



Neutral Citation No. [2024] EWHC 3159 (SCCO)

Case No: T20227013

SCCO Reference: SC-2024-CRI-000099

IN THE HIGH COURT OF JUSTICE
SENIOR COURTS COSTS OFFICE

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

Date: 6 December 2024

Before:

COSTS JUDGE LEONARD

R

v

WILLIAMS

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

Appellant: **Black & Co (Solicitors)**

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

The appropriate additional payment, to which should be added the sum of £750 (exclusive of VAT) for costs and the £100 paid on appeal, should accordingly be made to the Applicant.

COSTS JUDGE LEONARD

1. This appeal concerns whether, under the Graduated Fee provisions of Schedule 2 to The Criminal Legal Aid (Remuneration) Regulations 2013, the Appellant is due a cracked trial fee or a trial fee. The issue turns upon whether, for the purposes of the 2013 Regulations, a “Newton Hearing” (a fact-finding hearing for sentencing purposes, which is treated as a trial under the Regulations) took place.
2. The relevant Representation Order was made on 10 May 2021. The 2013 Regulations apply as in force at that date. Schedule 2 at paragraph 1 provides the following definitions:

“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...

... “Newton Hearing” means a hearing at which evidence is heard for the purpose of determining the sentence of a convicted person in accordance with the principles of *R v Newton* (1982) 77 Cr App R 13...’

Case Law

3. In *R v Robert John Newton* (1983) 77 Cr. App. R. 13, the Court of Appeal identified the three forms of what is now known as a “Newton Hearing”. The disputed facts may be put before the jury for a decision; the judge may hear evidence and then come to a conclusion; or the judge may hear no live evidence but instead listen to submissions from counsel and then come to a conclusion.
4. The 2013 Regulations expressly apply the principles of *R v Robert John Newton*. It follows that, despite their reference to evidence, live evidence need not be heard for a hearing to qualify as a Newton hearing. The essential point is rather that there must be a fact-finding exercise for the judge to conduct. The Appellant says that in this case, there was, and accordingly claims a trial fee. The Respondent says that there was not, and that the Legal Aid Agency’s Determining Officer was right to find that only a cracked trial fee was due.

Background

5. The Appellant represented Kai Williams (“the Defendant”) before the Crown Court at Winchester. The Defendant faced four counts on the indictment. Count 1 was of conspiracy to supply Class A drugs (cocaine) with James Cox, Benjamin Fry, Luther Takawira, Alex Male and others between 1 April 2020 and 30 June 2020; count 3 of conspiracy to purchase or acquire a firearm with Alex Male and others between 1 April 2020 and 30 June 2020; count 4 of conspiracy to possess ammunition with Alex Male and others between 1 April 2020 and 30 June 2020; and count 5, against the Defendant alone, of being concerned in supplying Class A drugs (cocaine) to another between 5 June 2020 and 12 June 2020.
6. The Defendant entered pleas of not guilty on 25 June 2021, and the case was listed for trial. The Representation Order transferred to the Appellant on 25 November 2023. The defendant changed his pleas to guilty on counts 1 and 5 on 14 February 2024, five days before the listed trial on 19 February 2024, which proceeded against a number of co-defendants. The trial judge was His Honour Judge Mousley KC, the Honorary Recorder for Salisbury.
7. On 11 March 2024, the last day of the trial, Ms Austin, counsel for the Prosecution, sent an email to Mr Schofield, counsel for the Defendant, confirming that there would be hearing on Friday 15 March:

“The HHJ is going to list Williams for sentence on Friday. Should a Newton be required he will hear the evidence on Friday.

The police are putting together a bundle but we say you are in excess of 5 kilos and the following leading features:

 - directing or organising buying and selling on a commercial scale;
 - substantial links to, and influence on, others in a chain;
 - close links to original source;
 - expectation of substantial financial gain.

But - you are Males right hand man and so he would be above you in the chain.

I hope to have the bundle and sentencing note with you on Tuesday am at the latest...”
8. On 13 March 2024, the Prosecution filed a sentencing note which asserted that the Defendant had purchased cocaine in kilograms from Alex Male and supplied his own customer base with “wholesale amounts” of cocaine.
9. On 14 March, the Defence team uploaded a basis of plea, which among other matters stated that the Defendant had been involved only with 2.5 kg of cocaine; that he had not played a role in the drugs operation headed by Alex Male; that his only role in the

offending was to introduce potential customers to Alex Male; and that he was not Alex Male's "right hand man".

10. An accompanying Defence sentencing note submitted that, in respect of the offences to which he pleaded guilty, there was insufficient evidence to support the contention that the Defendant had purchased cocaine from Alex Male or that others had purchased cocaine wholesale from him; and that the Defendant should be regarded for sentencing purposes as having played a "significant role" (for which the starting point would be 10 years' custody) as opposed to a "leading role" (for which the starting point would be 14 years' custody).
11. On the same date the Prosecution, which prepared two presentations of evidence (communication and location data) in respect of each of counts 1 and 5. I understand that the presentation prepared for count 1 had been before the court at the trial of 19 February 2024, but that the presentation prepared for count 5, which had not been within the subject matter of the trial, had not.
12. I have seen transcripts of the proceedings on 15 March 2024. The transcript of Mr Schofield's submissions is headed "mitigation", but it seems clear to me that the matters addressed by Mr Schofield on behalf of the Defendant went beyond that.
13. The Prosecution's opening of facts asserted that the Defendant had been the "right-hand man" of Alex Male, working with him to supply network of customers; that he had played a leading role in the conspiracy, buying and selling Class A drugs on a commercial scale; and that he was a trusted member of an organised criminal fraternity. The Prosecution referred to evidence in support of those assertions.
14. Mr Schofield's response started with these words:

"... all of the evidence that the Prosecution has served is agreed. It, it reveals messages and other inferential material and therefore it's simply a matter of interpretation. Your Honour has heard a trial in which must of, much of this material has been discussed, although not all of it, and so Your Honour is ideally placed to determine the factual basis of Mr Williams's sentence. But may I make these submissions on what I would submit is a correct interpretation of everything the Court has seen...."
15. Mr Schofield's submissions included that the Defendant had played a more limited role in the conspiracy than contended for by the Prosecution, and that it would be wrong, on the evidence, to conclude that the Defendant had been a "right-hand man" to Alex Male.
16. HHJ Mousley's sentencing remarks included these words: "... Williams, I am satisfied that you were Male's right hand man. Your role involved, amongst other things, passing on instructions to other conspirators... You bought cocaine from Male and supplied it to others... Williams, you bought and sold cocaine on a commercial scale. You had links and some influence on others. Count 5 involves you supplying half a kilo... Yours was a leading role".
17. The Defendant was sentenced to 18 years' imprisonment.

Principles

18. I have been referred to a number of decisions by costs judges on whether, on the particular facts of given cases, a Newton hearing had taken place. All of them being necessarily fact-specific I do not think that it is necessary to refer to them in any detail, but I will summarise some of the pertinent principles.
19. First, the question I have to consider is not whether a Newton hearing was listed in this case, but whether one actually took place.
20. Further, it would not be right to find that there had been a Newton hearing where the judge at a sentencing hearing drew factual conclusions not from evidence presented at the hearing itself, but entirely from a previous trial. Nor would it be right to conclude that there had been a Newton hearing where there was no factual dispute for the judge to resolve, the question to be determined being a rather the appropriate application of the sentencing guidelines to undisputed facts (for example, whether it would be right on those facts to sentence a defendant on the basis that they had had played a “leading”, as opposed to “significant” role).

Conclusions

21. In this particular case, as is evident from the Prosecution email of 11 March 2024, the hearing of 15 March was listed as a sentencing hearing on the understanding that it might in fact be a Newton hearing. It is also clear that not all of the evidence put before the judge on 15 March had been before him at the trial which had concluded some days previously.
22. Given that the evidence before HHJ Mousley was not itself disputed, I can understand why the Respondent submits that the hearing of 15 March 2024 was not a Newton hearing. The Respondent also points out that Mr Schofield addressed the court only for about 12 minutes.
23. All that is correct but, whilst the evidence itself was undisputed, the factual conclusions to be drawn from it were not, and were the subject of extensive written submissions. Whether the Defendant was involved in supplying a limited amount of cocaine or a much larger amount; whether he was a customer of Alex Male or merely an introducer of customers; whether he was Alex Male’s “right hand man”; and whether he was, in his own right, a supplier of cocaine on a commercial scale, all fell to be determined by HHJ Mousley. All were highly pertinent to sentencing.
24. It was not necessary for Mr Schofield to expound at length on the content of the evidence and submissions already considered by HHJ Mousley (a very experienced judge) for the purposes of those factual findings, and the length of Mr Schofield’s submissions is really not to the point. The question is whether HHJ Mousley, on 15 March 2024, was called upon to make findings of fact which would inform the sentence to be received by the Defendant. Evidently he was.
25. I am, accordingly, satisfied that a Newton hearing did take place on 15 March 2024 and that the Appellant is entitled to be remunerated accordingly.