



Neutral Citation No. [2022] EWHC 1782 (SCCO)

Case No: T20197480

SCCO Reference: SC-2021-CRI-000116

IN THE HIGH COURT OF JUSTICE
SENIOR COURTS COSTS OFFICE

Thomas More Building
Royal Courts of Justice
London, WC2A 2LL

Date:30 June 2022

Before:

COSTS JUDGE ROWLEY

REGINA

v

KENNEDY

**Judgment on Appeal under Regulation 29 of the
Criminal Legal Aid (Remuneration) Regulations 2013**

Appellant: Victoria Meads (Counsel)

The appeal has been dismissed for the reasons set out below.

COSTS JUDGE ROWLEY

Costs Judge Rowley:

1. From time to time costs judges make the comment in decisions that there is “no equity in the regulations”. Those regulations being the Criminal Legal Aid (Remuneration) Regulations 2013. The comment is invariably made as a lament in circumstances where a more equitable decision could be made if the judge had any discretion in the matter. A little disconcertingly, determining officers have recently quoted this comment as if it is said in some positive way. The circumstances of this case demonstrate the true meaning of that comment since the outcome is not an equitable one.
2. This appeal is brought by Victoria Meads of counsel against the decision of the determining officer to categorise the offences forming part of the Advocates Graduated Fee as falling in band 14 rather than in band 1.
3. Counsel was instructed on behalf of Christopher Kennedy who faced two counts of people smuggling offences. There were seven others in the conspiracy and the composite indictment before the court contained no fewer than 43 counts, 39 of which related to the manslaughter of would-be immigrants who were found to have died in the back of a lorry. The following extracts from counsel’s note produced in support of this claim sets out the background:

“3. The facts of the case arise out of a People Trafficking Conspiracy by an Organised Criminal Group. The People Trafficking itself had been proven to have been operating as early as May 2019 with most of the evidence relating to transportations of Vietnamese migrants during the month of October 2019. The heads of the Organised Criminal Group were said to be Gheorge Nika and Ronan Hughes. They recruited drivers, Maurice Robinson, Eamon Harrison and Christopher Kennedy to drive the migrants to the port of Calais, drop the containers full of migrants and collect the containers in the UK.

...

5. In preparing this Trial and thereafter presenting it and working with the Prosecution to do so, it has been necessary for Counsel and Solicitors representing Mr Kennedy to consider all aspects of the case including all evidence relating to the manslaughter. In order to agree Agreed Facts and deal with considerations such as whether we were agreeable to recordings from the victims’ phones as they were dying being played, we had to consider all aspects of the evidence. It would have been a clear dereliction of our duty to our client had we not done so.

6. Furthermore, it was heavy on our minds that the findings of the Jury against those indicted with Manslaughter would have a direct impact upon Mr Kennedy’s sentencing in the event of adverse verdicts. In order to prove Manslaughter against Defendants 1 and 2, the Prosecution had to prove that the migrants were at risk of some physical harm by virtue of the manner of transportation. The Jury finding on this, would clearly

have a significant impact upon the way in which the Judge [would] ultimately deal with sentence upon the People Smuggling counts and adverse findings would clearly mean this would be an aggravating factor. It was therefore essential that we defended all aspects of the evidence relating to the Manslaughter counts with the same ferocity as our own people smuggling counts.

...

8. As seen from the above points, the Prosecution ran the case against Kennedy as if he were subject to the Counts of Manslaughter and there was no difference asserted by the Crown as between Mr Kennedy and those defendants. It was necessary to consider all evidence regarding the victims and cause of death to be able to agree both the admissions and the sequence of events schedule, attached.”

4. The advocates for the co-defendants have been remunerated on the basis of band 1 offences which relate to murder and manslaughter. In particular, band 1.1 relates to the killing of two or more persons and it is that band which counsel seeks in this appeal.
5. The litigators for all of the co-defendants and indeed Mr Kennedy have all been paid on the basis of a Class A offence based on the table of offences in the 2013 Regulations.
6. It is only Ms Meads (and presumably Mr Scobie QC her leading counsel) who have not been remunerated on the basis of fees applicable to a manslaughter case. If the claim had been brought prior to 1 April 2018 however, counsel would have been in the same position as her instructed solicitors and the advocates for the co-defendants.
7. Prior to April 2018, the 2013 Regulations used the same table of offences to calculate graduated fees for both litigators and advocates. Under that arrangement, an offence which was not set out in the table would fall to be (re)classified by the determining officer either upon the request of the advocate or litigator or of the determining officer’s own volition. That is still the position here in respect of the litigators because the people trafficking offences do not come within the table of offences.
8. However, the banding of offences in the Advocates Graduated Fee Scheme which came into effect from 1 April 2018 contains band 14 relating to “exploitation/human trafficking offences” which is said to contain all such offences of that type. The fees for the offences faced by Kennedy therefore fall to be calculated using the band 14 proxy. Whilst there remains a catchall (band 17) for offences which do not fit within the banding, that is not the case here. The stark reality is that there is no discretion available to the determining officer, or the costs judge on appeal, to reclassify an offence with which a defendant was charged where it clearly falls within a particular band.
9. Consequently, notwithstanding the fact that counsel no doubt did work of the same quantity and importance in preparing her client’s defence as those actually facing the manslaughter counts, her fee under the Advocates Graduated Fee Scheme does not compare. There is no parity between the co-defendants or between the litigator and

advocate. Whilst I can urge those responsible for considering amendments to the scheme to look at the very large cracks through which this case has fallen, that will be, I am sure, of little comfort to counsel.

10. I therefore must dismiss this appeal.