



Neutral Citation No. [2023] EWHC 2685 (SCCO)

Case No: 202100664 A3
SCCO Ref: SC-2022-CRI-000151

IN THE HIGH COURT OF JUSTICE
SENIOR COURTS COSTS OFFICE

Thomas More Building
Royal Courts of Justice
London, WC2A 2LL

Date: 11/10/2022

Before :

COSTS JUDGE NAGALINGAM

Between:

R

-v-

David Wilson

and

IN THE MATTER OF AN APPEAL AGAINST REDETERMINATION

Michael Clare

Appellant

- and -

The Lord Chancellor

Respondent

Hearing date: 22/09/2023

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

COSTS JUDGE NAGALINGAM

Costs Judge Nagalingam:

1. The appeal has been successful for the reasons set out below. The appropriate additional payment, to which should be added the sum of £100 paid on appeal and £280 costs, should accordingly be made to the Appellant.
2. The Appellant is an advocate who represented the Defendant and subsequently submitted a claim for a brief fee of £6,640 to reflect a total of 28.5 hours of time spent in preparation for and attendance in the Court of Appeal relating to an appeal by the Attorney General as to the sentence received by the Defendant.
3. The Determining Officer's written reasons reflect that the Appellant's worklog demonstrates 23.5 hours of work up to 27 March 2021. That time is summarised by the Determining Officer as "reading the Attorney General's draft and final draft submissions, reading sentencing guidelines and case law, and drafting the Response".
4. The Determining Officer originally allowed 10 hours for the work up to 27 March 2021 on the basis that "all this work was done within six weeks of counsel representing Wilson at the Crown Court. The facts of the case would have been very familiar to him as would the case law which counsel relied upon at the Crown Court sentencing hearing and the sentencing guidelines."
5. The further 3 hours 15 minutes claimed post 27 March 2021 and the claim for 1 hour 40 minutes attending the hearing are not challenged. As such, the Determining Officer allowed 15 hours in total. The Appellant maintains a claim for 28.5 hours.
6. This appeal also relates to the rate allowed. The Appellant originally claimed £240 per hour whereas as the Determining Officer has allowed £100 per hour. The Appellant contends that a rate in excess of £100 per hour ought to be allowed.

Background

7. The Defendant was charged with multiple child sex offences on a 96 count indictment. 52 of the counts concerned offences against children under the age of 13. It does not assist, and would needlessly lengthen this judgment, were I to set out in full all 96 counts.
8. In summary, over a period of years, the Defendant sexually abused 52 boys under the age of 16 hundreds of times. All of the abuse took place online. The Defendant created multiple social media accounts, posing as a young girl and thereafter causing or coercing his victims into sharing intimate images of themselves. The Defendant thereafter engaged in threatening his victims with sharing such images with their friends and family unless they provided further images, later escalating to demands for videos not only of his victims but of their younger siblings, including engaging in sexual acts.
9. The Defendant left his victims often feeling suicidal but showed no remorse when faced with such desperation from those whom he abused.
10. In terms of the seriousness and sheer depth of offending I consider it reasonable to cite a sentencing comment from Judge HHJ Overbury where he observed that in

“..over 40 years of involvement in the criminal justice system, this is the worst case I have ever experienced”, with, “astonishing levels of depravity”.

11. The Defendant initially pleaded not guilty to all charges. However, following later guilty pleas he was sentenced in the Crown Court at Ipswich on 10 February 2021 to an extended determinate sentence of 33 years imprisonment, comprising a custodial term of 25 years and an extension period of 8 years.
12. The Attorney General subsequently referred the sentence to the Court of Appeal on the basis it was unduly lenient and the Appellant was assigned to represent the Defendant in the Court of Appeal. On 27 May 2021 the Defendant’s sentence was increased to 36 years imprisonment with a custodial term of 28 years and an extension period of 8 years.

Regulations

13. (The Criminal Legal Aid (Remuneration) Regulations 2013 (‘the 2013 Regulations’) apply in this appeal. Schedule 3 to the Regulations outlines the following relevant provisions:

“General Provisions

- (i) The provisions of this Schedule apply to proceedings in the Court of Appeal.
- (ii) In determining fees the appropriate officer must, subject to the provisions of this Schedule –
 - (a) take into account all the relevant circumstances of the case including the nature, importance, complexity or difficulty of the work and the time involved; and
 - (b) allow a reasonable amount in respect of all work actually and reasonably done.

...

Advocate’s fees for proceedings in the Court of Appeal

9.

- (iv) Where it appears to the appropriate officer, taking into account all the relevant circumstances of the case, that owing to the exceptional circumstances of the case the amount payable by way of fees in accordance with the table following sub-paragraph (i) would not provide reasonable remuneration for some or all of the work the appropriate officer has allowed, the appropriate officer may allow such amounts as appear to the appropriate officer to be reasonable remuneration for the relevant work”.

Decision

14. The Legal Aid Agency elected to not attend the hearing of this appeal, and instead regard has been given for the original decision and the Determining Officer’s written reasons dated 20 September 2022.

15. This decision addresses the time spent and the rate to be applied.
16. I wish to make it clear that at no time do I consider the Determining Officer called into question the veracity of the time claimed by the Appellant. Instead, citing the Appellant's years of experience and expertise, the Determining Officer concluded that the work ought to have been conducted with greater efficiency and expediency. Further, citing the Appellant's prior involvement, the Determining Officer concluded that the time allowed avoids any risk of duplication of work for which the Appellant has already been remunerated.
17. The Appellant was tasked with addressing the Court of Appeal in rebuttal of three arguments advanced by the Attorney General in support of the argument that the Defendant's sentence was unduly lenient.
18. The three arguments were that only a life sentence was justified for the offences committed, that an overall sentence of 37.5 years was too short (being the notional number of years presumed to have been in the mind of the sentencing judge before giving credit for guilty pleas), and that allowing full credit of one third was overly generous.
19. I do not consider that the Determining Officer has adequately taken into account the differences between sentencing in the Crown Court and the issues raised by the Attorney General, subsequently interrogated in the Court of Appeal.
20. The Attorney General sought to introduce factors that had not been considered and so did not fall to be addressed when sentencing was dealt with in the Crown Court. As such, whilst the Appellant's prior involvement on behalf of the Defendant no doubt assisted in reducing the number of hours spent, I do not consider that reduction can reasonably be condensed down to the time allowed by the Determining Officer.
21. The importance of the matters addressed in the Court of Appeal cannot be understated. Firstly, notwithstanding the sheer scale of the abuse the Defendant had engaged in, the deprivation of his liberty beyond the initial term for which he had been sentenced represented a significant and important development. Secondly, the application of a life sentence in a non-contact sexual offending case would represent a significant development with regards to how the sentencing of such cases were treated. That factor was complicated by the fact that the tariff for sexual offending had increased across the board in recent years, but had to be set against when the offending took place.
22. There is also the importance to the Defendant's victims and survivors of his abuse, as well as their families, and the wider public interest as to how such crimes are treated and deterred.
23. In terms of whether a life sentence was appropriate, it is of relevance that in the Crown Court the prosecution agreed that a life sentence was not suitable. As such, it was not a line of argument which the Appellant had previously been required to address.
24. I accept the Appellant's submissions that the case law surrounding the issue of life sentences is complex, and as a consequence something the Court of Appeal has grown

used to addressing in seeking to resolve what would otherwise be a landscape of conflicting and contradictory sentencing practices.

25. I also accept that there was a burden on the Appellant with regards to trying to draw a distinction with recent changes in sentencing tariffs brought about as a result of other high profile sexual offending cases.
26. In terms of the time involved, the Attorney General cited no less than 14 cases and authorities which had not been relevant to the matters before the Crown Court when passing sentence.
27. Whilst the Appellant accepts some familiarity with some of those cases, I do not consider the overall time claimed is at odds with reviewing or familiarising oneself with that volume of caselaw.
28. If anything, it is only because the Appellant was the counsel who appeared in the Crown Court is a claim for such a limited number of hours been possible. Further, the fact that the Appellant is a barrister of many years standing with a great deal of experience does not excuse the Appellant from carrying out his duty in a professional and non-negligent manner.
29. Ultimately, the Appellant is both a representative of the Defendant and an officer of the court, with duties to both. Neither a party nor a court will readily accept an unprepared or poorly prepared advocate. The time spent is a reflection of the importance, complexity and volume of documentation which fell to be considered.
30. The documents included consideration of offences outside of this jurisdiction but relevant to a finding of dangerousness, which is a relevant factor in sentencing. Thus the consideration of evidence pertaining to offences for which the Defendant had not been convicted is also a relevant factor. For context, a further estimated 5,000 victims approximately had been identified worldwide in what was already a prolific case of multiple abuses.
31. With regards to the time spent, the appeal is successful and once applied to the allowed rate, should lead to balancing payment being made to the Appellant.
32. The issue of the applicable rate, as is so often the case, is a matter to be taken on the facts of the case and the demands of the work undertaken.
33. The Appellant has conceded the work done in the Court of Appeal in this case is not analogous with *Evans v The Serious Fraud Office* [2015] EWHC 1525 (QB), both on the facts and in recognition of that being an assessment under section 19 of the Prosecution of Offences Act 1985 (private rates).
34. For the very same reasons as my allowance of the time as claimed, I am not persuaded that a rate of £100 per hour, as allowed, is reasonable. In the *Evans* case, Hickinbottom J reflected on a claim for £600-£750 for leading counsel and £250-£375 for junior counsel, stating:

“I consider those rates are “top end” rates for criminal work and, whilst I do not say that in another case they might not be exceeded – although, I suspect, not by very much – they take into account the special experience and expertise of particularly

eminent leading counsel, from which flows more efficient working than would be the case with less experienced and expert counsel”.

35. The Appellant had over 30 years of experience at the time of his involvement and the time I have allowed already takes into account the efficient working in this case which has resulted from that experience.
36. However, the central focus of the Appellant’s involvement for the purpose of this criminal costs appeal was their involvement in arguments as to sentencing in the Court of Appeal. The decision in Evans suggest that £250 per hour was the starting point for “top end” rates in 2015.
37. In terms of addressing the Attorney General’s three limbed arguments as to seeking a review of the Defendant’s sentence, I consider the work undertaken falls towards the top end on two of those three limbs. Namely the application of a life sentence, and the application of a longer term of years in the alternative based on recent changes to the approach to sentencing in sexual offence cases.
38. I remind myself that the Appellant was not assisted by a junior, nor an instructing solicitor or even a legal assistant. I also remind myself that the Defendant was the central figure in the offending. As such, there was no work of other advocates to assist the Appellant.
39. I have taken into account that investigations of the Defendant involved two National Crime Agency operations, collectively spanning the period from 2014 to 2020. I also note HHJ Goodin’s comment, in the Crown Court, that this was “..a highly unusual case of considerable factual and technical complexity, reflected in the 96 Count Indictment, the sheer weight of the evidential material and the nature of each Count (and in the level of Press interest)”.
40. Those are no doubt factors which were, in part, present in the sentencing review before the Court of Appeal. However, one must be careful not conflate the demands of trying the underlying offences and arguments as to sentencing in the Crown Court, with the work in the Court of Appeal in reviewing the sentence given.
41. The allowance I make is £175 per hour which is in recognition of the unique factors present in this case, and the expediency with which the work was conducted by this Appellant.
42. The Defendant was a prolific offender whose crimes drew much public interest, and raised difficult questions as to the threshold for a life sentence for non-contact sexual offending via coercive and threatening tactics deployed online. Arguments as to findings of dangerousness, relevant as they are to sentencing, brought into focus the Defendant’s global abuse which had deployed on a near industrial scale. There was also the issue of how a stricter sentencing approach to such offending is appropriately reflected in offences which took place before such an approach was adopted.
43. The appeal is therefore allowed in terms of hours (28.5) and rates (£175).

