

IN THE COURT OF APPEAL

CRIMINAL DIVISION

[2020] EWCA Crim 1502



CASE NOs 201904097/A1, 201904146/A1 & 202001213/A1

Royal Courts of Justice
Strand
London
WC2A 2LL

Thursday 15 October 2020

LORD JUSTICE DAVIS
MR JUSTICE SPENCER
MR JUSTICE WALL

REGINA
V
ANDRE HARRISON
RAYMOND LEE
CRAIG MORGAN

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Mr R Shellard appeared on behalf of the Appellant Harrison
Mr C Rees appeared on behalf of the Applicant Morgan
The case of Lee was heard as a Non-Counsel Application
Mr A Jones appeared on behalf of the Crown

J U D G M E N T

MR JUSTICE SPENCER:

1. At the end of October 2019 a total of 21 defendants were sentenced by His Honour Judge Richard Williams in the Crown Court at Newport for their various roles in a massive conspiracy to supply heroin. The sentencing took place over several days, with the defendants sentenced in batches. Most had pleaded guilty. Three were convicted after a trial. The judge was well-placed to assess the respective roles and culpability of the defendants, assisted by a very detailed prosecution opening and by written and oral submissions from defence counsel.
2. Seven defendants in total applied initially for leave to appeal against sentence. In the case of all but one the single judge refused leave. The exception was the appellant Andre Harrison. Of the remaining six, two did not renew their applications for leave to appeal and one renewed but the Full Court refused leave.
3. Today we were to deal with the last two defendants who renewed their applications for leave, Francis Westhead and Raymond Lee. However, Westhead has abandoned his renewed application. We also deal with a technical adjustment to the sentence passed on Craig Morgan whose application for an extension of time for leave to appeal has been referred to the Full Court by the single judge.
4. We are grateful to defence counsel for their written and oral submissions and to Mr Andrew Jones on behalf of the Crown who has appeared today to assist the court.
5. Before turning to the individual cases and the grounds of appeal of the three defendants we are concerned with, it is necessary to summarise very briefly the overall scope of the conspiracy.
6. It was a sophisticated and well-organised conspiracy to supply heroin throughout the United Kingdom on an industrial scale, operating between April and December 2018. The judge held a Newton hearing to determine the quantity of heroin involved. He was satisfied that it involved the supply of at least 150 kilograms of heroin at an average of 30 per cent purity which equated to 45 kilos at 100% purity. The prosecution estimated that the street value of that quantity of heroin was over £16 million.
7. At the head of the conspiracy was the defendant Sean Doolan, based in Liverpool. The heroin was distributed from Liverpool in multiples of kilos and half kilos to Cardiff, Newport, Gloucester, Plymouth and Hartlepool. There the heroin was supplied locally by dealers already established at those centres. The network's call centre was based in Liverpool and controlled a significant proportion of the drugs trade in Newport and Plymouth. There were also organised crime groups in Cardiff, Caerphilly, Newtown and Gloucester which were part of the widespread nationwide drugs network. On occasions the couriers were stopped and searched by the police and each time substantial quantities of heroin were recovered in their possession. Encrypted phones were used to minimise the risk of detection.

8. The applicant Francis Westhead, who has abandoned his renewed application for leave, was effectively the facilitator of the drugs supplied between Liverpool and the smaller networks in other parts of the country. He was Doolan's right-hand man in Liverpool.
9. The defendant Spencer Killoran ran the Newport network and received multi-kilogram deliveries of heroin from Doolan on a regular basis. Those responsible for delivering the Newport drugs were the defendant Kieran Lewis and the applicants Craig Morgan and Raymond Lee, among others. Another courier defendant, Ryan Gifford was stopped by police on return from Newport to Liverpool and was found in possession of 2.5 kilos of heroin with a street value of over £230,000.
10. The defendant Salman Ali was based in Newport and was a multi-kilogram customer of Doolan using taxis to meet with couriers.
11. The appellant Andre Harrison and the defendant Dale Millar were based in Gloucestershire. They were involved in exchanges of drugs with the applicant Raymond Lee. When Millar's home was searched by the police at the end of November 2018, 2.2 kilos of heroin were recovered with a street value in excess of £200,000. Andre Harrison was involved in negotiating the receipt and delivery of heroin to the Gloucestershire area with Doolan.
12. The defendant Nicholas Evans was a drug dealer based in Plymouth. He received regular visits from the various co-defendants including the applicant Craig Morgan. They were all couriers of multi-kilo consignments of heroin.
13. The conspiracy relied on trusted and committed couriers who travelled nationwide to deliver the heroin and collect the money from its sale, which was then returned to Liverpool. Two such couriers were the applicants Raymond Lee and Craig Morgan; Lee taking over the courier duties of Morgan after Morgan had been stopped by the police returning from Liverpool on 25 August 2018. On that occasion the police found 3.5 kilos of heroin in Morgan's possession, together with a kilo of adulterant, an encrypted phone and £855 in cash. The street value of the drugs seized from him was over £400,000.
14. Raymond Lee was stopped by the police on 13 October 2018 returning to Liverpool. Again, the police seized nearly five kilos of heroin, an encrypted mobile phone and £880 in cash. The street value of the drugs seized from him was over £463,000. On arrest, Lee told the police in emphatic terms that he was not a supplier: "just the mule".
15. After further consignments of drugs had been seized by the police, Doolan tried to flee the country. On 20 November 2018 he was detained at Liverpool Airport with his wife and four children. They had one-way tickets to fly to Cyprus where, we note, there is no extradition treaty with this country. During the course of the conspiracy on at least one occasion Doolan had been temporarily abroad in Cyprus and in his absence Francis Westhead continued to direct operations, indicating the level at which he was operating within the conspiracy.
16. The quantity of drugs involved in this conspiracy inevitably meant that sentences above the range in the Sentencing Council guideline for the supply of heroin were appropriate. The indicative quantity for the starting point for Category 1 leading role under the

guideline is only five kilos. That starting point is 14 years with a range of 12 to 16 years. Here the quantity was massively greater. The guideline provides that 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. The judge also had to bear in mind, consistent with authority, that these defendants were being sentenced for conspiracy, rather than substantive offences of supply.

17. The judge was particularly well-placed to assess culpability and roles. Not only did he preside over a three-week trial; he also presided over a week-long series of Newton hearings. It is difficult for this court to reproduce the grasp of detail which the sentencing judge had and clearly demonstrated in his sentencing remarks.
18. The longest sentence was passed on Doolan. He was 32 years old with no previous convictions. The judge took 22 years as his starting point, which he reduced to 21 years for good character and personal mitigation. He was entitled to full credit of one-third for his early guilty plea.
19. Westhead, who has abandoned his renewed application for leave, was 34 years old. He had no previous convictions and was of positive previous good character. The judge took a starting point of 18 years in his case which he reduced to 17 years for personal mitigation. He allowed him a full one-third credit for his early plea. He was sentenced on 28 October at the same time as Doolan.
20. The grounds of appeal for Harrison and Lee all involve, to a greater or lesser extent, a complaint of unfair disparity between their sentences and the sentences passed on others. It is therefore necessary to concentrate on the starting points which the judge took for the relevant defendants before any reduction for personal mitigation or any increase for relevant previous drug trafficking convictions. The sentences must of course be compared before any credit for guilty pleas, because credit varied widely as between defendants.

The appeal of Harrison

21. We turn to the appeal of Harrison who has leave from the single judge. He was 28 years old. He had a bad record for drug trafficking and was subject to the minimum sentence provisions. In March 2010 he was sentenced to a period of five years' detention on a guilty plea for being concerned in the importation of a class A drug, 2.32 kilos of cocaine at 100% purity. In May 2017 he was sentenced to 30 months' imprisonment on a guilty plea for possession of heroin with intent to supply. That was street dealing. He was on licence from that sentence when he became involved in this conspiracy. He was released on 27 April on tag and he was also subject to a 12-month community order imposed in April 2018 for driving offences committed shortly after he was released. Those convictions, and in particular the seriousness of his previous conviction in 2010, were gravely aggravating features of his case, as was the fact that within a matter of five weeks after his release on licence he was actively concerned in this conspiracy.
22. We accept, as Mr Shellard pointed out, that the first active involvement was not until the beginning of June 2018 but, as a matter of common sense, as Mr Shellard accepted, the appellant Harrison would have been approached and must have agreed to take part in the

conspiracy again sooner than the start of June; indeed it may well have been the problem of his being on a tag and therefore liable to be identified to a particular location which precluded any earlier start.

23. For Harrison the judge took 14 years as his starting point which he increased to 17 years in view of the aggravating features of his very serious record. The judge allowed credit of 20 per cent for his guilty plea, which was entered two months after the PTPH. The sentence was therefore 13 years seven months.
24. In his sentencing remarks, the judge said that he was satisfied that Harrison was the recipient of drugs delivered to Gloucester and had played a significant role in the distribution of heroin within Gloucester. He said that the conspiracy was a process, not a singular event. Harrison had continued to accept the receipt of heroin as part of an open-ended conspiracy brought to an end only by the intervention of the police. The actual amounts received were only part of the story. To assess Harrison's criminality solely on the basis of the individual amounts he received would not reflect the fact that his involvement was part of a continuing conspiracy rather than a one-off transaction. The judge noted that Harrison's basis of plea said that he joined the conspiracy after it was formed, following his release from prison in April 2018, and that he was obliged to participate because he had incurred a previous drug debt which he had to pay off by involving himself in the conspiracy, using a phone provided for him which was already in use in the conspiracy. The judge noted however that there was no indication in the basis of plea of the size of this drug debt or how long it would have taken to pay it off. Harrison's involvement was only brought to an end by the intervention of the police.
25. We note that Harrison was sentenced on 31 October, after most of the other defendants. The judge therefore had by then a particularly good overview of the respective roles of the various defendants and how he had reflected those roles in the sentences he had already passed. The prosecution submitted that as head of his own organised crime group working within the Gloucester area, Harrison fell into the very top end of significant role in the global conspiracy and played a leading role in his own local conspiracy. The judge said that he was satisfied that Harrison's role in the conspiracy fell broadly into the same "echelon" (as he put it) as the roles of Spencer Killoran, Mohammed Ali and Salman Ali, but that in order properly to reflect Harrison's involvement a starting point of 14 years was required. We note that in the case of Mohammed and Salman Ali the starting point was 12 years; in the case of Killoran the starting point was 16 years. The judge said in terms that he took into account the progress that Harrison had made since being returned to custody and that he had moderated the increase for the aggravating feature of his previous class A drug trafficking by limiting the uplift to 17 years.
26. In the grounds of appeal settled by Mr Shellard, it is contended that the judge took too high a starting point; 14 years was the starting point in the guideline for Category 1 leading role, whereas the judge purported to sentence Harrison for a significant role. It is contended in the grounds that the increase by three years to 17 years took Harrison above the range even for leading role under the guideline, which was manifestly excessive. It is contended in the grounds of appeal that Harrison's sentence of 13 years seven months was disproportionately high compared with the sentences passed on Doolan and Westhead: only five months less than Doolan's sentence of 14 years, and only two years greater than Westhead's sentence of eleven years four months.

27. Pausing there, this is a false comparison, as Mr Shellard properly acknowledged in his oral submissions, because Doolan and Westhead both received full credit of one-third for their early guilty pleas, and because their starting points were reduced for personal mitigation not available to Harrison. The proper comparison is between the starting points of 14 years for Harrison, 18 years for Westhead and 22 years for Doolan.
28. It is contended in the grounds of appeal that the judge did not sentence in accordance with the basis of plea which the prosecution had largely accepted, including the fact that the Gloucester end of the conspiracy had already started before Harrison became involved and that there were only a limited number of transactions in which Harrison was proved to have been involved.
29. It is contended in the grounds of appeal that there was an unfair disparity between Harrison's sentence and other defendants as well: Kieran Lewis, Spencer Killoran, Salman Ali, Nicholas Evans and Raymond Lee. Again, however, the grounds of appeal cite only the net sentences (where there were guilty pleas, after credit for those pleas) and do not take into account the adjustment for personal mitigation or aggravating factors, rather than concentrating on the judge's starting points. For example, Kieran Lewis had the same starting point as Harrison (14 years) which was increased to 16 years in view of his previous drugs convictions. He too was on licence at the time of the conspiracy. Spencer Killoran's starting point was 16 years. Salman Ali played a significant role; his starting point was 12 years. A suspended sentence of 12 months was activated in full and consecutively. For that reason the judge applied no further uplift. Nicholas Evans was convicted after a trial. His starting point was 14 years which the judge increased to 15 years in view of his previous conviction for class A drug supply, for which he had received a sentence of 15 months back in 2012.
30. In his oral submissions, Mr Shellard concentrated essentially on two points: first, that the level of 14 years as the starting point was too high having regard to the fact that the judge had determined that Harrison's role was "significant", not "leading", under the guideline; second, that even if there was no unfair disparity between the starting point for Harrison and other comparable defendants, nevertheless as a separate ground of appeal the judge was wrong to impose as high an uplift as three years for the admittedly aggravating feature of Harrison's previous class A drug trafficking convictions.
31. Mr Shellard took us in some detail to a comparison of the respective records of the various defendants.. We note however that Killoran was significantly younger than Harrison and although he had one previous conviction for class A trafficking, that was a much longer time ago, in 2014. Harrison's most recent such conviction was in 2017. It is true that Killoran was also on licence at the time of his involvement in this conspiracy but that was in respect of class B rather than class A offending.
32. We have considered all these submissions carefully. The judge was particularly well-placed to assess Harrison's role and culpability relative to the other defendants. Although Harrison was not involved in the trial, or in a Newton hearing, the trial over which the judge presided was concerned in part with the activities of the conspirators in Gloucester and therefore for that reason the judge had a good, clear overall grasp of the realities of what was happening in the geographical area where Harrison was involved. As we have already observed, it was a gravely aggravating feature that Harrison had gone

straight into involvement in this conspiracy on release from a sentence for class A drugs supply, having already previously served a sentence of five years for a very serious class A trafficking offence indeed. We think that an uplift of three years from the appropriate starting point was justified.

33. The judge was entitled to conclude that even treating Harrison's role as significant rather than leading, it fell at the very top of the range for a significant role, which is 12 years, but that is for quantities much lower than those involved in this conspiracy. The judge was right to look at the overall position rather than the size of individual consignments with which Harrison had been involved. In our view the starting point the judge took of 14 years was not manifestly excessive.
34. Nor was there, in our view, any unfair disparity between Harrison's sentence and those of the other defendants identified in the grounds of appeal or in the course of oral submissions. The placing of defendants in an order of seriousness of role and culpability cannot be a precise mathematical exercise. We are quite unable to say that Harrison's sentence of 17 years before credit for plea was so out of line with the sentence of any comparable defendant as to give rise to an objectively justifiable sense of grievance which would cause an informed observer to think that something had gone seriously wrong with the sentencing process. Seventeen years was undoubtedly a stiff sentence, but in our view properly so.
35. Accordingly, despite Mr Shellard's attractive and tenacious submissions, Harrison's appeal is dismissed.

The application of Raymond Lee

36. We turn to the renewed application of Raymond Lee. He was 53 years old. He had no relevant recent convictions and had been out of serious trouble for 31 years. He had lived an honest and industrious life in the meantime until his business failed shortly before he became involved in the conspiracy. He was a family man with significant family demands and responsibilities. There were very positive character references. His role was that of a courier, but a very widely travelled and trusted courier based in Plymouth but travelling all over the country. He pleaded guilty on the fifth day of the trial. There was subsequently a Newton hearing because his basis of plea was disputed. The judge rejected that basis of plea. He was sentenced along with Craig Morgan who played a similar role based in South Wales.
37. Lee was brought into the conspiracy by Nicholas Evans and he was involved extensively in delivering drugs and collecting money. On 13 October 2018, Lee was stopped by the police on the M6 motorway making a return trip from Liverpool. As we have already mentioned, he was found in possession of nearly five kilos of heroin, 10 compressed blocks, with a street value of £463,000. He also had an encrypted phone and over £800 in cash. It emerged at the Newton hearing that Lee had delivered two more encrypted phones which were supplied by Westhead, one of which was delivered to Gloucester.
38. The prosecution submitted that Lee's involvement fell at the top end of significant role in the global conspiracy, given the number of visits and trips recorded for him, the degree of his involvement and the quantity of drugs seized when he was arrested. All this placed him outside the range of the guideline.

39. In passing sentence, the judge acknowledged that in the case of Lee, as in the case of Craig Morgan, there were features of lesser role in that both were performing a limited role under direction and their financial gain was likely to be limited. However, the judge was satisfied that both were fully aware of the scale and geographical extent of the drugs operation; they were moving substantial quantities of heroin and cash from the sale of heroin to and from Liverpool to South Wales, the South West of England, Gloucester and Hartlepool. They bore the burden of the greatest risk of being caught in possession of substantial quantities of heroin, a risk which materialised for both of them. It was their arrest and nothing less which terminated their involvement in the conspiracy. There was no reason to believe that either would have ended his involvement voluntarily in the short to medium term.
40. The judge concluded that although their culpability above the guideline was on the face of it less than those who sold and dealt with drugs in a specific area on their own account, both Lee and Morgan respectively caused greater harm than such local dealers by transporting such substantial quantities of heroin across the country, enabling it to be distributed and sold over their extensive geographical areas. They were instrumental in returning the proceeds of sale to the principals in the conspiracy in Liverpool. Consequently the judge's conclusion was that Lee and indeed Morgan had each played a "most significant" role in the circumstances of this conspiracy, exceeding greatly the quantity of heroin for Category 1 in the guideline. The appropriate starting point for each of them was therefore 12 years' imprisonment. In view of Lee's personal mitigation, to which we have already referred, the judge reduced the sentence to 10 years. Plainly there could be no credit for plea.
41. In the grounds of appeal it is contended that there was an unfair disparity between Lee's sentence and the sentences of others more greatly involved. Based in Plymouth he had made a limited number of trips to and from Liverpool, albeit encompassing on various occasions Hartlepool, Gloucester, Newport and Cardiff. He had been recruited by Nicholas Evans when he was desperate for money, having lost his business in Plymouth. He saw this as a way to earn easy money. His involvement in the conspiracy spanned a comparatively short period, only some 36 days. It was suggested in the grounds of appeal that the starting point should have been five to eight years within Category 2 significant role.
42. The grounds of appeal, we note, were settled by Mr Worlock (who had not been trial counsel and did not have the advantage of being present during any of the trial or indeed the Newton hearing). We have considered all the submissions in the grounds of appeal carefully, but we are quite unable to accept them. As the single judge observed in refusing leave, the applicant continues to rely upon matters in the basis of plea which the judge was entitled to and did reject. He continues to minimise his role in this very serious and large conspiracy to supply heroin. The judge was fully entitled to treat this as a case of significant role at the very top of the guideline, 12 years. Lee was fully aware of the scale and geographical extent of the operation. He was trusted to make high value deliveries. Having presided over the trial and the Newton hearing the judge was particularly well-placed to assess Lee's culpability. The judge made a generous reduction for personal mitigation. It is not remotely arguable that the sentence of 10 years' imprisonment was manifestly excessive. The renewed application for Lee is refused.

The application of Craig Morgan

43. We turn finally to the application by Craig Morgan for an extension of time for leave to appeal. He was 40 years old at the date of sentence. He was a courier but deeply involved in the conspiracy and, like Raymond Lee, his starting point was 12 years, reduced to 10 years for his personal mitigation. There was a complication in his case in that before the conspiracy charge was laid, he had already been prosecuted and sentenced in the Crown Court for possession with intent to supply the quantity of heroin found in his possession when he was stopped by the police on 25 August. For that serious offence he was sentenced on 5 October 2018 by a different judge to a term of four years' imprisonment.
44. When he was charged with the conspiracy count as well he raised an abuse of process argument, contending that to prosecute him for the conspiracy was oppressive. That argument was rejected by Lewis J who made it clear that in the event of his pleading guilty to the conspiracy the sentence should reflect the fact that he was already serving a sentence for some, at least, of the same criminality.
45. Craig Morgan did plead guilty to the conspiracy before Judge Richard Williams and was afforded full credit of one-third, reducing his sentence to six years eight months. It is apparent from the transcript of the sentencing hearing on 29 October 2019 that Judge Williams intended that the sentence should run from the date on which the previous sentence of four years had been imposed, that is 5 October 2018. Indeed the judge directed the sentence should begin on that earlier date. There is, however, no power to back-date the commencement of a sentence and this was drawn to the attention of the Crown Court by the prison authorities who calculated that in order to achieve the result the judge had intended, the sentence of six years eight months would need to be reduced by 389 days. Consequently, there was a slip rule hearing on 13 December 2019 at which Judge Williams duly amended the sentence to five years seven months.
46. The application for leave to appeal arises because it became apparent thereafter, and outside the 56 days for any further correction of the sentence, that even the reduced term imposed by Judge Williams would still not effect Craig Morgan's release on the date intended, had the sentence run from the start of his remand in custody prior to his first sentence in October 2018. This was because the revised sentence did not take account of time served on remand before the initial sentence was imposed on 5 October 2018.
47. We are grateful to Mr Christopher Rees for setting all this out in his advice and grounds of appeal and to Mr Andrew Jones for confirming in writing that the prosecution accept the correctness of the proposition put forward by Mr Rees in the grounds of appeal that there needs to be a further reduction. Counsel are now agreed that the sentence should be reduced further to four years four months in order to achieve the objective of Judge Williams. We need say no more about the calculation, or about the interrelation of the relevant statutory provisions which is far from straightforward.
48. Accordingly, we grant the extension of time, we allow the appeal, we quash the amended sentence of five years seven months, and we substitute a sentence of four years four months to run from 29 October 2019, the date the original sentence was imposed by Judge Williams.

49. Finally, we cannot leave this case without paying tribute to the careful and assured way in which Judge Richard Williams conducted the difficult and complex sentencing task which faced him. We particularly commend his sentencing remarks which were admirably clear and succinct.

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