

**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

CASE NO 202201746/A4

[2023] EWCA Crim 369

Royal Courts of Justice  
Strand  
London  
WC2A 2LL

Thursday 16 March 2023

Before:

THE VICE PRESIDENT OF THE COURT OF APPEAL CRIMINAL DIVISION

LORD JUSTICE HOLROYDE

MR JUSTICE HILLIARD

MR JUSTICE CHAMBERLAIN

REX

V

ZAKARIA CHENTOUF

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

MR I JOBLING appeared on behalf of the Applicant

**J U D G M E N T**

MR JUSTICE CHAMBERLAIN:

1. On 14 February 2022 in the Crown Court at Lewes, the applicant appeared before His Honour David Rennie, sitting as a Deputy Circuit Judge, for trial on two counts of being concerned in the supply of a class A drug, heroin on count 1 and cocaine on count 2. The prosecution had served some late evidence. The judge said that the applicant should have the opportunity to consider this evidence and if he reviewed his position because of the late-served material he would be given considerably more credit than would otherwise have been the case. The applicant did review his position and changed his plea to one of guilty on both counts.
2. Sentencing was adjourned to 11 May 2022 when the applicant appeared before His Honour Judge Huseyin. Applying the guideline he found that the applicant had been involved in street dealing and that his role was "squarely in the middle of" the significant category. That gave a starting point of four-and-a-half years' custody with a range of three-and-a-half years to seven years.
3. The judge was informed of His Honour David Rennie's indication about credit but said that he was not bound by it and that he would apply a discount of 10 per cent to reflect the applicant's plea on the first day of trial. He imposed a sentence reflecting that discount of 48 months' imprisonment.
4. Leave to appeal was refused by the single judge. The application is renewed before us. Like the single judge we can see no arguable basis for impugning the judge's careful analysis of the applicant's role. The judge accepted much of what the applicant had said in his basis of plea and had good reasons for rejecting the remainder. His findings as to role were based on the evidence and were unimpeachable. He took proper account of the applicant's personal mitigation but concluded that this was counterbalanced by his previous convictions. A sentence of four-and-a-half years before credit for plea was neither manifestly excessive nor wrong in principle.
5. The question then arises whether the indication as to credit given by His Honour David Rennie makes any difference. This court has recently repeated the need for caution in

giving indications as to sentence: see R v AB [2021] EWCA Crim 2003, [2022] 2 Cr.App.R

10. Where an indication is given which places inappropriate pressure on the defendant to plead guilty and so deprives him of his free choice whether to plead guilty, the indication will supply a ground for setting aside the conviction. The appeal before us is not of course against the conviction, nor in our view could it be said that the indication given here was such as to place improper pressure on the defendant to plead guilty.

6. Should the sentence imposed by His Honour Judge Huseyin nonetheless have taken account of the indication given by His Honour David Rennie? There are three features of this case which are important. First, the indication was in vague terms and the offender's counsel did not ask the judge to give further detail, nor did he ascertain whether the judge intended to reserve the sentence to himself. Second, the case came on for sentencing later before a different judge. Third, the sentencing judge declined to give effect to the earlier indication. In those circumstances he applied the credit appropriate where a defendant pleads guilty on the first day of the trial.
7. In our judgment it was unwise for His Honour David Rennie to have given the indication he did. Indications as to the basis on which the defendant will be sentenced if he pleads guilty should be rare. Where they are given, they should be in precise terms. The judge giving the indication should consider carefully whether he or she, or another judge, is likely to be sentencing the defendant. Where the sentence will or may be imposed by another judge the judge giving the indication should be clear that it will not be binding on that judge, though it may be taken into account, and should take steps to ensure that the indication is accurately recorded on the Digital Case System.
8. Judges giving such an indication or sentencing in a case where one has been given should bear in mind the statutory obligation in section 59(1) of the Sentencing Code to follow any sentencing guideline which is relevant to the offender's case unless the court is satisfied that it would be contrary to the interests of justice to do so. In a case such as the present where the offender has pleaded guilty this includes the Guideline on Reduction in Sentence for a Guilty Plea. That guideline provides that the credit applicable in a case where the defendant

pleads guilty on the first day of trial is 10 per cent, unless one of the exceptions applies. The only exception that could in principle apply is F1 which provides as follows:

"Where the sentencing court is satisfied that there were particular circumstances which significantly reduced the defendant's ability to understand what was alleged or otherwise made it unreasonable to expect the defendant to indicate a guilty plea sooner than was done, a reduction of one-third should still be made.

In considering whether this exception applies, sentencers should distinguish between cases in which it is necessary to receive advice and/or have sight of evidence in order to understand whether the defendant is in fact and law guilty of the offence(s) charged, and cases in which a defendant merely delays guilty plea(s) in order to assess the strength of the prosecution evidence and the prospects of conviction or acquittal."

9. In this case the material that had been served late had already been served in summary, though not in admissible form. This was therefore a case where the appellant had delayed his plea, not in order to understand whether he was guilty (he knew very well that he was guilty) but to assess the strength of the prosecution case. It did not therefore fall within exception F1. We do not consider that the vague indication given by His Honour David Rennie could have engendered any legitimate expectation that a particular discount would be applied, particularly in circumstances where, as the applicant and his counsel both knew, the sentencing hearing had not been reserved to any particular judge.

10. The judge said at the start of his sentencing remarks that the applicant would be entitled to 10 per cent credit for his guilty plea on the first day of the trial. On a proper application of the guideline he was right. We therefore refuse leave to appeal.

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

Lower Ground, 18-22 Fumival Street, London EC4A 1JS

Tel No: 020 7404 1400

Email: rcj@epiqglobal.co.uk