IN THE COURT OF APPEAL

CRIMINAL DIVISION

ON APPEAL FROM THE CROWN COURT AT BRADFORD

MR RECORDER MENARY T20227421/T20230016

CASE NO 202303650/A1

NCN:[2024] EWCA Crim 978

Royal Courts of Justice
Strand
London
WC2A 2LL

Tuesday, 30 July 2024

Before:

LORD JUSTICE BEAN
MRS JUSTICE FARBEY DBE
HER HONOUR JUDGE MUNRO KC
(Sitting as a Judge of the CACD)

REX
V
KHUMRAN MOHAMMED TAJ

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MR A KING appeared on behalf of the Appellant

J U D G M E N T

1. LORD JUSTICE BEAN: The appellant Khumran Mohammed Taj, now 41 years old, appeals by leave of the single judge against total sentences of imprisonment of 18 years imposed on him by Mr Recorder Menary in the Crown Court at Bradford on 21 September 2023. Mr Taj had pleaded guilty to drugs offences on two indictments, one originally brought in the Bradford Crown Court and the other brought in the Luton Crown Court.
2. The facts of the Bradford case were that the appellant and two co-accused, Collins and Thornton, were linked to a police investigation into an organised crime group involved in the supply of cocaine, crack and heroin across Calderdale, West Yorkshire. The conspiracy had been managed and delivered through a drugs line, known as 'the Billy line' which had been in the possession and control of the appellant when he was arrested in Luton on 26 January 2022. The drugs line had been taking an average of 408 calls per day. A fleet of seven cars had been used to transport drugs and to avoid detection. During the period of the conspiracy the appellant would receive orders for drugs for the Billy line. He would use another burner phone to ensure that the drugs were delivered and to keep the Billy line free for incoming orders. The co-accused had been recruited by the appellant to deliver and sell class A drugs on his behalf. In a three-month period there were several hundred contacts between the appellant and each of the two co-accused. Messages on the mobile phones of the co-accused when they were arrested in October 2021 linked the appellant to the conspiracy.
3. Turning to the Luton indictment. On 26 January 2022 police executed a search warrant at an address in Luton of which the appellant was the sole occupant. A quantity of cash and keys for four vehicles were found. As a result of their searches the police found in excess of 2,000 wraps of controlled drugs which included just under seven kilograms of heroin

valued at between £194,000 and £371,000. The cocaine and crack cocaine had a much lower value of the order of £9,600. The cannabis had a value of between £3,600 and £4,900. The total valuation of the drugs seized was thus between £200,000 and £400,000.

4. The evidence indicated that the appellant regularly supplied drugs which in turn were sold at street level. The appellant was in charge of the enterprise. He purchased and supplied the drugs to others who were then involved in further drug supplies. Regular orders were placed by a man known as El Cabrone to whom the appellant sold on a wholesale basis. Another individual brought drugs daily through the postal service. The drugs had been compressed and packaged in order to resemble purchases from source. The appellant was also in possession of other substances commonly used in the process of cooking and preparing drugs for sale such as cutting agents. The drugs found had below average purity. They had been cut with a non-controlled substance, suggesting that they had been intended for street sale rather than wholesale. Thus the appellant had an online business in Luton and the Bradford conspiracy selling via the Billy line.

5. The appellant was not of previous good character. He had 11 convictions for 45 offences spanning the period 2001 to 2019, including 27 drugs offences. Notably on 15 December 2011 in the Crown Court at Bradford he had been sentenced to a total of nine years' imprisonment for offences including some related to the supply of class A drugs between 2009 and 2011.

6. In sentencing the appellant, the Recorder accepted that there was a certain amount of overlap between the offending contained in the Bradford and Luton indictments in respect of the nature of the offending and of the period in which it was taking place. The Recorder stated that he would deal with the offence of conspiracy (that is the Bradford

count) and the Luton offences as two separate categories. He identified the offending as representing a very significant, well-organised business being carried out at a time when the appellant had previously served a significant sentence involving class A drugs. He described the present offences as dealing in class A drugs "on the most serious and sophisticated scale". The Luton operation was a trade in class A drugs on a commercial and wholesale level. The West Yorkshire offending was a county lines operation which the appellant controlled. The judge noted the presence of paraphernalia and equipment, the sophistication of the operation and the quantities involved in what he described as a significant enterprise.

7. It was accepted on behalf of the appellant that his role was a leading role. directing or organising buying and selling on a commercial scale, with close links to the original source and an expectation of substantial financial or other advantage on the basis of the drugs recovered. There was no dispute that the offending fell to be categorised as Category 1A of the Sentencing Council guidelines given the appellant's leading role and the quantities, simply of the heroin recovered from the Luton address.

8. For the Bradford conspiracy offence it was less clear what quantities had been involved but plainly they were substantial given the description of the county lines operation which we have set out. The judge considered that the Bradford offence, given its serious nature and the previous convictions of the appellant as aggravating features, was offending at the top of category 1A, giving a sentence of 16 years after a notional trial. In respect of the Luton offences, the most serious of which was possession of class A drugs with intent to supply, the judge identified a global sentence, again after anotional trial, in the region of 16 years. He acknowledged that simply imposing consecutive sentences would result in a total of 32 years before credit for plea. He considered that he should

reduce the figure to a total of 24 years before credit for plea, including a reduction to reflect the delay in proceedings and the fact that there was some overlap between the two offences. There was and is no dispute that the appropriate credit for plea was 25 per cent, the appellant having pleaded guilty in respect of both indictments at the pretrial preparation hearing in the Crown Court. He thus reduced the total sentence to one of 18 years.

9. In passing sentence in open court the Recorder said that he was imposing a total sentence of 18 years but did not identify the sentences for the individual offences. He said he would provide details of the individual sentences to the court associate in due course. This was not correct procedure, although it does not affect the substantive outcome of the case. We will revert to the technical issue later in this judgment.

10. Mr King's primary ground of appeal is that the Recorder erred in imposing consecutive sentences and not treating the facts as representing a single course of criminal conduct. The appellant's contention is that although the two cases were investigated by two police forces, they were all part of a single drugs supply enterprise in which the appellant was involved and it was wrong to impose consecutive sentences for charges which were in fact different descriptions of the same activity. The arrest for the Bradford case yielded all the evidence for the Luton case. When the appellant was arrested at his home address in Luton and his stock of drugs and equipment was found, what was not discovered was any separate criminal enterprise from that which was being investigated or had been investigated by the West Yorkshire Police. The appellant's contention is that as the two indictments described a single course of criminal conduct, the sentences for all of the offences should have been concurrent. Mr King accepts that the appellant's antecedents, the multiplicity of drugs and the scale of supply would lead to an uplift from the starting

point of 14 years but even placing it at the top of the Category 1A range, namely a 16-year starting point following a notional trial, a reduction of 25 per cent would result in a sentence of 12 years. The judge's figure of 18 years represents a notional sentence after trial of 24 years which Mr King argues is simply too high.

11. We think it is a semantic distinction as to whether the offending is to be treated as a single course of conduct or as two separate operations in Bradford and Luton. Certainly there is overlap between the two, but, viewing the matter as a whole, the appellant played the leading role in an operation taking place in two separate parts of the country. He was at the top of the organisation which sold drugs online in wholesale quantities in Luton; he was also at the top of a thriving county lines business in West Yorkshire, involving some 400 calls per day to the Billy line and involving seven cars to take the drugs to their customers. These drugs were mainly heroin but also crack cocaine. The period in which the two operations was going on stretched to several months in Bradford and about a year in Luton.

12. The rubric to the Sentencing Council guideline states that: "Where the operation is on the most serious and commercial scale, involving drugs of significantly higher quantity than Category 1 [that is to say five kilos in the case of heroin], sentences of 20 years and above may be appropriate depending on the offender's role." If the offending of Mr Taj is to be viewed as a whole, which we think it can be, then in our view the rubric is clearly engaged.

13. While this is a case where the rubric is engaged we accept that it is not the very worst case of its kind. The case law makes it clear, for example, that a total sentence after trial in the region of 30 years is reserved for drugs offences involving colossal quantities of class A drugs far in excess of those with which Mr Taj was involved. We have

concluded that the judge's notional starting point of 24 years was somewhat too high. In our view the appropriate notional sentence after a trial was 22 years. Applying the discount of 25 per cent (to which the appellant was entitled for his plea) this should have produced a sentence on the class A counts of sixteen-and-a-half years.

14. We turn to the technical issue raised by the Registrar's staff. As we have said, the judge simply announced the total sentence in court but did not state in open court how it was made up. He later supplied those details to the court staff and they were entered on the court log. Although the order for imprisonment simply states 18 years on every count concurrent, which is inaccurate, the court log gives the following sentences. On the Bradford indictment there was a single count of conspiracy to supply class A drugs for which nine years' imprisonment was imposed. On the Luton indictment there were eight counts. Count 1 was being concerned in the supply of a controlled drug of class A (heroin) on which nine years consecutive was imposed. There were then concurrent sentences of nine years' imprisonment on Luton counts 2, 3, 5, 6 and 7, namely those of being concerned with or possession of controlled drugs of class A with intent to supply and two years concurrent on counts 4 and 8 involving cannabis.

15. The sentences should all have been pronounced in open court. However, it is not suggested that this renders any of the sentences unlawful. This court said in Ayo [2022] EWCA Crim 1271 at paragraph 118:

> "... the judge – with the agreement of counsel – did not pronounce all the sentences in open court. Instead, she pronounced the extended sentences which she imposed on 10 counts. The sentences on all other counts were not mentioned in court, but were instead set out in a schedule which the judge provided to counsel. We understand why that seemed a convenient course in a case of this scale and complexity, but it was inappropriate. As was observed in R v Whitwell [2018] EWCA Crim 2301, [2019] 1 Cr

> App R (S) 29 at [24], 'it is necessary for the sentences on each count to be pronounced by the judge in open court'. The statutory duties imposed by s52 of the Sentencing Code apply to 'a court passing sentence'. Even in a case such as this, the sentence on each count must be passed in open court. It can of course be done in a comparatively brief way, for example by reference to the number of the count, or counts, in the indictment on which a particular sentence is imposed."

At paragraph 120 the court added:

> "These errors do not render the sentencing, or any part of it, unlawful. We shall correct them by pronouncing the sentences imposed on each count in open court when this judgment is handed down."

16. We will follow the same procedure in this case. We shall amend the sentences as follows. The sentence on the single Bradford count of conspiracy to supply a class A drug will be amended to sixteen-and-a-half years' imprisonment. The Luton sentences, which will all be concurrent with the Bradford sentence and with each other, will be as follows: on counts 1, 2, 3, 5, 6 and 7, all concerned with class A drugs, we shall substitute sentences of sixteen-and-a-half years' imprisonment. The sentences on counts 4 and 8 (that is the concurrent sentences relating to cannabis) will remain at two years. The result is that, although we have increased the sentences on some counts, because they will all be concurrent the total gives effect to the view we have formed that the overall sentence on the appellant should be reduced to a modest extent.

17. The appeal is allowed to the extent we have indicated. The total is now 16-and-a-half years' imprisonment. The Serious Harm Prevention Order imposed by the Recorder remains unaffected.

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

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