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IN THE COURT OF APPEAL

CRIMINAL DIVISION

[2022] EWCA Crim 478



No. 202103058 A2

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Royal Courts of Justice

Thursday, 24 March 2022

Before:

LADY JUSTICE WHIPPLE

MR JUSTICE JEREMY BAKER

HIS HONOUR JUDGE LODDER QC, RECORDER OF RICHMOND UPON THAMES

REGINA

V

ROY BASSON

PAUL WORTHINGTON

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MR J. HUGHESTON-ROBERTS appeared on behalf of the First Appellant.

MS F DAVY appeared on behalf of the Second Appellant.

J U D G M E N T

LADY JUSTICE WHIPPLE:

Background

- 1 On 26 August 2021 in the Crown Court at Maidstone before Mr Recorder Elvin QC, the appellant Basson, then aged 39, and the appellant Worthington, then aged 41, pleaded guilty to the offence of conspiracy to supply class A drugs.
- 2 On 23 September 2021 HHJ Gratwicke sentenced both appellants to 11 years' imprisonment. Both now appeal against sentence with the leave of the single judge.

Facts

- 3 The facts in brief are these. At about 2.30 in the afternoon on 20 May 2021 police officers in Maidenhead witnessed an exchange of drugs between Worthington and Basson. The officers observed as Worthington got out of his Volkswagen Transporter van and walked towards Basson, who was stood at the door of his Citroen Berlingo. Worthington handed Basson a large tartan laundry bag, then both men turned towards their respective vehicles.
- 4 As the officers approached, they saw Basson was in the rear of his vehicle. He was wearing latex gloves and was unloading 1kg compressed blocks of cocaine from the laundry bag into a purpose-built concealed compartment in the floor of his van. The compartment was operated by remote control. By the time the officers got into the back of the van, Basson had unloaded 16 of the kilogram blocks of cocaine into the hide and there were four blocks left in the laundry bag. The vehicle was searched and £2,000 in cash was found in an envelope in a compartment above the steering wheel, along with two iPhones. Basson was arrested.

- 5 Worthington was approached by police whilst making a telephone call from inside his van. When he was arrested, police recovered two iPhones and a notepad, which had various post codes written on it. Worthington was found to be in possession of £270 in cash.
- 6 The drugs were examined by a forensic scientist who confirmed that there were 20kg of cocaine between 75 and 77 per cent pure. The wholesale value was in the region of £6,000 to £9,000, with a potential retail value of between £1 million and £2 million. One of Worthington's iPhones contained messages appearing to indicate that he was being directed to make multiple exchanges. These were drug-related messages, one of which showed that Worthington had been given a signal to make the exchange with Basson, another of which showed Worthington referring to "the afternoon shift tomorrow".
- 7 Basson and Worthington both gave no comment interviews.

Sentence

- 8 At the sentencing hearing on 23 September 2021, the Crown set out the facts. The Crown's submission was that both men had an operational and management function within the chain, both had an expectation of a significant financial advantage given the quantity of drugs involved, and, despite Worthington only in fact having a relatively small amount of cash on him at the time, both were aware of the scale of the enterprise they were involved in. Accordingly, the Crown said that they both played significant roles. This was the Crown's case based on the accepted bases of plea.
- 9 In sentencing, the judge noted the "exceedingly large amount" of cocaine involved, namely 20kg. He stated the defendants had made a choice and had gone into this enterprise with their eyes open. Turning to the guidelines, he concluded that this was a category 1 case, noting that the drugs involved were four times the indicative amount.

- 10 Turning to Basson, he said that Basson had some awareness of the scale of the enterprise that he was engaged in. Basson took delivery of the van, registered and insured it. Whether Basson built the concealed compartment mattered not, because he knew about it and that it would be used for transporting drugs. Basson was motivated by financial gain. Basson played a significant role. The judge noted Basson's lack of previous convictions for drugs and the rest of his personal mitigation. He concluded that after a trial Basson would have been sentenced to 15 years' imprisonment. He gave a discount of 25 per cent for the guilty plea and made an adjustment in light of *Manning*. The resulting sentence was one of 11 years' custody.
- 11 The judge then turned to Worthington. He said that Worthington also had some awareness and understanding of the scale of the operation, carrying 20kg in an ordinary bag to his waiting co-defendant Basson. Worthington too was motivated by financial gain. He too fell into category 1 and occupied a significant role. He too had no previous convictions for drugs and had personal mitigation in the form of alcohol problems. The judge also noted efforts made by Worthington while in custody to change his ways. The judge concluded that after a trial Worthington would have been sentenced to 15 years' imprisonment. Likewise, after giving 25 per cent credit for plea and making an adjustment for *Manning*, the sentence in Worthington's case was 11 years' imprisonment.

Grounds of Appeal

- 12 Mr Hugheston-Roberts appears for Basson. Mr Hugheston-Roberts did not represent Basson at the hearing below. Mr Hugheston-Roberts' written grounds of appeal advance two grounds. First, he criticises the judge for going above the guideline range for category 1 significant role; the starting point for that category under the relevant guideline is ten years in a range of nine to 12 years. Secondly, he argues that Basson should have got more than 25 per cent credit for his guilty plea. In oral submissions before us, Mr Hugheston-Roberts has adopted Ms Davy's written grounds in relation to Worthington's appeal.

- 13 Ms Davy appears for Worthington. She represented him at the sentencing hearing. She advances the following arguments in her written grounds. First, that the judge failed to sentence in accordance with the written basis of plea, which was not disputed by the Crown, in which Worthington accepted that he was a courier, but had no other knowledge or involvement. Secondly, the judge failed to have any or adequate regard to those factors suggested for lesser as opposed to a significant role, specifically the fact that Worthington performed a limited function under direction, that he had no influence on those above him in the chain, that he was being sentenced for his involvement on a single day, and that there was no evidence of substantial financial gain in his case. Third, the judge provided no explanation for assessing Worthington's role as significant. Fourth, the judge took too high a starting point. Fifth, the judge should not have increased the starting point by reference to the quantities seized, which had nothing to do with the role played by Worthington. In oral submissions before us today, Ms Davy has focused particularly on those aspects of Worthington's involvement which tended, in her submission, to lower his role to the lesser category or to the bottom end of the significant category.
- 14 We are grateful for the focused and succinct submissions which we have received from counsel, both in writing and orally.

Basson

- 15 We consider the appeal in Basson's case first. The sentencing judge put Basson in category 1 significant role. The role he occupied was significant, because Basson had some awareness and understanding of the scale of the operation. Harm was assessed by reference to the weight of the product. Category 1 in the guideline is predicated on 5kg of cocaine. In this case 20kg was being handled on the day in question. For a significant role, the guideline gives a starting point of ten years in a range of nine to 12 years. The guideline states that for cases where the operation is on the most serious and commercial scale, involving a quantity of drugs significantly higher than specified in category 1, sentences of

20 years and above may be appropriate. Given the very substantial quantity of cocaine involved in this case, on a single day, but in the context of repeat engagement in a drugs conspiracy, the judge was plainly entitled to go above the top of the range indicated in the guideline. The guideline itself suggests that in appropriate cases where the operation is on the most serious and commercial scale the top of the range should be exceeded. This operation was approaching that end of the scale. Thus, the judge's identification of 15 years as the notional determinate sentence after a trial cannot, in our judgment, be criticised. We reject Basson's first ground of appeal.

- 16 The judge reduced the sentence to 11 years applying a global reduction of around 27 per cent to take account of the guilty plea and *Manning*. We note that when the case was opened by the prosecution, the sentencing judge was told that Basson pleaded guilty at the PTPH. It does not appear that Basson's defence counsel at the hearing said otherwise. A reduction of 25 per cent is of course in accordance with the relevant guideline for a plea entered at that stage. In fact, it now appears that Basson indicated his intention to plead guilty at the Magistrates' Court. The notice to the Crown Court for sending for trial from the Magistrates' Court states in terms "plea of guilty indicated": see p.A3 on the DCS. It is regrettable that this was not drawn to the sentencing judge's attention.
- 17 In light of the early indication of guilty plea, Basson was entitled to a one-third reduction. Taking 15 years as the notional sentence after trial and reducing it by one-third arrives at ten years. We preserve the roughly three months' additional discount for *Manning* to arrive at a total sentence in Basson's case of 117 months or nine years and nine months.
- 18 We therefore allow the appeal against sentence in Basson's case. We quash the sentence of 11 years' imprisonment and impose in its place a sentence of 117 months: that is nine years and nine months.

Worthington

19 We turn to Worthington's appeal. The first ground of appeal is that the judge failed to sentence in accordance with the basis of plea, which was accepted by the crown and was in the following terms:

"(a) The extent of the defendant's involvement in the conspiracy on 20 May 2021 was that of a courier; namely, acting upon instruction from another. He collected and delivered the trucks in question from and to an address only provided to him that morning.

(b) Beyond his role as courier on 20 May 2021, he had no other knowledge or involvement.

(c) The extent of the defendant's benefit from his role as courier was payment of £300 in cash; £270 of this was seized from him on arrest."

20 The judge sentenced on the basis that Worthington had some awareness and understanding of the operation, such that his role was significant. In our judgment, that finding plainly was open to the judge on the material before him. As he noted, Worthington had handed over a laundry bag with 20kg of product in it. There were multiple messages on Worthington's phone dealing with exchanges. True it is that Worthington was found with only £270 cash in his possession, but the guidelines refer to the expectation of financial gain and it can readily be inferred that Worthington expected to make more money than this amount from his participation in this conspiracy. In short, the basis of plea, when put alongside other evidence in the case and known facts, is not inconsistent with the categorisation of Worthington playing a significant role. The first ground fails.

21 The second ground of appeal is connected to the first. It relates to factors which it is said point to a lesser role. We consider the judge to have been well placed to assess the role played by Worthington. The particular factors highlighted by Ms Davy represent, at best, a partial view. We have already identified those features of the evidence which put Worthington in the significant role category. This leads us to conclude that ground two also must fail.

22 By his third ground, Worthington suggests that the judge failed to explain why he put Worthington in a significant category. With respect, we disagree. The reasons given were sufficient. The third ground fails.

23 The fourth and fifth grounds have already been addressed in relation to Basson's case. The judge was entitled to take 15 years as his notional sentence after trial. We understand the judge to be saying that 15 years took account of the aggravating and mitigating factors and left only credit for plea to be deducted. The quantity of cocaine justified an uplift substantially above the top of the category range. These grounds fail.

Conclusion

24 We therefore dismiss these appeals.

CERTIFICATE

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