Neutral Citation Number: [2018] EWCA Crim 2799
2018/01912/A2
IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
The Strand
London
WC2A 2LL

Tuesday 20th November 2018

B e f o r e:
LORD JUSTICE HAMBLEN

MR JUSTICE POPPLEWELL

and

MR JUSTICE GOOSE

_____

R E G I N A

- v -

JOYSEN SIVEN JHURRY

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Mr K Monteith appeared on behalf of the Appellant

Mr T Probert-Wood appeared on behalf of the Crown

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J U D G M E N T
(Approved)

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Tuesday 20th November 2018

LORD JUSTICE HAMBLEN: I shall ask Mr Justice Goose to give the judgment of the court.

MR JUSTICE GOOSE:

1. On 17 April 2018 in the Crown Court at Southwark His Honour Judge Hopmeier sentenced the appellant, Joysen Siven Jhurry, to sixteen years' imprisonment in respect of two offences of conspiracy to contravene section 170 of the Customs and Excise Management 1979, contrary to section 1(1) of the Criminal Law Act 1977. The appellant had pleaded guilty to those offences at the first reasonable opportunity, on 13 January 2017. A sentence of sixteen years' imprisonment was imposed upon count 1, which related to a Class A drug (cocaine), and on count 2, for an offence relating to a class B drug (cannabis), he received a concurrent sentence of five and a half years' imprisonment. The total sentence was thus one of sixteen years' imprisonment. A timetable for proceedings under the Proceeds of Crime Act 2002 was set before sentence.

2. The appellant now appeals against sentence with the leave of the single judge.

The Facts

3. The appellant's plea of guilty was to his involvement in a conspiracy to import cocaine and cannabis. He was sentenced with ten other co-defendants who were also parties to the conspiracies; some of them were convicted after a trial. Due to his early guilty plea, the appellant was given a discount on his sentence, which the judge fixed at one-third. The judge indicated that the sentence before the guilty plea was twenty-four years' imprisonment. We shall return later to the issue of discount for the plea.

4. Count 1 on the indictment concerned a long-standing, professional conspiracy to import high purity cocaine from Brazil into London through Heathrow Airport, on passenger flights, using corrupt baggage handlers. This conspiracy took place over a period of fifteen months, between 1 September 2015 and 15 December 2016. On each occasion, cocaine was placed into ordinary passenger suitcases in Rio de Janeiro by corrupt baggage handlers. They were placed into British Airways baggage containers and loaded into British Airways passenger flights travelling to London Heathrow Airport. The cocaine was divided into 1 kilogram blocks. Conspirators in Brazil communicated with the conspirators in the United Kingdom. Picture messages, showing the bags and identification labels, were sent from Brazil to London. When the flight arrived at Terminal 5 the appellant, who was employed as a baggage handler, waited to collect the identified suitcase before it was transferred either by himself or by another under his direction, onto the domestic flight baggage carousel. The appellant and others he directed arranged for couriers to fly into Terminal 5 on domestic flights, to co-ordinate with the flight from Brazil. The courier, who had also been sent images of the bag, then removed it from the domestic carousel and left through the domestic arrivals area of the terminal, where there was a lower level of security.

5. The offenders in the conspiracy fell into three distinct groups. The first group, the "Rip Off" team, was run by the appellant with the assistance of his brother-in-law, Preetam Mungrah. It was Mungrah's job to liaise with the domestic importers, to ensure that they were ready to collect the suitcase once it passed through security in the domestic arrivals area. Mungrah worked under the direction of the appellant. The appellant was the controlling mastermind of the Rip Off team. He also brought another baggage handler, Mohammed Ali, into his direction as part of the conspiracy.

The second group were the "Domestic Importers" who all utilised the services offered by the appellant. They had, in varying degrees, links with the international importers to secure the importation of the cocaine. They were at the top of the chain of domestic importation. The third

group, "The Subordinates", acted as couriers and provided support for the Domestic Importers.

6. During the course of the conspiracy, six interceptions of cocaine were carried out by the National Crime Agency. They recovered over 100 kilograms of high purity cocaine, the average purity of which was 78.5 per cent. The dates of seizure and the weight of cocaine seized were as follows: on 30 November 2015, 29.015 kilograms; on 19 December 2015, 20.97 kilograms; on 26 April 2016, 12.008 kilograms; on 29 May 2016, 15.311 kilograms; on 12 November 2016, 5.865 kilograms; and on 19 November 2016, 16.979 kilograms.

7. It was accepted by the appellant and all other offenders that, given the frequency of the interceptions and that the conspiracy continued for fifteen months, substantially more cocaine was imported than had been intercepted. In sentencing the appellant and his co-accused, the judge drew an uncontentious inference that not less than double the quantity of cocaine intercepted must have been imported by the conspirators. The judge, who conducted the trials of those offenders who did not plead guilty, concluded that the street value of the cocaine, including the drugs intercepted, was at least £32 million. In truth, as the judge observed, the precise figure would never be known. It is clear, however, that this was a very substantial operation illegally importing very large quantities of cocaine.

8. It is not necessary in this judgment to provide a summary of all that the appellant did in furtherance of the conspiracy on count 1. However, his leading role, which is not disputed, can be discerned from the evidence involving the first two interceptions.

9. In the lead up to the importation of a passenger bag on 30 November 2015, the appellant was involved in messaging his brother-in-law, Mungrah, to set up the arrangements for the Domestic Importers to be ready for a delivery. Those messages occurred on 19, 25 and 28 November 2015. On 30 November 2015 there was considerable telephone communication between the conspirators in Brazil and a co-accused, Wilfred Kwaye Owusu, who was a leading Domestic Importer. He contacted the appellant, who was then in contact with other Domestic Importers. At 2.57am an image of the passenger bag was sent to Mark Agoro, a Domestic Importer. At 3.08am he received an image of the baggage container with its unique reference, which was information also sent to the appellant. At 12.40pm the appellant arrived at London Heathrow Airport. He swiped into the baggage handler staff system at 12.48pm. He was not rostered to work that day, but had attended so as to ensure that the passenger bag was identified and correctly switched as part of the conspiracy. The British Airways flight arrived into London Heathrow from Rio de Janeiro at 1.05pm. Whilst at the airport there was further telephone communication between the appellant and Mungrah, and with the Domestic Importers. After the arrival of the flight, police officers searched and recovered a Samsonite bag which contained 29 kilograms of high purity cocaine. The appellant left the airport at 2.11pm. He was covertly recorded telling Mungrah on the telephone that something had gone wrong. The appellant also communicated with one of the Domestic Importers. This was the first interception of an imported passenger bag by the authorities.

10. On 19 December 2015 the second interception took place. On this occasion the cocaine was successfully taken from the flight and collected by the courier, but he was later arrested as he went through customs. The appellant had arrived at 12.30pm, before the flight into Heathrow. Again, he was not rostered to work but he needed to ensure that the importation took place. The appellant contacted Mungrah, who gave the appellant two telephone numbers to contact for one of the Domestic Importers. The flight arrived at 1.16pm and shortly before 2pm the appellant was seen to place a bag on the domestic baggage carousel. At 2.27pm a message was sent by one of the Domestic Importers to a courier, identifying a bag which was then collected before the courier was arrested.

11. Those examples of only two of the intercepted deliveries clearly demonstrated the central role played by the appellant in this conspiracy.

12. During the course of the investigation, covert recordings were made of communication between the appellant and his co-conspirators. On 16 April 2016 a probe from the appellant's car recorded him in conversation on his mobile telephone with an unknown caller. The appellant stated:-

> "*…I gave you one hundred, I never even involved you in anything right? I paid shit loads of money, shit loads. I'm struggling right now and you don't have the patience? Why, why not? … I spent fifty fucking grand … about sixty grand with you, right? In the space of, what, a few months...*"

Later that same day, 16 April 2016, the appellant was recorded in conversation with Mungrah who was told to negotiate with a different set of customers. That again demonstrates the appellant's leading role in the conspiracy.

13. In a second conspiracy (count 2 on the indictment), the appellant performed a similar function in respect of cannabis importation. This involved a single intercepted delivery on 26 July 2016. The drugs were placed into two passenger bags on a British Airways commercial passenger flight travelling from Johannesburg, South Africa to London Heathrow, Terminal 5. A total of 44.85 kilograms of cannabis was intercepted by officers at Heathrow. The cannabis had a wholesale value of approximately £41,000 and a street value of £132,000. Using the same techniques involved in count 1, the flight number, baggage tag numbers and container number were sent to the Domestic Importers and to the appellant. At 5.30am on 26 July 2016 the appellant, who was not due to work that day, arrived at 4.56am. He was in contact with Mungrah. The cannabis was seized by officers at 5.30am.

14. The appellant was arrested at his home on 16 December 2016. He readily admitted his involvement in the offending. He made full admissions in his police interviews and pleaded guilty at the first reasonable opportunity.

The Sentence

15. The judge identified that the appellant fell to be sentenced for two separate conspiracies; one involving cocaine importation from South America; and the second of cannabis importation from South Africa. The judge determined that the appellant had played a leading role in the conspiracy. That is not disputed in this appeal. The judge stated that count 1 concerned a long-standing professional conspiracy to import high purity cocaine from Rio de Janeiro into London Heathrow, Terminal 5 on British Airways passenger flights, through the use of corrupt baggage handlers. It was an operation on a very serious and commercial scale; it was highly organised crime. The judge also observed that despite repeated disruption by interceptions, the conspiracy continued to operate over fifteen months and was still live at the time of arrest in December 2016. The street value of the high purity cocaine was at least £32 million and the quantity of drugs was in excess of 200 kilograms. The appellant's leading role was determined by his substantial links to and influence upon others in the chain, namely Mungrah and Ali. Further, he had an expectation of substantial financial gain, given his central role in the conspiracy of such high value drugs. Although count 2 involved a separate conspiracy on one occasion, the judge decided to impose a concurrent sentence of imprisonment. However, it was obviously a seriously aggravating feature of the appellant's offending that he was involved in two conspiracies. Undoubtedly, the judge was entitled to take this into account when fixing the overall sentence.

16. The judge imposed a sentence of sixteen years' imprisonment on count 1 and five-and-a-half years' imprisonment concurrently, on count 2. Allowing for a one year reduction for mitigation and a full discount for early pleas of guilty, the judge based the appellant's sentence on a term of twenty-five years imprisonment.

The Grounds of Appeal

17. The appellant submits in his grounds of appeal, and also orally by Mr Monteith in this appeal, that the sentence of 24 years, before discount for the guilty plea, was manifestly excessive. In adopting a 25-year starting point, before reducing by one year in respect of mitigation, it is submitted that the judge arrived at too high a sentence. It is also submitted that such a sentence, when compared with some of his co-accused, created an objectional disparity. Further, the appellant argues that a greater discount than one-third should have been given for his pleas of guilty. The appellant indicated his guilt from the beginning, implicitly upon arrest and explicitly during his police interviews. Given that he was the first of the conspirators to indicate a guilty plea, a greater discount than one-third should have been given to him.

Discussion and Conclusion

18. Although the Sentencing Council's Drug Offences Guideline for offences of importation provides a starting point of 14 years, with a range of 12 to 16 years custody, for a leading role category 1 offence involving Class A drugs, that is based upon an indicative quantity of 5 kilograms. The judge was required to increase the sentence substantially higher to reflect the greater quantity of drugs involved in this case. The judge correctly observed that the Guideline directs that an upward lift in sentence must take place in the most serious cases. At page 4 the Guideline provides:

> "*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*."

This was plainly such a case. The judge agreed with the prosecution's submission that the sentence range for a leading role in a conspiracy to import Class A drugs, where the quantity substantially exceeds 100 kilograms, is between 20 to 30 years custody, as a starting point, before discount for mitigating circumstances and any early plea of guilty. Such a sentence range is in accordance with previous decisions of this court: see *R v Welsh* [2014] EWCA Crim 1027, and *R v Sanghera* [2016] EWCA Crim 94. Given that the appellant was to be sentenced for his leading role in a conspiracy to import high purity Class A drugs, in quantities substantially in excess of 100 kilograms over fifteen months, there can be no argument that the sentencing range of 20 to 30 years was correct. The appellant does not seek to argue otherwise.

19. There were two significant aggravating factors to the appellant's offending, namely the clear abuse of his position of trust as an employed baggage handler at Heathrow Airport and, secondly, his use of companies to hide the proceeds of his offending. The mitigating factors were that the appellant was a man of good character, without previous convictions, and he was supported by a number of written references which were placed before the judge. In addition, there was clear remorse, which was evidenced by the appellant's prompt and very early admissions of guilt before he attended any court hearing. Taking into account the aggravating factors, the judge arrived at a sentence of 25 years custody, before he reduced it by one year for mitigation, providing 24 years as the sentence before guilty plea. The appellant submits that this sentence, before discount for the guilty plea, should have been at or below 20 years. This is based upon the contention that other offenders were sentenced to lower sentences. It is argued, for example, that Mungrah, who was convicted after trial on counts 1 and 2, was sentenced to thirteen-and-a-half years' imprisonment for a significant role. It is submitted that the differential in sentence between a category 1 leading role and significant role is approximately 30 per cent. Had Mungrah been convicted of a leading role, his sentence would have equated to a custodial term of 19 to 20 years, applying the increased differential. It is also argued that the sentences imposed upon Agoro and Owusu, being respectively fourteen-and-a-half years after a guilty plea at the Plea and Trial Preparation Hearing by Agoro, and twenty years after conviction for Owusu, makes the appellant's sentence, before discount for the guilty plea, excessive. By this

reasoning the appellant submits that his sentence was manifestly excessive.

20. The appellant's submission that his sentence is disproportionately higher than that of his co-accused, ignores a clear distinction drawn by the sentencing judge. The appellant's leading role in the conspiracy was as the leader of the "Rip-Off" team, responsible for the centrally important act of transferring the drugs from the international to the domestic baggage carousel in Terminal 5. Although each role in the conspiracy had its own importance, this one was central to its success. It enabled, when successful, the drugs to avoid the higher security regime involved with international passenger transport. Further, there was clear evidence that the appellant directed others in the conspiracy, whether as a baggage handler or as a Domestic Importer and which ones should be dealt with.

21. Whilst Agoro and Owusu each played a leading role in the Domestic Importers group, the judge determined, having conducted trials in respect of the conspiracy, that it was at a lesser scale of culpability than that of the appellant. In addition, neither of these offenders was involved in a gross breach of trust, as was the appellant. Accordingly, comparisons between the sentence imposed on the appellant and those imposed on both Agoro and Owusu, do not lead to a conclusion that there was an unfair disparity in sentencing; they were in a different and less serious category. The judge was satisfied of that distinction having, heard evidence over three trials which did not involve the appellant. We see no reason to disturb that finding.

22. Moreover, the sentence imposed on Mungrah of thirteen-and-a-half years' imprisonment, following a trial on counts 1 and 2, was for his significant, not leading role. In sentencing Mungrah, the judge identified that he was not part of the conspiracy for three months, during which period he had returned to his home in Mauritius. Further, there were other factors of significant mitigation which applied to his case and not that of the appellant. Accordingly, the sentence imposed on Mungrah does not bear any basis for identical comparison with the sentence imposed on the appellant. In addition, the appellant's arithmetical calculation on the assumption that Mungrah played a leading rather than a significant role is not sustainable. The difference in sentence between roles is not exclusively an arithmetical process. It involves the assessment of where each defendant falls, even within the category or role that their offending requires. In this case, the appellant's culpability was at a much higher level than that of Mungrah.

23. It should also be noted that on behalf of the appellant it was submitted before the judge in the sentence hearing that the starting point for his sentence was "up to 24 years". This was specified in the Defence Sentence Note at paragraph 8. It was argued before the judge, however, that such a sentence should have been discounted significantly for the mitigating factors that were raised.

24. We are satisfied, therefore, that the sentencing judge, who had presided over two long trials of co-defendants, was correct to identify the sentencing range of between 20 to 30 years custody. The judge then identified 25 years for the appellant, after taking into account the aggravating factors, but before discounting to 24 years for the mitigating factors. We do not accept that this sentence creates any unfair disparity when the sentences of the co-accused are considered. In effect, the appellant accepted before the judge that a sentence of up to 24 years was appropriate before mitigation was taken into account. The judge identified a sentence one year longer than that conceded by the appellant, before expressly taking into account those matters of mitigation advanced. Essentially, therefore, the appellant's submission is that insufficient weight was given to mitigating factors, which comprised good character and remorse. Given the seriousness of his offending, we are not persuaded that insufficient weight was given to the mitigating factors. The sentence of 24 years, before discount for the guilty plea, was neither manifestly excessive, nor wrong in principle.

25. The appellant's second ground of appeal, namely that more than one-third discount should

have been given for the very early indication of a guilty plea, can be dealt with shortly. The appropriate Guideline for reduction in sentence for a guilty plea was in the Sentencing Guidelines Council's guideline, revised in 2007. The new Guideline only became effective where the first hearing was on or after 1 June 2017, which was after the appellant's pleas of guilty on 13 January 2017. The appellant submits that the full discount in the 2007 guideline is a "recommended" discount of one-third, when the guilty plea is entered at the first reasonable opportunity, reducing on a sliding scale to the point of trial down to one-tenth. It is argued that this permits a greater discount within the judge's discretion. It is also submitted that in complex and multi-defendant cases more favourable credit might be given as a matter of policy. Reliance was placed on R v Sanghera where, at [19] it was stated by Bean LJ:-

> *"... it is in our view important in a complex and multi-defendant case to give particular credit to the first defendant to break ranks and plead guilty. ..."*

26. We do not accept the appellant's submission that a discount of more than one-third should have been given. Firstly, the Sentencing Guidelines Council Guideline makes no express provision for a discount greater than one-third, even where the guilty plea is indicated at the earliest possible stage. The policy of rewarding a very early guilty plea indication is expressly recognised in the 2007 Guideline. Secondly, the observation by Bean LJ in R v Sanghera was in the context of a multi-handed sentence in which the amount of discount given to each defendant was unclear from the sentencing remarks. The court was required to assess what the guilty plea should have been, when it was not entered at the first opportunity and a Newton Hearing had been held, for a defendant who was the first to plead guilty. Thirdly, on behalf of the appellant, it has not been possible to identify any authority which supports the proposition of a greater discount than one-third for a guilty plea. In these circumstances we do not find that a greater discount for a guilty plea should have been made for an offender who accepts his guilt even at the point of arrest.

27. The judge correctly identified in this case that the appellant's very early indication of a guilty plea represented clear evidence of remorse and was, therefore, a factor for mitigation and not a reason to increase the discount for the guilty plea. Therefore, we are not persuaded by this submission. Before leaving it, however, we observe that the Sentencing Council's new Definitive Guideline for reduction in sentence for a guilty plea, expressly states on page 3 that the maximum level of reduction in sentence for a guilty plea is one-third. This should render unnecessary any future submissions of a greater discount for an early plea of guilty.

28. In the circumstances, we are not persuaded that the sentence imposed was either manifestly excessive or wrong in principle. Accordingly, we dismiss this appeal.
