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NCN: [2023] EWCA Crim 767
IN THE COURT OF APPEAL
CRIMINAL DIVISION



CASE NO 202300745/A5-202300844/A5

Royal Courts of Justice
Strand
London
WC2A 2LL

Friday 9 June 2023

Before:

LADY JUSTICE MACUR DBE

MR JUSTICE CHOUDHURY

MR JUSTICE CONSTABLE

REX

V
PARWANA SAID
ABDUL ZAHIR

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MR A BAJWA KC appeared on behalf of the Appellant Said.
MR J ROSENBERG appeared on behalf of the Appellant Zahir.

J U D G M E N T

1. LADY JUSTICE MACUR: These are appeals against sentence brought with the leave of single judge. Parwana Said is now aged 35, Abdul Zahir is now aged 55. In March 2023 both were sentenced, after plea, in relation to offences of conspiracy to acquire criminal property contrary to section 1 of the Criminal Law Act and section 329(1) of the Proceeds of Crime Act 2002. In Parwana Said's case she was sentenced to 27 months' imprisonment. In Abdul Zahir's case he was sentenced to 25 months' imprisonment. Ancillary orders were made which need not concern us in the substance of this appeal.
2. The facts in brief. The two appellants, with one Khodja Riyaz, were involved in a conspiracy to transport large sums of money around the country. In essence, they operated an illegal FedEx style service couriering and counting large quantities of cash which arose from organised crime. Their offending was discovered as part of a wider investigation into the use of EncroChat encrypted devices. In addition, checks on the automatic number plate recognition network, revealed two vehicles associated with these respective appellants to make a number of long-distance journeys, often at the same time to similar locations.
3. On 5 May 2020 officers stopped both vehicles following what had been a collection of cash from Leeds. Ms Said was stopped driving a Jaguar motorcar. There was an EncroChat telephone on the front passenger seat and Khodja Riyaz was also inside the vehicle. There were two other mobile telephones in the car attributed to the occupants. Police dogs indicated that there was something in the boot of the vehicle, a hidden cavity was discovered and nearly £250,000 in cash was found therein. Mr Zahir was stopped on the M11. There were two bags in the boot of his vehicle. One contained £150,000, the other £100,000.
4. Riyaz's home was searched. It was found to contain large sums of money and a money

counting machine. At Ms Said's address officers found another money counting machine, rubber bands and expensive items of personal accessories including money within. Some of those bank notes were ripped, indicating that they had perhaps been put through a money counting machine. In Mr Zahir's home officers found a comparatively large amount of cash, nearly £2,000.

5. In interview Ms Said that she was unaware of any cash in the car and that she believed that her boyfriend Riyaz ran a mobile telephone business in Brixton and that the expensive accessories within her home were presents from him. She lied.
6. In his interview, Mr Zahir said that he had been offered £300 to drive to Bradford to collect what he believed were mobile telephones and that this was the first trip he had taken. He too lied.
7. The police completed a summary of the trips undertaken. Riyaz, who absconded during trial, had undertaken numerous trips and the amount of money involved in his couriering was assessed to be in the region of £2.5 million. Ms Said took part knowingly in eight trips. It is known that £110,000 was collected on the first of those trips and £250,000 on the last. An assessment was made on the basis that at least £100,000 had been collected on each of the other trips amounting to a total sum just short of £1 million. Mr Zahir took part in 14 trips and the total amount of money transported by him was estimated to be in the region of £1.4 million.
8. Both appellants entered bases of pleas which were accepted by the prosecution, and it is right that they should be read into the record.
9. Basis of plea of Abdul Zahir:

"1. I wish to plead guilty to the single count indictment of conspiracy to acquire criminal property on the following basis.

2. I was a taxi driver of good character until March 2020 when I lost my job and was unable to work due to the pandemic. I have a young child who has a diagnosis of severe autism and requires a lot of care and attention. I was desperate as I am the only person who earns money in my family.

3. I was introduced to Mr Riyaz by a friend at the Mosque. He knew of my situation and offered me an opportunity to courier packages for a fixed sum of money.

4. I was aware that I would be transporting large sums of money up and down the country, however I had no knowledge or understanding of where the money had come from. I had limited understanding as to the extent of the criminality and was unaware of other people couriating for Mr Riyaz.

5. I was told under direction where to go and what to do. My limited function was to pick up packages and drop them off."

10. Significantly, in our view, it was accepted that he had no knowledge or understanding of where the money came from, had a limited understanding as to the extent of the criminality and was unaware of other people acting as couriers for Riyaz, and performed a limited function under direction.

11. Basis of plea of Parwana Said:

"The defendant, Parwana Said, pleads guilty to count 1 of conspiring with Khodja Riyaz to acquire criminal property on the following basis:

1. On a number of occasions, the defendant agreed to accompany, and on occasions, for some parts of the journey to drive, Khodja Riyaz to and from various parts of the country whilst he collected quantities of cash.
2. The defendant performed a limited function under direction.
3. The defendant had limited awareness or understanding of the extent of the criminal activity."

12. Significantly, in our view, it was accepted that she performed a limited function under direction and had limited awareness or understanding of the extent of the criminal

activity in which she was undoubtedly involved.

13. Sentencing the offenders in the court below, the judge categorised each of their participation in the criminal activity as falling within category 3 *lesser role* in accordance with the relevant Sentencing Guideline.
14. We agree with the single judge that he was right to do so and see no merit in a ground of appeal drafted on behalf of each appellant asserting that the starting point of 3 years was too high. Realistically, neither Mr Bajwa KC nor Mr Rosenberg pursue that ground. We proceed on the basis that, as did the judge in the court below, the relevant starting point was also the appropriate starting point taking into account all of the circumstances and most particularly, the basis of pleas which had been accepted.
15. The judge went on to consider the issues of personal mitigation, which albeit that Ms Said and Mr Zahir were not associated other than by reason of this criminal activity, was to some extent mirrored in each case. That is, both Ms Said and Mr Zahir are primary or sole carers of dependent children. Ms Said has two children, one an 18-year-old teenager, still in full-time education, and an 11-year-old. Mr Zahir has two children. His first child (now 13) suffers from severe autism. He has particular and specific communication difficulties. His own mother was unfortunately deceased at a young age, and whilst his stepmother is presently caring for him, albeit with some difficulty, his relationship with his father is dominant .
16. The judge said he had taken these issues into consideration and referred to the case of Petherick (see below) but considered that, as in all cases involving defendants with dependent children, that the sentence would inevitably fall heavily upon them.

Discussion:

17. We, having regard to the reports that were before the court below, have come to the

conclusion that there is merit in the second ground of appeal which is pursued on behalf of both appellants; that is, insufficient weight was given to the mitigation regarding each appellant's caring responsibilities to young and /or vulnerable dependents. Realistically, neither Mr Bajwa nor Mr Rosenberg cite the authority of R v Petherick [2013] 1 WLR 1102, as providing a "get out of jail free card". However, in the appropriate circumstances such mitigation regarding the care of dependent children may and should garner significant weight. This, of course, always within the context of the seriousness and circumstances of the offences concerned.

18. We regard these offences as undoubtedly serious and calling for a custodial sentence. However, we conclude that the starting point for each sentence of 3 years, was not sufficiently reduced to reflect the bases of plea, the personal mitigation available to each appellant including their hitherto positive good character. We consider that the least custodial element of any sentence would be 24 months. This length of sentence 'opens the door' to consideration of suspension.
19. When considering that option we have reference to the overarching Sentencing Guideline on imposition of community and custodial sentences. We have regard to the domestic circumstances of both appellants and accept the submissions that there is sufficient material in the pre-sentence report to indicate that there is a low likelihood of either re-offending in the future. We conclude that there are grounds to suspend in each case. We intend to suspend the sentence for the full period of 24 months.
20. Both appellants have no doubt been told in no uncertain terms that if they were to re-offend again during the currency of any suspension period, not only would they be liable to be sentenced to an immediate custodial sentence, subject to the circumstances of the extant offence, but would also fall to be resentenced in relation to this.

21. In addition to the suspended sentence, and to signify the serious nature of money laundering offences, we intend in addition to impose a community-based punishment. In the case of Parwana Said, she will be sentenced to 2 years' imprisonment suspended for 2 years. In addition, she will be required to attend 20 rehabilitation activity requirement days and to perform unpaid work within the community for 100 hours. She will attend, upon their direction, the London Probation Service in order to be informed as to these additional requirements. In the case of Mr Zahir, he too will be sentenced to 2 years' imprisonment suspended for 2 years. In addition, there will be an unpaid work requirement of 100 hours.
22. We make clear that we have taken into account, as was indicated in the pre-sentence reports (a) the availability of such work and (b) the availability of the rehabilitation activity requirement days and also, and in the case of Mr Zahir, his ability to perform the work regardless of a heart complaint and diabetes; there is said to be unpaid work which will take those indispositions into account.
23. Therefore, the appeals are allowed. The sentences of 27 months and 25 months respectively will be set aside and, in their place, will be substituted 2 years suspended for 2 years in both cases, 20 days rehabilitation activity requirement days and 100 hours unpaid work requirement in the case of Ms Said and 100 hours unpaid work requirement in the case of Mr Zahir. That concludes the appeal.

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