IN THE COURT OF APPEAL

CRIMINAL DIVISION

[2021] EWCA Crim 422

No. 202001441 A2

Royal Courts of Justice

Wednesday, 10 March 2021

Before:

LADY JUSTICE CARR

MR JUSTICE JAY

HER HONOUR JUDGE DEBORAH TAYLOR
(RECORDER OF WESTMINSTER)

REGINA

V

RONALD HOOK

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MR P CALDWELL appeared on behalf of the Applicant.

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J U D G M E N T

LADY JUSTICE CARR:

Introduction

1 The applicant is now 41 years old. On 16 November 2015, following a two-month trial in the Crown Court at Southwark before His Honour Judge Testar ("the Judge"), he was convicted of conspiracy to supply a controlled class A drug, contrary to s.1(1) of the Criminal Law Act 1977. Ten days later the Judge sentenced him to 22 years' imprisonment.

2 Two men also involved in the conspiracy, Sergio Loaiza-Gomez ("Gomez") and Camilo Valancia-Garcia ("Garcia"), had been arrested earlier than the applicant and sentenced for their part by His Honour Judge Price in February 2014. Each having pleaded guilty to the conspiracy, each received a sentence of 12 years' imprisonment. Garcia applied for leave to appeal against sentence. That application was refused by the Single Judge and was not renewed. Further co-accused, each of whom had pleaded guilty, were sentenced alongside the applicant in November 2015 by the Judge as follows: Spenser Pasicznyk, 13 years' imprisonment; Andrew Georgiou, 12 ½ years' imprisonment; Warren Gravette, 10 years' imprisonment.

3 The applicant's application for leave to appeal against conviction was refused by the full court in February 2017. This is now his application for an extension of time of over four years for leave to appeal against sentence. Its premise is that the Judge sentenced the applicant under a material mistake of fact, namely that Garcia and Gomez had been sentenced by His Honour Judge Price on the basis of terms of 18 years' imprisonment before credit for guilty pleas, when in fact those terms had been only 16 years. The applicant only discovered this mistake of fact at around the end of 2018 as a result of a discussion that he had with Gomez in prison.

The Facts

4 The offending centred around Unit 6 of the Interchange Industrial Estate in Clapton, London E5 between 19 April and 5 October 2013. On 6 June 2013 Pasicznyk and Georgiou took holdalls from the unit to a meeting with Gomez and Garcia. Those holdalls were seized by police and were found to contain some 70 kilograms of cocaine at an average purity of 65 per cent and with a value of £2,500,000 to £3,000,000. It was at this point that Garcia and Gomez were arrested. Their co-conspirators were not apprehended in order to allow police observations to continue.

5 On 5 October 2013, however, the police arrested the applicant and Pasicznyk. On that day a bag had been delivered to the unit containing six kilograms of cocaine at 92 per cent purity valued at between £300,000 and £360,000. Upon the applicant’s arrest a Blackberry telephone was recovered from his van. This showed messages exchanged that day relating to the collection and delivery by Pasicznyk of the six kilograms of cocaine. The user of the Blackberry was running that deal and communicating with parties on both sides. There was cell-siting evidence linking the Blackberry telephone to the applicant.

6 Found within the unit were hides containing a bag holding a quarter of a kilogram of the cutting agent benzocaine, a tool box containing two kilograms of cocaine of various purities between 15 per cent and 72 per cent and drugs paraphernalia including a sieve, food processor, spoons, bags, scales, latex gloves and mobile telephones. In another room in the unit was a bag containing a quarter of a kilogram of cocaine at 79 per cent purity. Pasicznyk's fingerprint was on that bag. A heavy-duty hydraulic press that had been picked up by Pasicznyk on 11 September 2013 was also found. On that day Pasicznyk and the

applicant, who was then on holiday, had messaged each other referring to the press. A money counter was found on top of the fridge in the unit alongside books and ledgers containing entries relating to the price of the drugs.

7 It was the prosecution case that the applicant was the one in control and in charge of the unit and its activities. He was the tenant, he usually paid the rent. Bags were carried in and out of the unit on numerous occasions. Georgiou was seen there on 33 separate occasions, the applicant on 42, Pasicznyk on 91 and Gravette on two. There was also a meeting at a restaurant near the applicant's home on 24 July 2013 attended by him, Pasicznyk, Gravette and Georgiou.

8 Further, the applicant's fingerprints were found on the ledgers and associated loose pieces of paper found in the unit. The ledgers revealed a course of dealing in the trading of cocaine.

9 In his sentencing remarks the Judge commented that "as the evidence against the applicant emerged, the case against him only grew stronger and stronger."

Sentence

10 The Judge handed down short oral sentencing remarks accompanied by lengthy and meticulous written sentencing remarks. He found this to be a large-scale, sophisticated and evolving conspiracy that exhibited planning, sophistication, awareness of investigative methods and large profit on an ongoing basis. The purities of drugs found indicated that those involved were close to the source of the importation. The quantities of the drugs seized by the police could only represent a part of the throughput of the operation.

11 The Judge was satisfied that the applicant played a leading, if not the leading, role in the operation. He controlled the unit, he controlled the handover of the drugs on 5 October 2013 and he maintained contact with his follow conspirators throughout the conspiracy, including by means of a "dirty" telephone when he was in Spain and by means, at other times, of heavily secure Blackberry messenger communication.

12 The Judge stated that an important part of the background concerned the events of 6 June 2013. After the handover of the drugs by Georgiou and Pasicznyk to Gomez and Garcia, the police had followed the latter two men and arrested them. He recorded Gomez and Garcia as having pleaded guilty and of having been sentenced separately by His Honour Judge Price, each to a term of 12 years' imprisonment. The Judge went on to say:

> "If His Honour Judge Price gave them full credit for their guilty pleas he must have been taking a starting point of 18 years ... "

13 This the Judge found to be reasonable, given the quantity of cocaine and the role which had been attributed to the two men as "enhanced couriers". As indicated, in fact, Gomez and Garcia had not pleaded guilty at the first opportunity but rather at a plea and case management hearing. Following *R v Caley and Others* [2012] EWCA Crim 2821, the reduction for plea was, therefore, something in the region of 25 per cent being applied to a term of "in the region of 16 years' imprisonment" and not 18 years.

14 The Judge, having considered the relevant authorities, then concluded that the minimum sentence that could properly be passed in the applicant's case was one of 22 years. He said that in coming to that conclusion he had not neglected the evidence heard during trial in which witnesses had spoken well of the applicant who was of previous good character.

15 In rounding up his written sentencing remarks, the Judge commented that he had tried to reflect the roles of each defendant and other relevant circumstances in his sentencing process. However, it had been necessary to place the four defendants before him in a scheme. At the lower end were Gomez and Garcia who were sentenced simply as couriers on one occasion; at the upper end was the applicant who was treated as being in overall charge. His sentence of 22 years' imprisonment was considerable on any view. The Judge stated that for Pasicznyk and Georgiou it had been necessary to take a term for credit for guilty plea below that of the sentence of the applicant and above that for the sentences of Gomez and Garcia. Because of the placing within the scheme, the sentences "might have been different if they had been sentenced in isolation". But the Judge stated in terms that no defendant had been sentenced to a greater term than that for which he would have been sentenced if he were not to be seen alongside others. In fact, said the Judge, he was quite sure that the opposite was the case.

Grounds of appeal

16 Mr Caldwell has advanced the applicant's cause skilfully, both in writing and orally. He submits, effectively, that the sentence imposed was wrong in principle in that it was based on an erroneous understanding by the Judge of factors which were relevant to the sentencing exercise. In passing the sentence that he did, he mistakenly applied a starting point that was too high. He made an error which unwittingly, though materially, affected his determination of the appropriate sentence in the applicant's case. Had he appreciated the true position in relation to Gomez and Garcia, he would not have imposed the sentence that he did. He viewed those events as important background. He calibrated the sentence that he considered appropriate in the case of each defendant evidently conscious of the risk of disparity. By taking a term of 18 years for the couriers, Gomez and Garcia, as being at the bottom of the scale, he unwittingly inflated the sentence of the applicant at the top of the scale. Given that the Judge considered that his intended sentence for the applicant was at the upper end of the possible range (on the basis of his misunderstanding), it is said to be “inconceivable” that the Judge would have concluded that an even higher sentence could be justified.

17 Mr Caldwell referred to *R v Williams (Declan Cragg*) [2019] EWCA Crim 279, [2019] Cr App R(S) 15 at [3] and [4]. There, Leggatt LJ (as he then was) commented that this appellate court will not usually review the approach of the sentencing judge sentencing many defendants for their various roles in a large conspiracy to supply drugs. The appellate court will not have the advantage of the sentencing court.

18 Here, it is suggested that the Judge self-evidently carried out a careful calibration exercise with which this court should not interfere. But the court should give effect to what is said to be the Judge's obvious intention to place the sentences of the individual defendants by reference to the scheme in question. The scheme was, as we have indicated, said to be based on a false premise on the part of the Judge in relation to the terms adopted for Gomez and Garcia. Mr Caldwell suggests that, had the error in question been drawn to the Judge's attention, it would have gone without saying that he would have been prepared to lower his sentence for the applicant under the slip rule.

19 As to the extension of time, Mr Caldwell relies on the fact that the error in the Judge's factual premise at the time of sentencing only became known to the applicant some years after the time of his sentence. That is a good reason to extend time. Otherwise the applicant will otherwise suffer significant injustice.

Discussion

20 As identified in *Williams* (supra), this appellate court does not have the advantage of the court below, particularly here in circumstances where the Judge had the benefit of presiding over what was a two-month trial for the applicant. He took full advantage of that benefit, providing, as we have said, detailed sentencing remarks.

21 The applicant seeks to contend that the Judge made a mistake of fact which justifies appellate interference with the applicant's sentence.

22 As to the premise of the application, it is not clear to us that the Judge in fact proceeded under the firm mistaken apprehension that Garcia and Gomez had been sentenced by reference to a precise term of 18 years before credit for guilty pleas. He commented that "if" they had received a full one-third credit that would have been the relevant term. He was looking at the parameters of sentence more generally in circumstances where, in the normal way, he was seeking to sentence each of the defendants fairly in the context of an overall scheme by reference to their respective roles.

23 However, assuming in the applicant's favour that the Judge did proceed on a clear misunderstanding as alleged, in any event, the flaw in the applicant's approach is to assume that the Judge's alleged misunderstanding means automatically that the sentence of 22 years' imprisonment was manifestly excessive. But that is far from the position, not least since the Judge had commented in terms that a term of 18 years' imprisonment before credit for guilty plea for Garcia and Gomez would have been reasonable.

24 As the Single Judge put it, there is nothing to demonstrate that any misapprehension contaminated the sentencing process by leading to manifestly excessive sentences on the other defendants. The Judge reached his determination of the appropriate sentence for the applicant by reference to the hierarchy of the defendants' offending and after considering the relevant authorities.

25 A term of 22 years' imprisonment was not manifestly excessive based on the Judge's findings as to the scope of the conspiracy and the role of the applicant. Those are findings which the applicant, rightly, does not seek to impugn. Nor is it wrong in principle by reference to a sentencing structure which imposes a term of 16 years' imprisonment before credit for guilty pleas on the bottom rung of involvement, namely Garcia and Gomez, and a term of 22 years on someone such as the applicant on the top rung. The applicant's role was in a different league to that of Garcia and Gomez; they were described as "enhanced couriers". By contrast, the applicant was at the very heart and at the top of the conspiratorial organisation and its operation.

26 The position is put beyond doubt by the Judge's concluding remarks at the time of sentence. He said in terms that, whilst he had placed the defendants in an overall scheme, he was entirely satisfied that no defendant had been sentenced to a greater term than would have been the case if he had been sentenced in isolation. We do not, therefore, accept for one moment that he would simply have corrected the sentence of the applicant under the slip rule (had a 16-year term of imprisonment in respect of Garcia and Gomez been drawn to his attention). Those final remarks in what were careful and comprehensive written sentencing remarks would not have been made lightly by the Judge.

27 In our judgment there is nothing that arguably justifies a reduction in the sentence of 22 years' imprisonment.

28 In the absence of arguable merit on this application, we decline further to grant the

necessary and very lengthy extension of time. Even if the applicant did not discover the basis of sentencing of Garcia and Gomez until "towards the end of 2018", there is no proper explanation for the significant further delay in making this application until 2020.

29 For these reasons, and whilst again expressing our gratitude to Mr Caldwell for his submissions, the applications for an extension of time and leave to appeal sentence are refused.

CERTIFICATE

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the Judgment or part thereof.

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This transcript has been approved by the Judge.