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IN THE COURT OF APPEAL
CRIMINAL DIVISION



CASE NO 202303589/A5
[2024] EWCA Crim 792

Royal Courts of Justice
Strand
London
WC2A 2LL

Thursday, 20 June 2024

Before:

LORD JUSTICE WARBY
MR JUSTICE HOLGATE
MR JUSTICE MURRAY

REX
V
JOHN JAMES DILLON

Computer Aided Transcript of Epiq Europe Ltd,
Lower Ground Floor, 46 Chancery Lane, London, WC2A 1JE
Tel No: 020 7404 1400; Email: rcj@epiqglobal.co.uk (Official Shorthand Writers to the Court)

NON-COUNSEL APPLICATION

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

MR JUSTICE MURRAY:

1. On 11 May 2023 in the Crown Court at Liverpool, the applicant, John Dillon, then aged 54, pleaded guilty to one count of conspiracy to supply a controlled drug of class A (count 1 on the indictment), two counts of conspiracy fraudulently to evade the prohibition on the importation of a controlled drug of class A (counts 4 and 5) and one count of possessing criminal property (count 7). Each of the drugs conspiracies involved one or more named individuals as co-conspirators as well as persons unknown and was concerned with the supply or importation of cocaine during the period 1 January 2020 to 15 February 2023.
2. On 28 September 2023 in the Crown Court at Liverpool, HHJ Swinnerton imposed concurrent sentences on all four counts, making a total sentence of 18 years nine months' imprisonment. The individual sentences were as follows:
 - a. count 1: 16 years six months' imprisonment;
 - b. count 4: 18 years nine months' imprisonment;
 - c. count 5: 12 years' imprisonment; and
 - d. count 7: 27 months' imprisonment.
3. The applicant renews his application for leave to appeal his sentence following refusal by the single judge.

The facts

4. The three drugs conspiracies of which the applicant was convicted came to light as a result of the penetration of the EncroChat network by European law enforcement agencies in 2020. The network allowed encrypted communications between various users of the system using dedicated network-specific communication devices (mobile phones). Analysis showed that the network was predominantly used to facilitate serious organised criminal activity.
5. Each EncroChat device was associated with a specific user name or "handle". Having intercepted a large cache of encrypted communications data sent over the network, law enforcement authorities began the task of linking or attributing EncroChat handles to specific individuals.
6. The evidence in this case is principally comprised of intercepted encrypted messages and images sent and received by the handle "deepoasis" during the data capture period of 14 March 2020 to 2 June 2020. The United Kingdom authorities identified the applicant as the user of the handle "deepoasis". During the data capture period "deepoasis" had been in contact with 24 other EncroChat handles.
7. Count 1 concerned a conspiracy to supply cocaine in wholesale quantities. The applicant supplied others directly and occasionally acted as middleman, brokering deals from

others. The evidence showed that he conspired to supply 19 kilograms of cocaine over the data capture period.

8. Count 4 concerned a conspiracy to import cocaine from Colombia to the UK. The applicant exchanged numerous messages with the EncroChat handle "elusivehat", who was based in Colombia. This conspiracy was referred to as the "Far Job" in encrypted communications between the applicant and others. The user of EncroChat handle "elusivehat" indicated to the applicant that the consignment would be sent by Colombian government transport. Messages exchanged up until the end of the data capture period in June 2020 showed, according to the prosecution case, that the applicant had entered into an agreement to import approximately 50 kilograms of cocaine into the United Kingdom over several planned consignments. The applicant had invested £94,000 in the scheme, although he maintained in his basis of plea that some of this was invested on behalf of others. The applicant had set up a dummy company to facilitate the conspiracy. Messages sent on 25 May 2020 suggested that by that date at least 20 kilograms of cocaine had been loaded for transport. The prosecution was not able to say whether the shipment actually arrived in the UK.
9. Count 5 concerned a conspiracy to import cocaine into the UK from Holland and Belgium. This conspiracy is referred to as the "Dock Job" in encrypted communications between the applicant and others. The evidence showed that the applicant was involved in an agreement to import 100 kilograms of cocaine from Europe. The applicant's role was to set up a meeting between a contact with the EncroChat handle "battlehawk" and the applicant's own contact in the Liverpool docks. The messages indicated that the applicant vouched for the credentials of both parties and arranged a meeting on 2 May 2020 between those parties, which he was not expected to, and did not, attend. There was no evidence from the data capture indicating any further involvement by the applicant in this conspiracy.
10. Count 7 concerned a discovery, following the execution by the police of a search warrant on 15 February 2023 at the applicant's home address, of cash totalling £10,900, which was found concealed inside a toy box at the property.
11. Prior to his conviction for these offences, the applicant had seven convictions for seven offences. The most recent conviction was in 2006 for an assault on a police constable for which he received a community order. None of the earlier offences, committed while in his twenties, was a drugs offence or otherwise relevant.
12. The applicant submitted a basis of plea. A trial of issue was provisionally fixed for 28 September 2023. There were then discussions between the parties narrowing their differences, such that it was agreed that, subject to the better view of the court, a trial of issue was no longer required. The agreed position was set out by the prosecution in a note prepared for the court for a mention hearing on 4 September 2023 ("the Mention Note"). Just over three weeks later, on 28 September 2023, the judge proceeded to sentence on the agreed factual position.

The grounds of appeal

13. Much of the judge's approach to sentence is accepted by the applicant. He accepts that it was appropriate for the judge to treat count 4 as the lead offence and to pass concurrent sentences for the other counts. The applicant accepts that he played a leading role in relation to counts 1 and 4 and a significant role in relation to count 5, as the judge had found. The judge's determination of the quantum of drugs involved in each conspiracy for the purposes of determining harm is also not disputed by the applicant. He accepts therefore that this is a case where in relation to counts 1 and 4 the starting point for sentence would exceed 20 years' custody. The applicant accepts the judge's determination that a 25 per cent discount for his guilty pleas was the appropriate level.
14. The applicant's core submission is that, within the agreed parameters, the judge failed to reflect the true factual position of the applicant's involvement, particularly in relation to counts 1 and 4, which to an extent mitigated the severity of the applicant's offending. As a result the judge adopted too high a starting point for each of those counts. The judge adopted a starting point of 25 years' custody for count 4 and 22 years' custody for count 1, before in each case applying 25 per cent credit for the applicant's guilty pleas.
15. The applicant submits that:
 - a. for count 4 the judge should have adopted a starting point towards the bottom of the 20 to 30-year range reserved for cases of drugs conspiracies on a commercial scale involving quantities significantly higher than the Sentencing Council guideline amounts of Category 1 harm; and
 - b. for count 1 the judge should have adopted a correspondingly lower starting point at or below the bottom of the 20 to 30-year range.
16. Thus, for example, in the applicant's counsel's advice on the merits of an appeal against sentence, it is submitted that:
 - a. in relation to count 1 although the applicant had a leading role, his role was nonetheless principally a brokering role which mitigated his culpability, but the judge failed to properly reflect this in his starting point for sentence; and
 - b. in relation to count 4, although the applicant had a leading role, his role was clearly subordinate to that of the user of the "elusivehat" handle, and the judge was wrong to rely on a number of communications sent by "elusivehat" in relation to the scale of the offending that did not reflect the applicant's lesser involvement (for example, the references by "elusivehat" to sums of money in excess of £1 million for the conspiracy as a whole, when the scale of the applicant's investment, including on behalf of others, was £94,000).

Decision

17. The single judge rejected these submissions, saying:

"This was a lengthy sentence for a man of relatively good character, reflecting the serious nature of your offending. The Judge was required to sentence for three conspiracies, involving the supply and importation of very large quantities of cocaine. The Judge considered your role in each of the conspiracies carefully, reaching appropriate conclusions on categorisation. As is rightly conceded on your behalf, the starting point after a trial fell in the range 20-30 years. As has been said by the Court of Appeal in previous cases, once in that band there is an element of 'bunching' and the scope to differentiate for amounts and roles is compressed. The Judge decided that, looked at overall, your offending justified a sentence in the middle of the range. That was a view open to him. In those circumstances, your sentence is not arguably manifestly excessive."

18. We agree. In determining the appropriate sentence for each of the applicant's conspiracy offences, the judge was required to carry out a "fair but realistic assessment of the overall scale of the conspiracies, actual and intended operations": R v Cavanagh [2021] EWCA Crim 1584 at [8]. It is clear that the judge did just that.
19. As Cavanagh makes clear at [8], the judge was not limited to "the weight of product" that can be shown to have been supplied in the data capture period, which only represented a short portion of the conspiracy. Provided that the judge when considering the applicant's role in each conspiracy remained true to the applicant's basis of plea, as modified by the agreed factual position reflected in the Mention Note, he was entitled to infer from all the facts that each conspiracy lasted for a significant period before and after that window.
20. The sentence for the lead offence (count 4) needed to reflect the overall criminality of this offending. It involved three significant class A drugs conspiracies with a number of co-conspirators, international links, sophistication, the use of the EncroChat network, multiple communications between the applicant and at least 24 other persons on the EncroChat network and multiple transactions over a substantial period. Counts 1 and 4 involved together at least 39 kilograms of cocaine on the agreed factual position and count 5 involved 100 kilograms of cocaine, although there was no evidence of actual importation. In these circumstances the applicant's lack of offending over a substantial period and a lack of relevant convictions did not provide much mitigation.
21. For these reasons it is not arguable that the total sentence imposed on the applicant for this offending is manifestly excessive. Accordingly, we refuse the applicant's renewed application for leave to appeal against sentence.

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

Lower Ground Floor, 46 Chancery Lane, London, WC2A 1JE

Tel No: 020 7404 1400

Email: rcj@epiqglobal.co.uk