogrammes of class A drugs at a time. Within the relatively short period for which messages were available he was identified as dealing with 3 kilogrammes of cocaine, 7 kilogrammes of heroin, 53 kilogrammes of cannabis and 60 kilogrammes of amphetamine. He was described as acting as a broker. He was tried by a jury for a number of weeks before it became necessary for the jury to be discharged from giving a verdict in his case. The trial continued without him. His case was listed for re-trial in May 2022. Shortly before that trial was due to commence, Mr Pope pleaded guilty.

46 Mr Pope was a close friend of Mr Mount and an associate, if not a close friend, of Mr Saunderson. He had at one stage been discussing with Mr Saunderson and Mr Mount them supplying him with packs of amphetamine, each of which would have been 200 kilogrammes in weight. The judge agreed with the Crown's submission that Mr Pope played a leading role. However, he considered that, since Mr Pope was only involved in supply rather than any production, his level of overall criminality was less than that of Mr Mount and Mr Saunderson.

47 The judge gave him some reduction for his plea. Notwithstanding the fact that it came only at the start of a re-trial, the judge reduced the sentence by approximately 7 per cent. Taking the sentence on count 5 as the lead sentence, he considered that a sentence after trial could not have been less than 19 years' imprisonment. The sentence imposed was 17 years 6 months' imprisonment after reduction for the plea of guilty. The other lesser sentences were concurrent.

48 Mr Shearwood had been arrested in July 2019, as a result of which he was convicted of relatively minor drugs offences and made the subject of a community order. At the time of his arrest the police had seen quantities of chemicals. They had not appreciated their significance in relation to the manufacture of drugs. The judge noted that notwithstanding the fact that he was the subject of a community sentence, he continued to be a willing participant in the conspiracies in which he had already got himself involved. The judge described his roles as involving storing and moving drugs, chemicals and cash. He was involved on a very regular basis, being seen at Wood Cottage on many occasions. He travelled around the country, both relatively close at hand and further away up to Scotland. The judge concluded that, because of his close association with Mr Mount and Mr Saunderson, he must have been aware of the size of the conspiracy. He described Mr Shearwood's role as significant rather than leading, but said he had been involved over many, many months. That placed him towards the top of a significant role. His lead offence by reference to his pleas was count 5. The sentence after trial could not have been less than 16 years' imprisonment. Given that he had pleaded at the start of the trial, the sentence would be reduced to 14 years 4 months' imprisonment. Other sentences were ordered to run concurrently.

49 We have set out the judge's reasoning at some length. It explained the nature of these conspiracies. The reasoning shows the way in which the judge reached the findings he did. It demonstrates that the judge's review of the case and the evidence, though concise, was comprehensive.

The grounds of appeal – submissions and discussion

50 Mr Saunderson was represented by Mr Simon Csoka KC. He did not appear at trial. His submissions were directed to the sentences imposed on counts 1 and 3 i.e. the offences involving amphetamine designed for administration by injection. He argued that in many cases, particularly where drugs are recovered, the nature of the class A drug is readily identifiable by reference to concentration or purity. On analysis the drug may be of high

purity indicating it is close to the source. It may be of relatively low purity so as to suggest that it is ready for supply to drug users. When a court is considering offences of supply, an adjustment may need to be made from the starting point within whichever category is relevant, considering the quantity and purity of the drugs involved. No precise calculation is likely to be possible, but sufficient information ought to be available to enable some adjustment to be made.

51 Mr Csoka argues that, because the production of amphetamine designed for administration by injection is very likely to be of a similar concentration as a preparation not so designed, the reality is that it is impossible properly to identify amphetamine as a class A drug in the same way as you do for cocaine and heroin. The result is that the judge should have considered the conspiracies involving amphetamine by reference to the class B guideline whether or not they were designed for administration by injection. That is an argument that finds no place in Mr Saunderson's grounds of appeal. It is only given passing mention in Mr Owen's grounds, which is from where Mr Csoka invites us to consider them. It is also an argument that, if it was put at all to the sentencing judge, was not put with any force. Mr Csoka is correct in saying that, in the event of amphetamine being seized and analysed, it may well be that it would be difficult to distinguish between what is amphetamine designed for administration by injection and what is not. Where people agree to supply amphetamine designed for administration by injection, it is in substantial measure their intention which creates the classification of amphetamine as class A.

52 But this was a conspiracy. The agreement, to manufacture and then to supply, was an agreement to supply amphetamine designed for administration by injection. As the judge observed, if that is how it was used, so be it. If it were not used in that way by the final customer, that would not affect the culpability of the person entering into the agreement. Mr Csoka submits that it does make a difference to the harm caused. Administering amphetamine by injection puts the user at greater risk of harm. Whether that is the case is

not something which can affect the classification of the drug. Parliament determined that, where amphetamine is designed for administration by injection, it is to be a class A drug. The judge used 20 kilogrammes as the indicative weight by reference to the guideline which distinguished the drug from cocaine and heroin. That was a proper route by which to reflect any lesser gravity involved in the manufacture and supply of amphetamine.

53 Mr Csoka and others moved on to a second argument, namely that the prosecution did not contend that the available evidence allowed them accurately to identify the amount of amphetamine that had been produced in a way designed for administration by injection. For the judge to engage in that exercise and thereafter to find that all amphetamine planned to be produced after April 2020, would be class A amphetamine was a plain error. He did not have any basis on the evidence to do so. The judge, it is said, could only have included amphetamine within class A where there were specific EncroChat messages confirming such a supply. There was double counting in the judge's calculation even though, in his sentencing remarks, he expressly abjured any such double counting. For those reasons, the quantity of class A amphetamine was far less than the judge found it to be. Thus, he was not entitled to sentence on the basis of hundreds of tonnes of injectable amphetamine forming the subject matter of the conspiracy. The amount was far below that. That meant that the sentences on counts 1 and 3 were manifestly excessive.

54 In relation to what the prosecution had to say about the evidence, it was of limited value to a judge who had heard all the evidence for himself. He was entitled to draw proper inferences from all of the EncroChat messaging, and in terms of what was to come, what was found at different premises. We do not intend to repeat his reasoning which we have set out in some detail. Our simple conclusion is that we cannot identify any flaw in that reasoning. Mr Cook on behalf of Mr Owens took us to a number of EncroChat messages which he says appear to demonstrate that no amphetamine at all had been produced at the time those messages were sent. That may be so. That would not affect the amount and type of amphetamine planned for production pursuant to the criminal agreement. The judge

analysed all the messages retrieved from the EncroChat server. In our view, the conclusion he reached as to the amount of amphetamine that had been produced and had been supplied was unimpeachable, His view as to how much of it was designed for administration by injection was a matter for him to judge on all the evidence he had heard. The issue was not what the end user of the amphetamine would do with the amphetamine that was supplied, the end user being far distant from these conspirators. It was the purpose for which it was capable of being used. The judge inferred that every effort would have been made to produce class A amphetamine. We cannot see any reason to attack that inference.

55 We have referred to a complaint about double counting. In our judgment, that has no force. In relation to defendants such as Mr Saunderson and Mr Mount, who were involved in the conspiracies to supply and produce non-injectable amphetamine as well as the class A amphetamine, the judge determined that the former conspiracies, in part at least, covered the manufacture of freebase oil, thousands of litres of which were produced.

56 It is clear the sentence of 31 years imposed in relation to counts 1 and 2 were very significantly outside the category range in the guideline. It is not suggested that the judge was not entitled to go outside the category range. In Mr Saunderson's case in his grounds of appeal he expressly avows that the proper sentence should have been 26 years rather than 31. That is because this case was one falling within the rubric, which we have already cited and to which the judge referred. In *R v Cuni* [2018] EWCA Crim 600 this court said that even in cases to which the rubric applied, there was generally a ceiling of about 30 years, save in extraordinary circumstances. The judge found that the circumstances here were extraordinary. We cannot say that he was wrong to do so. The conspiracy to manufacture and supply class A amphetamine on his findings involved something like 3 metric tonnes of the drug. The principal conspirators were also concerned in supplying well in excess of 150 kilogrammes of cocaine and heroin. In our judgment, those circumstances entitled the judge to go beyond the notional 30 year limit to which *Cuni* referred.

57 The judge's approach to the notion that class A amphetamine is in some way a lesser form of class A in comparison to other class A drugs was sensible and principled. He referred to the fact that the guideline required a greater quantity of amphetamine to bring the case within category 1 harm. By that route he accommodated any point there may have been about the lesser significance of amphetamine.

58 For all of those reasons, we conclude that the sentences in the case of Mr Saunderson and Mr Mount were not manifestly excessive nor wrong in principle. We dismiss their appeals.

59 Mr Owens put forward the same general arguments, which we have already rehearsed in respect of Mr Saunderson and Mr Mount. We reject them for the reasons we already have given. However, he had two freestanding submissions. First, he pointed out that a notional sentence after trial in his case was 28 years. That was only three years less than the equivalent sentence imposed on Mr Saunderson and Mr Mount. Yet, he was not involved in the conspiracy to supply very large quantities of heroin and cocaine. Second, he was only given about 14 per cent credit for his pleas of guilty. His pleas were tendered around two weeks before trial. He said that he had indicated to the prosecution that he would plead guilty to all counts save counts 1 and 3 at a much earlier stage, and his pleas to counts 1 and 3 came after the application to dismiss had failed. In those circumstances, a much greater reduction for plea should have been given.

60 In a drugs conspiracy of the size with which we are concerned there is going to be bunching of sentences between those who were involved in the organisation and running of the agreement. Mr Owens, Mr Saunderson and Mr Mount had different levels of participation but they were all leading lights in these conspiracies. The bunching of sentences is a factor recognised in *Cuni*. The convictions of Mr Mount and Mr Saunderson for conspiring to supply cocaine and heroin were the prime reason why their sentences exceeded 30 years. Even if they had not been convicted of that conspiracy, they would have been subject to very long sentences. It is clear to us that the judge who had heard the trial and considered

all of the evidence had closely in mind the need to calibrate the sentences. That could not be a simple and straightforward mathematical exercise. The judge considered all the relevant factors in each individual's case. We are satisfied that he met the need properly to calibrate the sentences. The sentence imposed on Mr Mount was a proper reflection of the nature and extent of his offending.

61 We have rehearsed what the judge said about Mr Owens' pleas of guilty. He did not plead guilty to any count until close to the start of his trial. He could have tendered pleas to those counts where there had been no challenge to the sending of the charges long before he did. It is argued that it is possible for a judge to identify different reductions for different offences depending on the circumstances. Equally, the judge is entitled to look at the case in the round and see what he considers to be the appropriate overall reduction. That is what the judge did in this case. We cannot see he that he fell into any fundamental error by concluding that a reduction of somewhere in the order of 14 per cent was appropriate. For the reasons we have given, the appeal of Mr Owens is dismissed.

62 Mr Hartley was convicted of counts 1 and 3 after a trial. In so far as his appeal depends on the various propositions set out above about the types and quantities of amphetamine produced, his appeal fails, for the reasons we have already given.

63 The sentence in his case was 23 years' imprisonment on counts 1 and 3. The argument is that this failed to take account of three matters in particular: the fact he had joined the conspiracy after it had begun; the fact that he was not an organiser from the outset; the fact his participation was secondary to the principal offenders. These factors were identified by the judge. He set them out in terms. He said that in consequence Mr Hartley was a step down from Mr Owens, but he was still an organiser in the way the judge described.

64 The sentence in his case was five years less than that which would have been imposed on

Mr Owens had Mr Owens not pleaded guilty at a late stage. In our judgment the judge did give sufficient weight to the matters now relied on. Had he not done so, the sentence would have been longer.

65 It is also submitted that insufficient weight was given to Mr Hartley's good character, his work history, his position as a family man and the good use to which he was putting his time in prison. They were all factors to which the judge referred. But we remind ourselves of the general proposition noted by the judge, namely that personal mitigation could only play a limited part when offending was very serious. That applied in Mr Hartley's case. In our view, the judge cannot be said to have failed to give sufficient weight to all of the matters relating to Mr Hartley's personal mitigation. We dismiss his appeal.

66 The final appeal is that of Mr Beeby. He pleaded guilty. He was concerned solely with conspiracies involving amphetamine, but including those involving class A amphetamine. He provided a basis of plea which was accepted by the judge. In short form this provided as follows. He was involved from October 2019 onwards. He assisted in the works, setting up Wood Cottage as a place of manufacture. He thereafter collected and delivered material and money as required. In April 2020 he was directly involved in the production of amphetamine at Wood Cottage. When Wood Cottage was abandoned he removed equipment. He had no direct involvement with any conspiracy after the end of May 2020. Whilst he was aware that amphetamine was being produced with a view to injection of the drug, his involvement in such production was "more limited".

67 It is argued to us as it was argued before the judge below that his basis of plea ought to have placed Mr Beeby on the borderline of lesser and significant role. We disagree. The judge's conclusion was that he had played a higher end significant role. On the admissions he made in his basis of plea, in our view, this conclusion cannot be impugned. The judge set out by reference to Beeby's activity very clearly how he reached his conclusion. There was no

departure from the basis of plea by the judge in his factual findings.

68 We consider that the sentence after trial identified by the judge, namely 20 years' custody, was a proper reflection of the very serious offending of Mr Beeby.

69 Mr Howat in oral submissions argued that he could not find another case where somebody had been involved in a significant rather than a leading role in drug dealing that was outside the guideline, where such a person had received more than 18 years' custody. Knowing Mr Howat's experience of this sort of case, we are prepared to accept that he is correct. The problem with the submission is that every case must be dealt with on its own facts. The fact that a lot of other cases have only led to sentences up to 18 years does not mean a sentence in this case of 20 years was wrong in principle or manifestly excessive. The judge had to sentence Mr Beeby for what was before him. We have already described how the judge viewed these conspiracies.

70 It is said that the judge gave insufficient weight to the mitigation. With respect, there was little mitigation. Whilst Mr Beeby had not been involved with cocaine or heroin or firearms, that was not so much mitigation, as a lack of aggravation. The judge could have aggravated the sentence rather more than he did to take account of Mr Beeby's previous convictions involving drug trafficking. He was, to use the vernacular, a three-strike offender. The sentence imposed reflected a reduction of just short of 25 per cent for the pleas of guilty.

71 In our judgment, taking all matters into account the sentence was an appropriate one for Mr Beeby's offending. His appeal is dismissed.

72 Finally, we turn to the renewed applications. Michael Pope is 37 and has a previous conviction for conspiracy to supply drugs, albeit that the class of drugs previously supplied is not clear from his criminal record. He pleaded guilty two weeks before the second trial in

which he was to be involved. His complaint is that the notional sentence after a trial, one of 19 years in relation to count 5 (the conspiracy to supply cocaine and heroin), was manifestly excessive. The first point we make in his case was he was afforded credit, i.e. a reduction in sentence of around 7 per cent, to reflect his pleas of guilty. This was very generous. Mr Pope had had contested a trial on the counts with which he was concerned for several weeks before he was discharged from that trial. In our view, he could not have complained at all had he been afforded no reduction whatsoever.

73 He invites us to consider the judge's finding that he played a leading role. We are quite satisfied the judge was correct in finding as he did. Leading role as a concept will necessarily encompass different levels of participation at the highest level. It does not necessarily mean the offender is the principal or the leader of the relevant criminal enterprise. As we have described, Mr Pope was a broker of very significant quantity of drugs and he was properly described as having a leading role. As with others in his case, the mitigation supposedly available to Pope was in reality in large measure a lack of aggravation. Further, as we have said already, personal mitigations in cases of really serious professional crime will have limited effect. The single judge said that the application for leave to appeal was unarguable and we agree. His renewed application is refused.

74 Stephen Shearwood's renewed application was presented by Mr Julian Nutter. We are very grateful to him for his attendance and his representation of Mr Shearwood. Mr Shearwood is now 40. He was made the subject of a community order for producing cannabis in March 2020. He pleaded guilty either at the start of his trial or during his trial, depending on which count we are looking at. The argument in his case is that the sentence on count 5, which before any reduction for plea was said to be 16 years, is manifestly excessive. His apparent role by reference to the material available to the judge was that he had moved 1.5 kilogrammes of the relevant class A drug. That meant that he was barely

in the highest category of offending and he certainly did not deserve a sentence at the top of the category range for category 1. With great respect to Mr Nutter, we consider this submission does not grasp the fact that the judge was sentencing Shearwood for close involvement with the amphetamine conspiracy, albeit the one involving amphetamine as class B. As the judge found, he knew of its scale. We agree with the single judge who said that the sentence on the lead count (count 5) had to reflect the overall criminality with which Mr Shearwood was involved. The sentence on the count relating to class B drugs was 9.5 years before reduction for plea. That demonstrates the seriousness of that offending. The lead offence had to encompass all offending, and in our judgment, the sentence eventually passed in relation to Mr Shearwood did that.

75 We do not consider that there are any arguable grounds of appeal in his case. Therefore, this renewed application also is refused.

CERTIFICATE

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