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IN THE COURT OF APPEAL
CRIMINAL DIVISION

CASE NO 202301053/A3



Neutral Citation Number:
[2024] EWCA Crim 473

Royal Courts of Justice
Strand
London
WC2A 2LL

Wednesday 24 April 2024

Before:

LORD JUSTICE MALES

MR JUSTICE HILLIARD

RECORDER OF NORTHAMPTON

(HIS HONOUR JUDGE MAYO)

(Sitting as a Judge of the CACD)

REX

V

MICHAEL JAMES PATRICK DERRANE

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MR C KNOX appeared on behalf of the Applicant.
MR S GRATTAGE appeared on behalf of the Crown.

J U D G M E N T

1. MR JUSTICE HILLIARD: On 22 May 2020, in the Crown Court at Leeds, the applicant pleaded guilty to counts 1, 3, 4 and 5 on indictment T20207246. On 13 April 2021, he pleaded guilty to counts 1, 4 and 6 on indictment T20207416. On 10 June 2021, he changed his plea to guilty on count 3 on indictment T20207416 and on 1 March 2023, at the age of 50, he was sentenced as follows. Indictment T20207416, count 1, conspiracy to transfer prohibited weapons, 9 years and 7 months' imprisonment; count 3, conspiracy to supply heroin, 9 years and 7 months' imprisonment to run consecutively. Count 4, conspiracy to supply cocaine, 9 years and 7 months' imprisonment to run concurrently. Count 6, conspiracy to supply cannabis, 3 years and 6 months' imprisonment to run concurrently; and on indictment T20207246, count 1, possessing a prohibited weapon, 5 years and 3 months' imprisonment; count 3, possessing ammunition without a certificate, 2 years and 3 months' imprisonment; count 4, possessing skunk cannabis with intent to supply, 2 years and 6 months' imprisonment; count 5, possessing ammunition without a certificate, 2 years and 3 months' imprisonment. All the sentences on that indictment were ordered to run concurrently and thus the total sentence was one of 19 years and 2 months' imprisonment.
2. He now applies for leave to appeal against sentence and for a representation order after refusal by the single judge. The offences came to light as a result of the interception of material using the EncroChat encrypted messaging service. Conversations between the applicant, the co-accused, Alsi Vata, and others were captured between 10 October 2019 and 13 May 2020. As regards indictment T20207246, on 22 April 2020, at about 10.00 am, the applicant was driving a Volkswagen Caddy van which was being followed by surveillance officers. He drove from Wakefield to Manchester and back, arriving just before 3.25 pm. He met two other men, Mr Orimas and Mr Rokinas. They indicated to

the applicant to drive his vehicle into a quiet side road. Mr Orimas entered the passenger door of the van. Mr Rokinas was observed to put a cardboard box into the back of the van. Armed police intervened and all three men were arrested.

3. Police officers searched the van. In a compartment above the driver's seat, an officer found a bag containing a Grand Power 9 mm pistol and a quantity of bullets. There was also a separate bag containing a quantity of UK banknotes. A cardboard box in the rear of the van was found to contain two bags of herbal cannabis ("skunk"), each weighing 991 grams. The approximate wholesale value of the drugs was £5,000, with a street value of £20,000.
4. The firearm and ammunition were submitted to a laboratory for analysis. The gun was capable of semi-automatic and fully-automatic fire. The bullets were confirmed to be ammunition. They were suitable for use with the gun. A search was carried out at the applicant's home address, and a further quantity of bullets was recovered. Cash totalling £2,100 was also found.
5. The applicant gave a prepared statement when interviewed, saying that the £2,100 was payment to store the ammunition found at his home address and to deliver the weapon in the box, which he now knew to contain cannabis and cash to a third person whom he could not name for fear of retribution.
6. As regards indictment T20207416, count 1 charged a conspiracy to breach section 5(2A) (b) of the Firearms Act 1968, reflecting an ongoing trade in firearms carried out by the applicant and others. Messages showed the applicant acting as a go-between for those seeking to obtain handguns. He received requests for such weapons from various people, including Vata, identified a source for the weapons (normally a contact in Manchester), brokered the sale and supplied the guns. There were frequent references to delays in

obtaining further weapons due to Covid restrictions and indications that the weapons were being imported from Spain. There was evidence that the applicant had previously supplied two handguns to Vata in this way.

7. On 29 March 2020, there was extensive communication between the applicant and Vata. The applicant said that he had access to one silver and one black gun and had another two put down but was unable to access them due to Coronavirus at that time. Through 29 and 30 March, the messages continued as the applicant confirmed the vehicle he would be driving and the location of the meeting. Vata sent him images of bundles of cash. The applicant said, "Okay, as I am driving 300 miles with two straps and it's very dangerous to be on roads at moment."
8. The exchange took place on 30 March in St Albans. Vata's Ford Transit van was captured on ANPR cameras making the journey from Central London to St Albans. The applicant sent a photo of his trainers and trousers to Vata to help him identify him on arrival. After the exchange, Vata travelled to Charlton, where he remained for about 2 hours and then sent messages to the applicant seeking a further weapon, having apparently passed the black gun to an associate of his. The applicant responded that the weapon had already been sold and was in Spain. On 16 April, Vata chased the applicant for "sweets" (meaning bullets). The applicant replied that they were still in Spain and he could not get them sent, pointing out, "You've got enough to kill someone, only need one".
9. In the period from 27 March to 22 April 2020, the applicant supplied at least one further firearm to Vata on 30 March, and was in the course of supplying another, along with ammunition, when he was arrested on 22 April and the weapon seized. That was count 1 on the T20207246 indictment.

10. On 19 April, a deal for the supply of another firearm to an associate of Vata's collapsed at the last moment when the customer could not arrange collection. The applicant messaged Vata, "Mate, happens all the time with them. I get two or three sales a week. Lucky if one goes through. Don't worry, it's gone. His loss."
11. Count 3 related to the applicant's ongoing involvement in the supply of multi-kilogram batches of heroin. He kept notes on his mobile phone in relation to all of the classes and types of drugs he was supplying and brokering, amounts owed and courier costs, running to many pages and hundreds of thousands of pounds. EncroChat material from his device showed him regularly contacting people, seeking to obtain "bottoms" (slang for heroin) or offering to supply heroin to others. Several actual supplies were arranged and carried out on 7 April 2020. The applicant messaged a user named "Codfudge", "Keep the money for the bottoms so that leaves £21,500. I pay my mate that, and as soon as get hold Cov I get sorted. Is that okay?". There were many further discussions relating to money owing in tens or hundreds of thousands of pounds for heroin. Notes found on the applicant's mobile phone recorded debts for "bottoms" in the tens of thousands of pounds. His trade in heroin had a wide geographical spread. On 10 April, he told a contact that he needed 10 kilograms of heroin to be delivered to Oxford, London and Leicester, and was brokering a deal with Codfudge to a total value of £187,500. There was also evidence of several more supplies to Nottingham.
12. Count 4 reflected the applicant's involvement in obtaining and supplying cocaine throughout the period. The chats showed him buying and selling, brokering sales and arranging deliveries of cocaine. On 9 April, the applicant sent a picture of a block of cocaine to nine different contacts on EncroChat and subsequently agreed a sale to one of them. Vata was someone from whom the applicant sought to obtain cocaine and Vata

- himself was involved in supplying kilogram blocks of the drugs to others. On 12 April, the applicant agreed to obtain cocaine from Vata to be supplied to one of his customers in Nottingham. On 16 April, Vata sent pictures of further blocks to the applicant who said he could not afford them at present because he had taken three similar blocks on credit.
13. Count 6 related to a conspiracy to supply cannabis. When the applicant was arrested on 22 April, he had just collected 2 kilograms of skunk cannabis for onward supply. The supply of those drugs was organised by Vata, who had previously supplied similar drugs to him. The applicant told Vata that his customers were very pleased with the product they had received previously.
14. Between 14 and 17 April, the applicant discussed the purchase of 11 kilograms of cannabis with Vata and on 16 April, Vata told him there was 7 kilograms available for collection from “the usual place”. A supply took place on 16 April, when the applicant and Vata met at an address in Dewsbury. Messages from Vata to the applicant said that there would be 11 not 7. The applicant confirmed that he could “place all the weights okay.”
15. On 21 April 2020, Vata messaged the applicant, “Yes, you’ll be at least 47.3 for dogs and 1K for strap drink” (meaning £47,000 for cannabis and £1,000 being the payment for his moving of the firearm). Later the same day, the applicant complained about delivering items to associates of Vata’s not known to him and highlighted the risk that he was running in doing so whilst on a life licence.
16. Chat evidence showed that the applicant was actively attempting to obtain high quality cannabis throughout and supplied it on when he did. He also discussed a cannabis farm property that he and his business partner had obtained and was ready to go in Northampton. Vata offered to “take the property off your hands as I was the biggest

cropper's biggest client. So I have people in every city".

17. The applicant was 50 years old at the date of sentence. He had a number of previous convictions, including for offences of dishonesty and violence. In 2001, he was sentenced to 4 years' imprisonment for blackmail. In 2004, he was sentenced to life imprisonment for an offence of wounding with intent. We have been told that the minimum term was 2 years and 2 months' imprisonment, but that the applicant was not initially released on licence until 2012.
18. The applicant told the author of a pre-sentence report that he had first been released in 2012 and was subsequently told by the police there was a threat to his life. He was given an Osman warning in 2014. He was recalled to custody when he failed to live in approved premises. He said that after his final release in 2015, he relocated to the Newcastle area to break with previous ties and then led a law-abiding life. His partner had received threats via social media. He was told that if he transported the items in his possession on arrest, then no harm would come to her. Plainly his activities went far beyond simply transporting items on one day. He had been employed as a regional sales manager for a steel fabrications company. The judge had a letter from the applicant which set out the programmes he had engaged with whilst in custody and before being released on life licence and in which he explained that he had only agreed to deliver the items to satisfy those who were threatening his partner. His partner also spoke in a letter to a better side of the applicant and confirmed that she had been threatened in February and March 2020. There were also impressive testimonials from a prison chaplain, and evidence of progress the applicant had made whilst on remand in custody for these offences. We have read all the material, and it is clear that he has sought to make the best of his recent time in custody. That is very much to his credit.

19. When he passed sentence, the judge said that the applicant's part in the firearms conspiracy fell into category 1 for harm and category A for culpability, for the purposes of the applicable sentencing guidelines. The judge was entitled to find that this was a large-scale commercial and highly sophisticated enterprise. Guns were coming from abroad and there were obvious connections with other serious criminal activity, namely drugs. Culpability was high. The applicant was properly described as a key facilitator.
20. Such an offence has a starting point of 20 years' custody. In addition, he had a leading role in a category 1 offence, for supplying Class A controlled drugs. A leading role was demonstrated by his organising buying and selling on a commercial scale. Again, a sentence of 20 years or more could be appropriate in respect of both the heroin and the cocaine. The operation was on the most serious and commercial scale, and the quantities involved were significantly higher than the indicative amounts for category 1 harm, namely 5 kilograms.
21. The judge said that the sentences for the drugs offences and the firearms offences should be consecutive although account had to be taken of totality. He took account of the applicant's personal mitigation which we have already referred to and of his previous record. The judge said that the applicant had been using the EncroChat phone since at least October 2019. The messages to his partner had not caused him to start offending. We will return to this aspect in due course.
22. The judge took account of the difficulties in prison arising out of the pandemic and said he would reduce the sentence by 34 months which was the period the applicant had spent in custody whilst on recall under life licence and which would not count towards this sentence. There is no automatic entitlement to this, but the court retains a general discretion so as to achieve a just result - see R v Kerrigan [2014] EWCA Crim 2348. He

said he would give credit of one-third for the plea of guilty on count 1, even though there had been an abandoned basis of plea. The sentences on counts 3 and 4 would attract credit for plea of 20 to 25 per cent. There is no complaint about the amount of these reductions.

23. The judge took a starting point of 19 years' imprisonment on count 1, which he reduced by 2 years on account of personal mitigation. Credit for plea resulted in a term of 12 years and 8 months' imprisonment. On counts 3 and 4, he took a starting point of 20 years' imprisonment, which he reduced by 2 years on account of personal mitigation. Credit for plea resulted in a term of 14 years' imprisonment. Consecutive sentences would result in a term of 26 years and 8 months' imprisonment. The judge reduced this to 22 years on account of totality and then made a further reduction of 34 months for time spent which would not count. The result was a total sentence of 19 years and 2 months' imprisonment which the judge then divided between the respective counts.
24. It is now argued on the applicant's behalf by Mr Knox that the judge's figures were too high and did not take sufficient account of totality, pressure that the applicant had been under and of the undoubted efforts he had made whilst in custody. It is said that the judge was in error in saying that the applicant had used an EncroChat phone since October 2019 and that this related to the phone of a co-accused. The applicant's phone was only reviewed from the end of March 2020. We will proceed on the basis of the information given to us by Mr Knox. Mr Knox has advanced all these submissions to best effect.
25. We have given them careful consideration. Having done so, we are satisfied that a sentence of 19 years and 2 months' imprisonment, after credit for plea, was a sentence that the judge was entitled to come to. It took sufficient account of how the applicant

said he had become involved but the messages we have recounted do reveal participation that shows enthusiasm rather than reluctance. Why ever he became involved in the first place, the applicant was then an active and eager participant. He was involved with large amounts of heroin and large amounts of cocaine. The sentences for these different drugs and for the cannabis were ordered to run concurrently. The firearms conspiracy was also extremely serious. The applicant had himself observed that only one bullet was needed to kill someone. All the while, the applicant was on licence from a life sentence. The applicant had made specific reference to this in a message and was not deterred by it. The judge made specific allowances for the applicant's personal mitigation, a reduction of 4 years in all, and for time spent on remand. These were all matters for the judge to assess and balance. In all these circumstances, it is not arguable that the sentence was in anyway wrong in principle or manifestly excessive and this application must be refused.

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

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