



Neutral Citation No. [2023] EWHC 1692 (SCCO)

Case No: T20210222

SCCO Reference: SC-2022-CRI-000077

IN THE HIGH COURT OF JUSTICE
SENIOR COURTS COSTS OFFICE

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

Date: 3rd February 2023

Before:

COSTS JUDGE WHALAN

R

v

QAISER SHAH

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

Appellant: Qamar Solicitors LLP

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

COSTS JUDGE WHALAN

Introduction

1. Qamar Solicitors ('the Appellants') appeal the decision of the Determining Officer at the Legal Aid Agency ('the Respondent') in respect of a claim submitted under the Litigator's Graduated Fees Scheme ('LGFS'). The issue is whether the Appellants are entitled to a graduated fee based on a 'cracked trial', as claimed, or whether it should be allowed as a 'guilty plea', as assessed by the Respondent.

Background

2. The Appellants represented Mr Qaiser Shah ('the Defendant') who appeared at Bradford Crown Court with three co-defendants on an indictment alleging three counts of (1) Murder, (2) Conspiracy to Kidnap and (3) Conspiracy to Possess Criminal Property.
3. A pre-trial preparation hearing ('PTPH') was listed on 25 May 2021. It was decided by the court that no arraignment should take place due to the absence of at least one co-defendant (one had fled the country and was subject potentially to extradition proceedings), along with the fact that other co-defendants indicated the possibility of an application to dismiss. Nonetheless a timetable was set and a trial was listed on 11th January 2022.
4. After the PTPH, Stage 1 material was served, along with ongoing disclosure. In September 2021, the Defendant, who had indicated not guilty pleas to his solicitors, submitted an application for representation by (what was then) Queen's Counsel. This was granted.
5. A further PTPH was listed on 10 September 2021, which was vacated because the allocated judge was unavailable (he/she was apparently "stuck in Ibiza").
6. On or about 29 September 2021, the Defendant, after consultation with his counsel and solicitors, indicated that on count 1 he would plead guilty to Manslaughter as an alternative to Murder. This offer was submitted to the Crown for their consideration. On or about 20 October 2021, the prosecution advised (somewhat to the surprise of the defence) that they would accept the plea of Manslaughter.

7. On 28 October 2021, the case was listed ‘for plea’ in relation to the Defendant alone. He entered guilty pleas to Manslaughter and on counts 2 and 3 on the original indictment. His case was adjourned for sentence. The other co-defendants were dealt with separately at later hearings.
8. On 8 February 2022, the Defendant’s case was listed for sentence and the court imposed a term of 18 years’ imprisonment.

The Regulations

9. The Criminal Legal Aid (Remuneration) Regulations 2013 (‘the 2013 Regulations’) as amended in 2018, apply to this appeal.
10. Schedule 2, Litigator’s Graduated Fees Scheme, Part 6, contains the following relevant definitions:

“Cracked Trial” means a case on indictment in which –

(a) a plea and case management hearing takes place 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 has pleaded guilty, the assisted person did not so plead at the plea and case management hearing; or

(bb) in respect of one or more counts which did not proceed, the prosecution did not, before or at the plea and case management hearing, declare an intention of not proceeding with them; or

(b) the case is listed for trial without a plea and case management hearing taking place;

“guilty plea” means the 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; ...*

Case guidance

11. The Appellants and the Respondent cite and rely on the decisions of CJ Brown in R.v. Lamin [2020] SCCO Ref: 175/19, CJ Leonard in R.v. Barzey [2022] EWHC 1775 (SCCO) and R.v. Jarir [2022] EWHC 2231 (SCCO).
12. A point of particular importance was set out in Lamin and repeated at para. 17 of the judgment in Barzey:

...The wording of the regulation is intended to draw a clear distinction between cases in which the prosecution and/or defence clearly and procedurally demonstrate an intention to proceed to trial, but later change course (a cracked trial); and those cases in which a guilty plea may be entered at a relatively late stage, because disclosure is limited, instructions are unclear, and options are left open (a guilty plea).

Submissions

13. The Respondent's case is set out in Written Reasons dated 27 January 2023 and in detailed Written Submissions drafted by Francesca Weisman, a Senior Legal Adviser at the LAA, on 26 January 2023.
14. The Appellant's submissions are set out in typed Grounds of Appeal and in a detailed Written Response filed on 31 January 2023. Ms Weisman and Mr Mark Gallagher, a Paralegal representing the Appellant, attended and made oral submissions at the hearing on 3 February 2023.

My analysis and conclusions

15. The Respondent, in summary, relies on an interpretation of paragraph 1(1)(b) which draws a distinction between cases listed for trial 'without a hearing' per se and those where a hearing was listed but no plea was entered. This distinction was considered in the recent cases cited, particularly by CJ Leonard in Barzey. Ms Weisman points out that the trial fixture in January 2022 was "merely an administrative listing". Alternatively, and in any event, this is not a case where the parties had indicated a clear intention to proceed to trial, given that guilty pleas were entered and accepted more than three months before this listing.

16. The Appellants, in summary, submit that the facts of this case can be distinguished from those in Lamin, Barzey and Jarir (ibid), where the litigators' appeals were dismissed. On a straightforward interpretation of para. (1)(b), the Defendant's trial was listed in January 2022 after a hearing in May 2021 at which the Defendant was not asked to enter a plea. He had, argues Mr Gallagher, always indicated a not guilty plea to murder and after May 2021, it was the intention and expectation of the defence that the case should proceed to trial. As such, an application for a QC was made and allowed, which would not have been the case had guilty pleas been anticipated. After Stage 1 and subsequent disclosure, along with numerous attendances upon solicitors and counsel, the Defendant indicated an alternative guilty plea to Manslaughter, which was accepted by the prosecution. More than five months elapse between May (the PTPH) and October (the guilty plea hearing), during which time the defence prepared effectively for trial. The chronology, in other words, distinguishes this case from Lamin, Barzey and Jarir (ibid).
17. In cases like these, the important distinction is that set out in para. 17 of Barzey (ibid), namely the difference between cases where there was a collective intention to proceed to trial, but where the parties later change course (a cracked trial), and those cases where a guilty plea may be entered at a relatively late stage, because disclosure is limited, instructions are unclear, and options are left open (a guilty plea).
18. I am not persuaded by the Respondent's reference to a trial listing 'for administrative purposes'. As CJ Leonard noted in Jarir (para. 15), the expression has no relevance or determinative meaning for the purposes of the 2013 Regulations. Nor am I persuaded by Ms Weisman's interpretation of para. 1(1)(b). Instead, what is relevant, on the facts of each particular case, is whether or not there is a genuine and settled intention to proceed to trial at the PTPH, before a collective change of direction, in circumstances where it was not dictated by factors such as limited initial disclosure or lack of clarity in the defendant's instructions.
19. I accept the Appellants' submissions that the facts of this case are different in some respects to those set out in Lamin, Barzey and Jarir (ibid). The Defendant was not arraigned in May 2021 because of issues concerning his own case, but rather because of factors relevant to his co-defendant. A very significant period of 5 months then elapsed before the interlocutory guilty plea hearing in October 2021. Clearly, the

Defendant challenged the allegation of murder, but no real dispute appears to have centred on counts 2 and 3. But I am not satisfied that the facts of this case meet the criteria for remuneration as a cracked trial. Significant, ongoing disclosure was made evidently after the PTPH in May 2021, and this undoubtedly had a bearing on the Defendant's prospects and instructions. More particularly, guilty pleas were eventually entered and accepted 3 months before the trial listing, in circumstances where the offer of guilty pleas were indicated several weeks before that. On the facts of this case, therefore, I am satisfied that the Determining Officer correctly classified it as a 'guilty plea' and not a 'cracked trial'. Accordingly, this appeal is dismissed.

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