

No: 201901011/A2, 201901119/A2 & 201901080/A2
IN THE COURT OF APPEAL
CRIMINAL DIVISION

[2019] EWCA Crim 606

Royal Courts of Justice
Strand
London, WC2A 2LL

Tuesday, 2 April 2019

B e f o r e:

LORD JUSTICE FLAUX

MRS JUSTICE SIMLER DBE

THE RECORDER OF GREENWICH

HIS HONOUR JUDGE KINCH QC

(Sitting as a Judge of the CACD)

R E G I N A

v

MATTHEW EVANS

RICKY JACKSON

JOHN JOHNSTONE

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Miss S Magill appeared on behalf of **Evans**

Mr J Woodward appeared on behalf of **Jackson**

Mr T Lord appeared on behalf of **Johnstone**

J U D G M E N T

MRS JUSTICE SIMLER: On 11 February 2019 in the Crown Court at Preston, before His Honour Judge Medland QC and a jury, the three applicants were convicted of an offence of transferring criminal property, contrary to section 327(1)(d) of the Proceeds of Crime Act 2002. On 14 March 2019 before the same court, they were sentenced as follows: Matthew Evans was sentenced to immediate imprisonment for four months, less 16 days ordered to count towards that sentence; John Johnstone was sentenced to an immediate term of eight months' imprisonment, less 16 days and Ricky Jackson to an immediate sentence of eight months' imprisonment less 16 days. In each case a victim surcharge order was made.

The applicants apply for leave to appeal against sentence, these appeals having been referred to the full court by the Registrar. They are represented as follows: for Matthew Evans, Miss Magill of counsel appears; for Mr Johnstone, Mr Lord appears and for Mr Jackson, Mr Woodward appears. We are grateful to all counsel for their concise submissions.

The facts

The offending arose out of a wider police operation conducted by Lancashire Police into the activities of an organised crime group. High purity cocaine was sourced from Merseyside and Yorkshire into Blackpool. The Crown's conservative estimate was that during the course of the conspiracy to supply drugs, the amount of cocaine involved was not less than 28 kilograms. These three applicants were all involved in transferring cash arising from the sale of the drugs in the wider conspiracy. On 1 June 2017, Ricky Jackson handed over cash to one of the wider conspirators, a man named Scott Le Drew. That cash formed part of a larger amount collected by Scott Le Drew and eventually passed on to one of the main conspirators who was arrested in the early hours of 2 June 2017 in possession of in excess of

£64,000. On 16 June 2017 John Johnstone handed £11,200 in cash to one of the wider conspirators. The cash was the proceeds of drug dealing. On 13 July 2017 Matthew Evans handed over £5,000 on behalf of one of the wider conspirators in payment for drugs.

Matthew Evans was 34 at the date of sentence, born on 10 August 1984. He had two convictions for minor violence and public order offences and one for theft dating back to 1997. There was a pre-sentence report available. He continued to deny committing the offence, maintaining he had no idea of anything the Crown had alleged. He had provided a no comment police interview on advice. Nonetheless, he accepted he had been convicted and would accept the punishment of the court. He was assessed as a low likelihood of general re-conviction and serious recidivism. He was also assessed as a low risk of serious harm to all groups. The author of the report indicated that should the court feel able to step back from immediate custody, he could be sentenced in the community and was deemed suitable for an unpaid work requirement and/or an electronically monitored curfew.

Mr Johnstone was aged 61 at the date of sentence. He was born on 29 August 1957. He had eight convictions for 15 offences spanning the period December 1970 to August 2011. In terms of relevant convictions he had one for fraud and six for theft and associated offences. The pre-sentence report said that he denied the offending but accepted the jury's finding of guilt. He suffered from anxiety and depression and had done so for many years. He was currently prescribed with Valium for that condition. He too was assessed as a low risk of both general and serious recidivism. There was no evidence that he presented anything other than a low risk of serious harm to others and again in his case, the author of the report took the view that a community-based sentence could be imposed and that he was suitable, albeit that there were issues presented by his mental health condition for an unpaid work and curfew requirement.

Ricky Jackson was aged 52 at the date of sentence, born on 25 November 1966. He had ten convictions for 26 offences spanning the period November 1978 to January 2003. His relevant convictions included 13 theft and associated offences. The pre-sentence report said he too denied the offending, albeit accepting that his behaviour had looked suspicious. He took no responsibility for money laundering. He was assessed as a low risk of serious recidivism and general re-offending and was also assessed as a low risk of serious harm. He too was assessed as suitable for a community order with curfew and unpaid work requirements, although the author of the report was concerned that he was at that stage signed off sick due to a back injury.

The Definitive Guideline

The Sentencing Council's Definitive Guideline on Fraud, Bribery and Money Laundering applies in relation to these offences. In terms of culpability, the Crown put all three cases at somewhere between medium and lesser culpability because there were characteristics present which fell under the different levels of culpability so that a balanced assessment would be required. In terms of harm, in the cases of Mr Johnstone and Mr Jackson, the Crown contended for Category 5 which covers a range of £10,000 to £100,000, with a starting point based on £50,000 and in relation to Mr Evans, Category 6 which involves sums less than £10,000, with a starting point based on £5,000. In relation to Mr Johnstone and Mr Jackson, on that footing, the category range fell somewhere in between 5B and 5C. Category 5B had a starting point of 18 months' custody with a range of 26 weeks to three years. Category 5C had a starting point of 26 weeks' custody with a range of a medium level community order to one year's custody. In relation to Mr Evans, looking at Category 6C, the starting point is a low level community order with a range of a fine to a medium level community order, whereas culpability B has a high level community order as

a starting point with a range of a low level community order to one year.

However, in all three cases it is important to recognise that harm B in the Definitive Guideline states that money laundering is an integral component of much more serious criminality and to complete the assessment of harm therefore the court must take into account the level of harm associated with the underlying offence to determine whether it warrants upward adjustment of the starting point within the range or in appropriate cases, a sentence outside the range. Although Miss Magill sought to argue that entails a sideways adjustment, so that if the starting point was 6C in Mr Evans' case, that allowed the judge to go to 6B, we disagree. We consider that a natural reading of the Guideline is that harm B takes the harm A assessment up a category, so that if one is in 6C one moves up to 5C.

The sentence

The trial judge referred to the destruction caused by class A drugs; the ruination of people's lives', the fact that class A drugs break up families, ruin health, corrode society, promote organised crime and enrich powerful criminals at the risk of the weak and vulnerable. He made clear that having been convicted by the jury of money laundering, the offending was an essential element in the way in which the underlying conspiracy had worked because it was necessary for the money to be hidden and passed on in order for it to succeed. The money would therefore be put into the care of people who were trusted, but who were below the radar and in that regard each of the applicants had played a direct role. The trial judge took the view, bearing in mind the sums of money involved in the supply of class A controlled drugs and in the absence of any plea of guilty, that there had to be a sentence of imprisonment in each applicant's case. He bore in mind the Guideline, the mitigation advanced and the contents of the pre-sentence reports and reached the conclusion that the sentences to which we have already referred should be passed.

The appeal

On this appeal all three applicants contend that the sentence in their case is manifestly excessive.

For Mr Evans, Miss Magill submits that the custody threshold was not even passed. She submits that Mr Evans had turned his life around, that he was performing a limited function with limited awareness on the instructions of or as a favour for his brother. Moreover he had dependants, in terms of a partner who was not in work, and all the conditions for a community order were in place. If that is not correct she submits that his sentence ought to have been suspended.

In the case of both Mr Jackson and Mr Johnstone, the principal argument advanced is that the sentences in their cases ought to have been suspended. Looking at the Guideline, in relation to those applicants, both Mr Woodward and Mr Lord submit that they were at low risk of re-offending. There was no history of poor compliance with court orders and they did not know the scale of the operation or that it was concerned with class A drugs. In each of their cases they maintain there was a realistic prospect of rehabilitation and the court could be confident therefore that a suspended sentence was the appropriate sentence in their cases.

In each case, it is submitted that there was compelling mitigation and in Mr Evans' case particular emphasis was placed on the charitable volunteering work he did as a member of the Royal National Lifeboat Institution, together with his father's terminal illness.

In our judgment, the judge was uniquely well placed to have an overview of the underlying conspiracy and the part played by money laundering within it by each applicant. The offences are made all the more serious by forming part of a much wider and sophisticated criminal operation to supply class A drugs involving many others. That is the case whether these applicants knew precisely the extent of the conspiracy or not. These sorts of

conspiracies depend on those who are under the radar and trusted, as the trial judge made clear.

It seems to us that it was inevitable that the level of harm associated with the underlying offence warranted an upward adjustment of the starting point to the next category range. That meant in each of these three cases the judge was amply entitled to take the view that an immediate custodial sentence was warranted. In terms of Mr Evans, the judge was entitled to move from Category 6C to Category 5C. That meant a starting point of 26 weeks' custody with a range of up to a year. The judge had full and proper regard to the mitigating circumstances in his case and we can see nothing wrong with a sentence of four months' imprisonment. In the case of Mr Johnstone and Mr Jackson, having reflected the amount of cash that was laundered in each of their cases in terms of Category 5, it seems to us once again that there can be no argument with a term of imprisonment of eight months each.

So far as suspension is concerned, again bearing in mind the nature of these offences, the sums involved and their derivation from the supply of class A drugs, it seems to us that the judge was once again amply entitled to conclude that appropriate punishment could only be achieved by immediate custody, notwithstanding the mitigation available. Moreover, the absence of reassurance that a plea of guilty might have provided and the continuing denial by all three applicants, plainly entitled the judge to conclude that he could not be satisfied that there was a realistic prospect of rehabilitation as a factor supporting suspension. In the result, we can see nothing wrong in principle with immediate custodial sentences in all three cases. The sentences are not arguably manifestly excessive in the circumstances we have identified. Accordingly, we refuse these applications.

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