



Neutral Citation No. [2023] EWHC 1330 (SCCO)

Case No: T20210606

SCCO Reference: SC-2022-CRI-000051

IN THE HIGH COURT OF JUSTICE
SENIOR COURTS COSTS OFFICE

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

Date: 27 March 2023

Before:

COSTS JUDGE ROWLEY

R

v

THUC TRUONG

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

Appellant: Jonathan Turner (Counsel)

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

COSTS JUDGE ROWLEY

Costs Judge Rowley:

1. This is an appeal by Jonathan Turner of counsel against the decision of the determining officer to assess the fee payable to counsel under the Advocates Graduated Fee Scheme by way of a guilty plea rather than a cracked trial fee as described in the Criminal Legal Aid (Remuneration) Regulations 2013 (as amended).
2. Counsel was instructed on behalf of the defendant in respect of an indictment alleging a count of producing a controlled drug, namely cannabis. The defendant appeared at a Plea and Trial Preparation Hearing (PTPH) and, at which, stage dates and a trial date were set but the defendant was not arraigned.
3. Approximately two weeks before the trial, the defendant pleaded guilty following advice from counsel that he had, in all likelihood, already served any sentence that would be imposed. The defendant's alternative was for the trial to be vacated and relisted at some point in the future given the absence of a National Referral Mechanism assessment having been completed.
4. According to Schedule 1 to the 2013 Regulations, as amended, the terms "cracked trial" and "guilty plea" are defined as follows:

"...cracked trial" means a case on indictment in which—

(a) the assisted person enters a plea of not guilty to one or more counts at the first hearing at which he or she enters a plea and—

(i) the case does not proceed to trial (whether by reason of pleas of guilty or for other reasons) or the prosecution offers no evidence; and

(ii) either—

(aa) in respect of one or more counts to which the assisted person pleaded guilty, the assisted person did not so plead at the first hearing at which he or she entered a plea; or

(bb) in respect of one or more counts which did not proceed, the prosecution did not, before or at the first hearing at which the assisted person entered a plea, declare an intention of not proceeding with them; or

(b) the case is listed for trial without a hearing at which the assisted person enters a plea;

"guilty plea" means a case on indictment which—

(a) is disposed of without a trial because the assisted person pleaded guilty to one or more counts; and

(b) is not a cracked trial..."

5. For a cracked trial to have occurred under (a), the defendant needs to plead not guilty originally and then, at a subsequent point, either the defendant changes their plea to guilty or the prosecution offers no evidence. That is not the circumstance here and I say no more about it.
6. The alternative limb of the definition, under (b), is for a case to be “listed for trial without a hearing at which the assisted person enters a plea.” It is upon this limb that counsel relies for his claim for a cracked trial fee.
7. Counsel has asked for this appeal to be decided without a hearing and I therefore rely upon his written submissions as to how he puts his case. He describes his central submissions as being that an arraignment did not take place only because of the dicta in the case of R v D regarding human trafficking and what should take place at the PTPH.
8. In counsel’s submission, arraignment is not necessary to claim a cracked trial fee under limb (b). The sole issue is that a trial date is set. Given the case progressed so that it was prepared for trial, then the case ought to be assessed as a cracked trial fee.
9. I have some sympathy with counsel’s argument and indeed have previously been persuaded that a cracked trial fee is payable in these circumstances. However, I have since had the benefit of reading the decisions of Costs Judge Brown in R v Lamin (175/19) and Costs Judge Leonard in R v Jarir [2022] EWHC 2231 (SCCO), and for the reasons set out in those decisions, I do not think that a cracked trial fee is in fact payable.
10. In the case of Lamin, Costs Judge Brown considered in detail the original drafting of the 2013 Regulations and the subsequent amendment in 2015 in respect of the definition of a cracked trial. Under limb (b), the wording set out in paragraph (4) above replaced the original description of a case which was “listed for trial without a plea and case management hearing taking place.”
11. That earlier description made it clear that limb (b) was intended to cover cases where no PTPH took place at all and the case was simply listed for trial. The revised wording concentrates on whether a hearing takes place at which the defendant enters a plea. If, at any point, the defendant enters a plea before the trial then that will be determinative of whether a cracked trial fee or a guilty plea fee will be payable. For counsel to succeed in his appeal in these circumstances, the defendant had to plead not guilty originally before changing his plea. If the only plea put forward by the defendant is one of guilty, then a guilty plea fee is payable even if, as in this case, an earlier hearing took place at which no plea was required.
12. With due apologies for the length of time that it has taken me to be able to produce this decision, I confirm that this appeal fails.