

WARNING: reporting restrictions may apply to the contents transcribed in this document, particularly if the case concerned a sexual offence or involved a child. Reporting restrictions prohibit the publication of the applicable information to the public or any section of the public, in writing, in a broadcast or by means of the internet, including social media. Anyone who receives a copy of this transcript is responsible in law for making sure that applicable restrictions are not breached. A person who breaches a reporting restriction is liable to a fine and/or imprisonment. For guidance on whether reporting restrictions apply, and to what information, ask at the court office or take legal advice.

This Transcript is Crown Copyright. It may not be reproduced in whole or in part other than in accordance with relevant licence or with the express consent of the Authority. All rights are reserved.



IN THE COURT OF APPEAL

CRIMINAL DIVISION

[2021] EWCA Crim 670

CASE NO 202100131/A3-202100133/A3

Royal Courts of Justice

Strand

London

WC2A 2LL

Wednesday 28 April 2021

LORD JUSTICE BEAN

MRS JUSTICE FARBEY DBE

RECORDER OF NEWCASTLE

(HIS HONOUR JUDGE SLOAN QC)

(Sitting as a Judge of the CACD)

REGINA

V

JAMAL CONTEH

CHERYL HAMAND

Computer Aided Transcript of Epiq Europe Ltd,
Lower Ground, 18-22 Furnival Street, London EC4A 1JS
Tel No: 020 7404 1400; Email: rcj@epiglobal.co.uk (Official Shorthand Writers to the Court)

MS C WILDE appeared on behalf of the Applicant Conteh.

MR D THOMPSON appeared on behalf of the Appellant Hamand.

J U D G M E N T

MRS JUSTICE FARBEY:

1. On 2 October 2020 in the Crown Court at Chester before HHJ Thompson, at an adjourned plea and trial preparation hearing, the applicant Jamal Conteh (then aged 22) pleaded guilty to four drug offences. On 14 December 2020 he was sentenced by HHJ Leeming to a total of 12 years' imprisonment. This total sentence had the following components: count 1 (possession with intent to supply crack cocaine on 12 December 2018) - 3 years' imprisonment; count 2 (possession with intent to supply heroin on 12 December 2018) - 3 years' imprisonment concurrent; count 3 (conspiracy to supply crack cocaine between 15 July 2019 and 9 July 2020) - 9 years' imprisonment consecutive; and count 4 (conspiracy to supply heroin between 15 July 2019 and 9 July 2020) - 9 years' imprisonment concurrent. A Serious Crime Prevention Order was made for a period of 5 years to which there is no challenge.
2. On 25 September 2020 the appellant Cheryl Hamand (then aged 43) pleaded guilty to counts 3 and 4. She was sentenced at the same time as Conteh to 31 months' imprisonment on both counts concurrently. The judge sentenced two other conspirators who had pleaded guilty to counts 3 and 4: Zakaira Ahmed (then aged 24) was sentenced to 7 years and 6 months' imprisonment; Oluwafemi Odumuyiwa (then aged 30) was sentenced to 44 months' imprisonment. They do not appear before us. Two other conspirators were indicted but not sentenced by the judge at that time, for reasons which we need not set out.
3. Conteh applies for an extension of time of approximately 19 days in which to renew his application for leave to appeal against sentence. Ms Hamand appeals against sentence by limited leave of the single judge. We understand that the delay in lodging Conteh's renewed application was caused by factors beyond his solicitor's control. We are therefore prepared to grant the modest extension of time which he seeks and turn to the facts of the case.

Facts

Conteh

4. On 12 December 2018 police officers stopped a vehicle in which Conteh was a front seat passenger. He was searched and found to be in possession of £576 cash and a burner phone, on which were found messages indicating drugs available for purchase. He was also in possession of 42 wraps of cocaine weighing 3.28 grams, valued at £420 (count 1) and 55 wraps of heroin weighing 4.56 grams, valued at £550 (count 2). He was released under investigation.

5. Counts 3 and 4 related to conspiracies to supply heroin and crack cocaine, in a “county lines” arrangement between Liverpool and Macclesfield between July 2019 and July 2020. During that time Conteh worked with the other conspirators with, it is agreed, no apparent hierarchy between them. They used two “graft” phones and during the lifetime of the operation. Each of them at various times controlled the principal graft phone which sent out “flares” and sought out customers.
6. Conteh often went to Macclesfield and was sometimes involved with hands-on dealing there. On other occasions he would stay at a location in Macclesfield directing others. He would then return to Liverpool to restock.
7. On 29 September 2019 Conteh travelled to Northamptonshire to collect three youths aged 16 and below. He drove them to an address in Farndale Walk in Macclesfield, which was then used as a base for supply. Some weeks earlier Conteh had been stopped by the police in the company of one of the youths. When spoken to by officers the youth provided his date of birth but made up a story about being Conteh's cousin which Conteh falsely confirmed. Several days later the youth was reported missing from home and was located by police in a bedroom of the Travelodge in Macclesfield. Subsequently investigation revealed that that room had been booked and paid for by Conteh.
8. On 30 September 2019 telephone evidence showed that Conteh was at an address in Macclesfield from which a taxi was booked to go to Farndale Walk where the three youths were located. That taxi was stopped by police. One of the youths was inside with £530 in cash and a phone. Prior to the taxi being stopped the youth had been seen among a group of local drug users. On 2 October 2019 Conteh was again in Macclesfield at the home address of Hamand. We will return to her involvement shortly.
9. On 3 October 2019 a search warrant was executed at the Farndale Walk address. Ninety-one wraps of heroin and crack cocaine were recovered together with £338 cash and three kitchen knives. The youths were at the address. Conteh and Ahmed were in touch with them at that time.
10. After the execution of the warrant Conteh changed his personal phone number and temporarily stopped travelling to Macclesfield although he resumed his visits on 7 October 2019. His involvement in the conspiracies continued until (on 21 June 2020) he was arrested in possession of 249 wraps of heroin and crack cocaine, valued at £2,490.
11. A police drugs expert concluded that between July 2019 and July 2020 the team sent out flare messages on 71 separate days. An established county lines dealer with a single line could expect to deal between 100 and 200 £10 deals per day depending on demand, location, product and rival dealing. Based on 71 days of dealing this indicated a potential

overall value of between £71,000 and £142,000 and an estimated total quantity of Class A drugs of between 639 grams and 1.27 kilos. We have no reason to doubt that this expert evidence provides a useful guide to the scale of the criminal activity involved in these well-organised county lines conspiracies.

Hamand

12. Hamand was part of the same conspiracies. We understand her to have been arrested in July 2020. In her written basis of plea (accepted by the prosecution and by the judge) she stated that she pleaded guilty to counts 3 and 4 on the following basis:

"1. On 2 October 2019 the defendant was directed by a male she knows as 'Mitch' to deliver a package of drugs to 4 Farndale Road.

2. The defendant allowed 'Mitch' to attend at her address and 'unplug' drugs on his arrival into Macclesfield on a number of occasions.

3. The defendant was addicted to crack cocaine and heroin and was paid with Class A drugs, she made no financial gain."

Judge's Sentencing Remarks

13. In relation to counts 3 and 4, the judge observed that the conspiracies reflected a tried, tested and well-planned county lines operation to supply crack cocaine and heroin from Liverpool to Macclesfield over a protracted period. Each conspirator sustained and supported the others in those deliveries and transactions in which they did not personally participate. Given the period of time over which the conspiracies were active, each of them was engaged in the knowledge that the conspiracies were wider than their individual acts.

Conteh

14. The judge applied the sentencing guideline for the supply of drugs. In relation to culpability he concluded that Conteh's role was significant because he was involved in every aspect of the conspiracies and had exploited three children. In relation to harm the judge considered the indicative quantities of drugs, in accordance with the police expert evidence, and appears to have placed the offending in category 2. On this basis the starting point for the conspiracy offences was 8 years' custody and the category range was 6 years 6 months to 10 years' custody.

15. Having set out in detail the aggravating and mitigating factors the judge referred to a starting point of 12 years before discount for Conteh's guilty pleas. He applied a 25%

discount to reach a sentence of 9 years on each of counts 3 and 4 which, as we have said, were to run concurrently.

16. In relation to counts 1 and 2 the judge observed that these offences warranted separate recognition and "an element of consecutive sentencing to mark the persistence and overall criminality" subject to the totality principle. Applying the sentencing guideline for possession of a controlled drug with intent to supply, he found that Conteh had a significant role and placed the harm in category 3. The relevant starting point under the guidelines was therefore 4 years 6 months' custody and the category range was 3 years 6 months to 7 years' custody.
17. Applying the principle of totality he imposed a sentence of 3 years on both counts to run concurrently with each other but consecutively to counts 3 and 4.

Hamand

18. In relation to Hamand the judge took into consideration her basis of plea. However, he also referred to matters outside her basis of plea, saying that she had worked as a team with the others and answered a graft telephone on occasions, taking orders which would then be relayed to Conteh. He referred to her as resupplying drugs to the Farndale Walk address.
19. It seemed to the judge that Hamand was on the cusp of lesser and significant role. Having regard to the aggravating and mitigating factors the appropriate sentence was 42 months' imprisonment before discount for her guilty plea. Applying a 25% discount her sentence was reduced to 31 months concurrently on each count.

Grounds of Appeal: Conteh

20. On behalf of Conteh, Ms Wilde submits in writing and orally that the starting point in relation to counts 3 and 4 was too high. Insufficient regard was given by the judge to Conteh's young age of between 20 and 22 at the time of the offences. Insufficient regard was given to his young age of just 14 and 15 when he committed previous similar offences, which is indicative of exploitation. Ms Wilde submits that totality was not properly considered in imposing a consecutive sentence on counts 1 and 2 and that the judge failed to reduce the overall sentence to take account of the impact of custody in the present pandemic.
21. We disagree essentially for the reasons given by the single judge. Conteh was involved in a county lines operation to supply two different Class A drugs. The operation involved numerous other people. It was well planned. It was well organised. It was sustained for

around a year.

22. There were additional serious aggravating factors in Conteh's case. He personally introduced and exploited three children to do the bidding of the conspirators. We are bound to conclude that such conduct is a grave aggravating factor which would alone warrant a significant upward adjustment to the overall sentence. He used the address of a drug user (Hamand) to unplug drugs. His offending continued even after he had been released under investigation.
23. Although there were elements of mitigation such as his age and troubled background, as well as the difficulties faced by prisoners in the pandemic, these factors could not outweigh the aggravating factors which amply justified the judge's approach to counts 3 and 4. Nor are we persuaded that the prison report, helpfully obtained by Ms Wilde's solicitors, about Conteh's progress in prison (which we have seen today) should persuade us to take a different view.
24. As for counts 1 and 2, the judge was entitled to mark this separate offending with a consecutive sentence. Given the seriousness of Conteh's offending, it is not arguable that he should have been sentenced differently. For these reasons Conteh's renewed application for leave to appeal is dismissed.

Grounds of Appeal: Hamand

25. Turning to Hamand's appeal, we agree with Mr Thompson, who appears on her behalf, that the judge sentenced her on matters that fell outside her basis of plea. Having accepted her basis of plea he was not entitled, in our judgment, to impose a sentence that reflected these other matters. The basis of plea emphasised that Hamand took part in the conspiracies under direction, allowing her home to be used to unplug drugs but making no financial gain. On this basis the judge ought to have accepted that she performed a limited function under direction and ought to have sentenced her on the basis of a limited role. To the extent that he sentenced her on the basis of a significant role he fell into error. A sentence of 42 months, before discount for plea, was manifestly excessive and must be quashed.
26. The prosecution accepted that Hamand's offending fell within category 3 of the guideline. Category 3 lesser role has a starting point of 3 years and a category range of 2 years to 4 years 6 months' custody. Hamand's comparatively limited previous criminal convictions provided some mitigation as did her mental health difficulties. In these circumstances we substitute a sentence of 30 months, which we reduce to 20 months to include both the 25% discount for guilty plea and the difficulties for prisoners in the current pandemic (R v Manning [2020] EWCA Crim 592).

27. Applying the familiar table in the Overarching Guideline on the Imposition of Community and Custodial Sentences, we are not prepared to suspend the sentence. In our judgment, the seriousness of Hamand's offending means that appropriate punishment can only be achieved by immediate custody. The sentence on each of counts 3 and 4 is therefore 20 months immediate imprisonment to run concurrently. To this extent, Hamand's appeal is allowed.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

Lower Ground, 18-22 Furnival Street, London EC4A 1JS
Tel No: 020 7404 1400
Email: rcj@epiqglobal.co.uk