

IN THE COURT OF APPEAL  
CRIMINAL DIVISION



CASE NO 202200615/A1-202200776/A1  
NCN Number: [2022] EWCA Crim 1437

Royal Courts of Justice  
Strand  
London  
WC2A 2LL

Tuesday 18 October 2022

Before:

LORD JUSTICE COULSON

MR JUSTICE CAVANAGH

MRS JUSTICE HILL DBE

REX  
V  
ENDRI KOSTRENI  
ARDIT ZANI

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MR P CORRIGAN appeared on behalf of the Applicant Kostreni.  
MR Y SOLLEY appeared on behalf of the Applicant Zani.

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**J U D G M E N T**  
(Approved)

MRS JUSTICE HILL:

**Introduction**

1. These are two renewed applications for leave to appeal against sentence, leave having been refused by the single judge in both cases on 5 July 2022. The appellant Zani also seeks leave to vary his grounds and to add a new ground that was not before the single judge.
2. The appellants were jointly charged with four others with conspiracy to supply Class A drugs, namely cocaine, contrary to section 1(1) of the Criminal Law Act 1977. On 1 June 2021, in the Crown Court at Bournemouth, Zani (then aged 29) pleaded guilty upon re-arraignment on the first day of his trial. On 3 December 2021, Kostreni (then aged 26) was convicted after trial. Another co-defendant had been found guilty in a separate trial. Kostreni was also convicted of producing a Class B drug, namely cannabis, contrary to section 4(2)(a) of the Misuse of Drugs Act 1971.
3. Both appellants were sentenced by the judge who had conducted both trials (HHJ Fuller QC) to 8 years' imprisonment on the cocaine conspiracy count. Kostreni was sentenced to a further 2 years' imprisonment on the cannabis production count, to run consecutively. The judge also imposed a victim surcharge order and made directions in respect of confiscation proceedings.
4. We have been greatly assisted today by submissions from Mr Corrigan, on behalf of Kostreni, and Mr Solley, on behalf of Zani.

## **The Facts**

### Count 1 (Conspiracy to supply controlled drugs of Class A) - both appellants

5. The appellants were part of an Organised Crime Group ("OCG"). Police carried out an extensive surveillance operation on the OCG beginning in early 2020. It was halted due to the Covid pandemic but recommenced from 25 June 2020. The operation culminated in the arrest of Zani and three others on 29 October 2020 while they were carrying out a drug exchange. A kilogram block of cocaine at 80% purity, other drugs and large amounts of cash were seized. Kostreni was arrested later that day at his home address.
6. Zani, Kostreni and others involved in the conspiracy were based in Bournemouth. Another lived in Luton. The group were supplying Class A drugs in Poole and Bournemouth. Surveillance also showed that drugs supply took place in London. Zani and another co-defendant regularly travelled to North London and met with other members of the OCG including Zani's cousin, Klement Gjika.
7. The arrests that took place on 29 October followed a series of meetings between the defendants in Bournemouth, London and other areas.
8. Numerous mobile phones were seized from the group. Most could not be accessed as the defendants would not provide the PIN numbers. The messages that were accessible showed regular communications related to Class A drug supply.
9. Messages exchanged between Kostreni and Zani related to prices of grams of cocaine. A mobile telephone found at Zani's address showed communications with drug purchasers about the quality, quantity and prices of cocaine and

postcodes believed to be the delivery locations for the drugs. Zani forwarded Kostreni messages and Kostreni in turn forwarded them to drug users. Kostreni then sent postcodes to two other co-defendants.

10. On 5 October 2020 Kostreni was stopped by police in his Mercedes. He produced a fake driver's licence in the name "Darko Crivich". Zani, travelling as a passenger, was found in possession of two iPhones, one of which was in a red case. This was believed to be the " drugs telephone" used in the conspiracy. Zani was captured on body-worn video telling Kostreni in Albanian to say that the red telephone was his.
11. On 29 October 2020 surveillance showed the appellants and two others meeting in the Olive Cafe in Poole Hill, Bournemouth. There was regular contact with their co-defendant, Bendaj, who was travelling down from Watford including a text message with the postcode for the location of the drug exchange.
12. The four men left the cafe at 12.34 pm. The co-defendant, Doyle, parked his BMW at a railway station in the village of Hinton Admiral close to the transfer location. Zani dropped Kostreni off somewhere and was next seen in a Ford Fiesta driven by Bendaj. At 3.00 pm the co-defendant Najim parked his Corolla at the Cat and Fiddle public house. A few minutes later Bendaj's Ford Fiesta arrived at the Cat and Fiddle car park. Zani walked to the rear of Bendaj's Fiesta. Bendaj got out of the Fiesta holding a plastic bag with a kilogram of cocaine inside. He handed the bag to Najim through the driver's window of the Corolla. Zani then spoke with Bendaj.
13. At 3.05 pm the Fiesta followed the Corolla out of the car park and they travelled in convoy to Elphinstone Road, New Milton. Najim called Doyle, who then

drove his BMW to Highland Road around the corner from Elphinstone Road. Doyle walked to the Corolla. He was in possession of £41,000. Najim accompanied Doyle back to the BMW. Doyle was now carrying the bag with cocaine. Both men got inside the BMW and were arrested. Bendaj telephoned Zani who was still in the Corolla. Zani exited the vehicle and discarded his mobile telephone in a private garden. He was arrested while walking up the driveway of 3 Elphinstone Road. Bendaj was arrested 25 minutes later after appearing from some bushes close to his Fiesta. He had thrown a "burner" mobile telephone in the bushes and it was not recovered.

14. The cars were all searched. The kilogram of cocaine at 80% purity was found in Doyle's BMW, as well £1,000 cash and £2,000 cash hidden in a sock. The £41,000 was found in the Corolla attributed to Zani and Najim, as well as the two iPhones.
15. The appellants' addresses were searched. Cash totalling £6,000 was seized from Kostreni's address. At Zani's address police found two mobile telephones and £1,200 in cash. Several mobile telephones and £6,170 was seized from Najim's house. Inside Doyle's address was £6,400 in cash and 14 wraps of cocaine weighing 5.2 grams. A flat at 9 Alumhurst Road, Bournemouth linked to Kostreni, Zani and the co-defendant Nona was also searched. Inside were plastic wraps containing 76 grams of cocaine at 49-68% purity and a bag of 498 grams of cocaine at 13% purity. The value of the drugs in the flat was between £12,000 and £20,000.

Count 3 (Producing a controlled drug of Class B) - Kostreni only

16. On 4 November 2020 police discovered a cannabis factory at 52 Mandale Road,

Bournemouth. There were 117 cannabis plants in various stages of cultivation.

The potential street value was between £50,000 and £150,000.

17. Kostreni had been seen at the address on 2 October 2020. His mobile telephone showed that he had taken dozens of trips to the address. Text messages and photographs on his telephone showed his involvement in producing cannabis. He was working under the direction of a man named Jose from Bristol. Text messages showed that he was in charge of Klajdi Kostreni, who was found at the address on 4 November. He was a distant cousin of Kostreni's who had pleaded guilty at the outset to his involvement as the "gardener" of the operation. He was sentenced, also by HHJ Fuller QC, to 6 months' imprisonment on the basis that he had been pressurised to work there.
18. Zani had also been at 52 Mandale Road. He and Kostreni drove their respective vehicles to a B & Q store where they purchased some chipboard which was later used in the conversion of the Mandale Road address into a cannabis factory. However Zani was not charged with any offence relating to the cannabis factory.

### **The appellants**

19. Neither appellant had any relevant previous convictions.
20. Although Zani had not pleaded guilty until the first day of his trial, his counsel submitted that he should be afforded a 25% discount for his plea. This was on the basis that the prosecution evidence had been served very late; there was a large amount of evidence that related to him; parts of the evidence had to be translated for him which obviously took time; there were significant difficulties

in his legal representatives securing access to him at HMP Winchester and he had indicated an intention to plead guilty through his counsel around a week before the start of the trial.

21. Zani also placed evidence before the judge explaining that he has Crohn's disease which requires long-term treatment and causes a significant impact on his life. He relied on a letter from Dr John Gordon DM FRCP, Consultant Gastroenterologist at the NHS Hampshire Hospital NHS Trust. This confirmed that while in prison Zani had been admitted to hospital on three occasions due to his condition and might at some stage need to have surgery. His counsel argued that his condition would make the impact of imprisonment on him considerably greater than on a prisoner without such a condition. He also relied on a letter from his wife which described the impact of his condition on him. The letter also explained that Zani's remand into custody coincided with his wife losing her job and this had caused them significant financial difficulties.

### **The judge's sentencing remarks**

22. The judge made some pertinent overarching observations at the outset of his remarks. He said that the evidence painted a "clear picture" of a "well-planned, detection-adverse and professionally run conspiracy". Further:

"Its duration and the repeated appearance of named individuals show most, if not all, to be entwined either through relationship and/or background, and, furthermore deeply embedded in the conspiracy with an insight into what others were doing...The association and purpose of the relationship between Zani, Najim, Kostreni and Nona (the four defendants based in Bournemouth) was very clear...That is especially so in the case of Zani and Kostreni".

23. The judge had been addressed in detail by all counsel at the applicability of the sentencing guidelines for supplying drugs and in particular as to the culpability of each of the defendants.
24. However, the judge observed that the guidelines deal with the complete or completed offences and that conspiracy offences "do not always stand on all fours with such offences" because "[c]onspiracies...may...be an open dynamic arrangement, which changes shape as the next opportunity presents itself. By way of example in this case, street dealing may expand into wholesaling".
25. As to harm, a single kilogram of cocaine placed the case in category 2 of the guideline. This merited a starting point for a *leading role* of 11 years' imprisonment, a *significant role* 8 years and a *lesser role* of 5 years. However, the judge noted this:

"Conspiracies, by their nature, may disclose an unfulfilled ambition of greater magnitude than the actual result achieved...Certainly what is clear from the evidence is that the offending in one form or another...would have continued had it not been disrupted...The Prosecution case is that there were at least three observed purchases which had been proceeded by a fourth...that...is the very minimum to be considered because dealing was over a period of months...seizures of drugs and cash indicate purchase and sales in significant quantities, and as a result, the conclusion to be drawn is [that] the amount involved would have been well in excess of the 1 kilogram starting point...the conspiracy contemplated, certainly in its later stages, the supply of amounts measured in kilos and half kilo, for that was the very least that was found. With so many phones locked and inaccessible, the full extent of drugs involved remains hidden...but having heard the evidence...a conservative conclusion would be something up to 3 kilos, and that is...modest."

26. The judge also noted that the duration of the conspiracy (4 months), while not



the longest, was significant.

27. He considered that this factor together with the amounts of drugs that must have been dealt, put the starting point for each defendant in the middle of the sentencing range and elevated the starting points.

28. In respect of Kostreni the judge concluded that he had played a "very significant" role in both Counts 1 and 3. He had "both operational and management functions" and he "employed others who worked under his direction on both counts". He had a "clear understanding of what was going on and stood to make significant financial gains". The judge indicated that he would have passed a sentence of 9 years' imprisonment on count 1 and 4 years' imprisonment on count 3 but, having regard to totality and the submissions made on his behalf, he reduced these figures to 8 years and 2 years to run consecutively.

29. In respect of Zani, the judge noted that an earlier pre-sentence report involved him seeking to deny responsibility and blame others albeit that he no longer relied on those comments. He had accepted buying cocaine in large quantities and selling them in street deals. The judge rejected Zani's counsel's submission that he should not be placed at top of the hierarchy, saying:

"It is suggested...that the kilo on the 29th was as a result of a business deal between Najim and Doyle alone. Such a suggestion is totally contrary to the evidence. Your involvement is manifestly clear. Similarly, the actions of Kostreni, on whom you make comment on Count 1, cannot be said to be unconnected with you, independent of you, or not the result of the conspiracy in which you were involved and fully aware."

30. The judge rejected an argument that he should take into account the low level of

purity of the some of the drugs, saying:

"My view is that it was the intention of those involved to purchase cocaine for resale. The fact that you were sold, at some point, a quantity of relatively unmarketable cocaine, was a risk you took. You had intended to deal, and in any event, the low purity cocaine found is only a small part of that which must have been dealt."

31. The judge noted that Zani's medical needs would be attended to while in prison and said that they did not on their own justify a reduction in sentence. He indicated that if he had been dealing with Zani on the basis of street dealing alone, his *leading role* would have justified a starting point of 10 years' imprisonment. However his wholesale dealing and influence on others in the chain raised the category and the starting point respectively, he said, such that a sentence of 12 years' imprisonment would have been appropriate after trial, which he reduced to 8 years' imprisonment.

### **The submissions on appeal**

32. On behalf of Kostreni Mr Corrigan argues, in writing and orally today, that (i) the starting point that the judge adopted was too high for the cocaine offence both in respect of culpability and harm, leading to a manifestly excessive sentence; and (ii) the judge erred in imposing a consecutive sentence in respect of the cannabis production count.

33. Zani's initial grounds were drafted by counsel who represented him before the sentencing judge. The sole argument advanced was that the sentence was manifestly excessive due to mischaracterisation of his role in the conspiracy as a leading one. Mr Solley was instructed after the initial grounds were lodged. He

adopts those grounds and seeks to add a new ground that was not before the single judge, to the effect that the judge did not afford sufficient discount for Zani's medical condition and the particularly adverse impact of imprisonment due to the Covid restrictions. It is accepted by him that this information was known to Zani's previous counsel but reliance is placed on R v James & Others [2018] EWCA Crim 285 for the proposition that it would be in the interests of justice for him to be permitted to argue this ground.

### **Discussion and conclusions**

34. We have considered all these submissions carefully. By way of general observation we note that the judge who sentenced both appellants had conducted Kostreni's trial and that of his co-defendant. He had also sentenced Klajdi Kostreni. He was therefore very familiar with the detail of the evidence and so well placed to assess the culpability of each defendant and the harm caused by the conspiracy for the purposes of sentence. We also agree with the judge that the culpability levels set out in the sentencing guidelines do not always easily translate to cases such as this, where a conspiracy is involved.

#### **Kostreni - Count 1**

##### *Culpability*

35. Mr Corrigan had sought to persuade the judge that Zani had two operations going on at the time of his arrest - supplying wholesale cocaine to others and his own street dealing operation - and that Kostreni was only involved in the street dealing aspect such that his was a *lesser role*. However the prosecution had challenged his characterisation of his role. It was submitted that while he did

not directly procure the wholesale shipments, he played a *significant role* in the OCG that both purchased and sold cocaine in wholesale amounts.

36. In our view, there was plenty of evidence that justified the judge's assessment that Kostreni had played a *very significant role*.
37. First, there was evidence that he performed an operational or management function within the chain, namely that he liaised directly with drug users using the red phone under Zani's direction. He would then arrange for a street level dealer (first Nona and thereafter Lindi Kostreni) to make the individual supplies. The prosecution contended that he was taking orders and "running" the dealers. The scales recovered from his home address and other evidence also showed his involvement in the preparation of drugs for onward sale.
38. Second, he had "involved others in the operation whether by pressure, influence, intimidation or reward" (to quote the guideline). There was evidence of him directing Nona, providing him with a car and the relevant postcodes and putting pressure on him to remain within the conspiracy. There was also evidence of him directing his cousin, Lindi Kostreni.
39. Third, he had some awareness and understanding of the scale of the operation. He was an associate of both Zani and Nona, who all came from the same town in Albania. He had accepted having acted as a driver for Zani, and the judge was quite satisfied "that he soon immersed himself in his drug dealing" and acted as his "trusted assistant". Surveillance and telephone data showed that Kostreni was in direct control of the Alumhurst Road property, where the remains of two previous wholesale shipments were recovered. He was also present on the morning of 29 October 2020, and his phone activity in the

aftermath of the sting operation showed that he had an awareness of what was to take place that day.

40. Fourth, he had an expectation of significant financial or other advantage. In excess of £6,000 in cash was recovered from his home. While there was some doubt as to whether this was *all* his money (as it was split between two bedrooms and it was not possible to say which was his) the judge's overall assessment was this was only part of his proceeds and that he stood to gain significant financial benefit from his involvement in the conspiracy. However even if this factor within the guidelines is disregarded entirely, it is clear to us that there were features of the evidence that justified the judge in concluding that the other elements of a *significant role* within the Guideline were present in Kostreni's case.

41. The judge was clearly of the view that Kostreni's role went well beyond street level supply with mere knowledge of the wider conspiracy, as his grounds allege, and, in our view, he was entitled to characterise Kostreni's role as he did.

#### *Harm*

42. We do not accept Mr Corrigan's submission on behalf of Kostreni that harm should have been assessed by the amount of drugs with which he was directly involved. This appears to us wrong in principle given that Kostreni had been convicted of a conspiracy charge. In any event it is undermined on the evidence by the judge's finding that his role went beyond street supply.

43. We also consider that the judge was entitled to give short shrift to the low purity argument given the evidence that those involved in the conspiracy had not intended to buy that low quality of drugs.

44. We do not consider that there is any basis for disturbing the trial judge's assessment from the evidence that conservatively the conspiracy involved around 3 kilograms of cocaine. We note that under the Guideline category 2 applies where 1 kilogram has been supplied and category 1 applies where 5 kilograms are involved. On that basis it could be said that a conspiracy involving around 3 kilos falls nearer to category 1 than to category 2.

*Overall categorisation*

45. Under the guideline a *significant role* in the category 2 conspiracy involving 1 kilogram of cocaine merits a starting point of 8 years' imprisonment with a range of 6 years 6 months to 10 years. Our view is that in light of the judge's assessment of Kostreni's *very significant role*, the weight of the drugs involved and the duration of the conspiracy the judge cannot be criticised for selecting a starting point of 9 years' imprisonment in Kostreni's case.

Kostreni – Count 3

46. It is right to acknowledge that there was some evidence that Zani knew about the cannabis production and that it did occur at the same time as the cocaine conspiracy.

47. However, Kostreni alone was charged with the cannabis offence; it involved a different drug to the conspiracy charge; and there was evidence of him performing an employing or directing role in it in respect of Klajdi Kostreni.

48. Under the Sentencing Guidelines on Totality, consecutive sentences will ordinarily be appropriate where offences are "distinct" and "there is an aggravating element that requires separate recognition" and/or where "the overall criminality will not sufficiently be reflected by concurrent sentences".

49. In our view, either or both of these factors apply here. We therefore consider that the judge was entitled to conclude that a consecutive sentence for count 3 was appropriate. We note from the sentencing remarks that Mr Corrigan accepted that at the time of sentencing that that would be appropriate. In fairness, today he has not sought to argue that it was necessarily wrong in principle.

50. For all of these reasons we do not consider that Kostreni's grounds are reasonably arguable and we refuse him leave.

Zani - existing grounds

51. The prosecution case was that Zani was involved in the sale of cocaine within Dorset and sometimes elsewhere. He bought in large quantities and sold small sometimes directly to users, more often indirectly to a delegation to his trusted assistants. The drugs found at the Alumhurst Road property were effectively under his control via Kostreni. They represented two separate wholesale supplies. Zani was also involved in the organisation of wholesale supplies from Bendaj to Doyle on 14 September 2020 and 29 October 2020.

52. The prosecution therefore contended that there were factors in his case which indicated a *leading role* for the purposes of the guideline as there was evidence of him organising, buying and selling on a commercial scale and having substantial links to and influence on others in the chain. It was also accepted that there were elements of the evidence that suggested that he played a *significant role*.

53. On that basis, in the discussions before Zani's plea, it had been suggested by the prosecution that his role should be placed at top of *significant role* within the

Guidelines, ie 10 years' custody for a starting point.

54. As we have already explained, a *significant role* in a category 2 offence involving 1 kilogram of cocaine merits a starting point of 8 years with a range of 6 years 6 months to 10 years. A *leading role* in an offence involving 1 kilogram of cocaine merits a starting point of 11 years' imprisonment with a range of 9 to 13 years.

55. In light of the evidence which suggested Zani performing a *leading role*, the weight of the drugs involved and the duration of the conspiracy, we consider that the judge was justified in departing from the prosecution's proposed starting point for sentence by adopting a starting point of 12 years' imprisonment for him. For these reasons we refuse Zani leave in respect of his current grounds.

Zani - application to add a new ground

56. Zani seeks leave to add a new ground to the effect that the judge had insufficient regard to his health issues and his time in custody during the Covid pandemic.

57. We are not persuaded that the criteria for permitting an appellant to vary their grounds of appeal set out in James are met. At paragraph 38(iv) of James the Court of Appeal indicated that in deciding whether to permit an appellant to vary their grounds the full court will take into account the following non-exhaustive list of issues: (a) the extent of the delay in advancing new ground/s; (b) the reason for the delay in advancing new ground/s; (c) whether the issues/facts giving rise to the new Grounds were known to the applicant's representative at the time he or she advised the applicant regarding any available Grounds of Appeal; (d) the overriding objective (Crim PR 1.1) namely acquitting the innocent and convicting the guilty and dealing with the case



sufficiently and expeditiously; and (e) the interests of justice."

58. Mr Solley only relies on ground (e). However, in our view, there is no clear reason why this proposed ground, which was known to previous counsel, should be advanced now. We note the medical evidence we have been provided with is no different to that which was placed before the trial judge.

59. In any event, we do not consider that this proposed ground has merit. The judge specifically said at page 12F of his remarks that he recognised the need to take into account the impact of Covid on all of those in prison. He also referred to Zani's medical issues. He applied full credit for the plea which, as we have indicated, in these circumstances was understood to be 25%. That took the 12 years starting point down to 9 years. As the final sentence imposed was one of 8 years, the judge made a further discount of 1 year. In our view this was an entirely fair deduction to reflect the impact of Covid and Zani's medical condition.

60. For these reasons we refuse Zani leave to vary his current grounds to add this new ground.

61. It follows that all the applications before us are refused.

62. As a final matter, we note that the judge imposed a victim surcharge order prior to the outcome of the confiscation hearing. In R v Bristowe [2019] EWCA Crim 2005, the Court of Appeal stated that "... the judge should postpone the decision on the statutory surcharge until the outcome of the confiscation proceedings. But if the order is made during the postponement period or at the time when sentence is passed, the surcharge will not be quashed unless, exceptionally, the final outcome of the case means that the circumstances and

justice of the case makes this necessary." We do not consider that any such circumstances apply here.

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

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