



Neutral Citation No. [2023] EWHC 3483 (SCCO)

Case No: T20217210

SCCO Reference: SC-2022-CRI-000147

IN THE HIGH COURT OF JUSTICE
SENIOR COURTS COSTS OFFICE

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

Date: 9 June 2023

Before:

COSTS JUDGE LEONARD

R

v

SHEHU

**Judgment on Appeal under Regulation 29 of the Criminal Legal Aid (Remuneration)
Regulations 2013**

Appellant: **Harris Solicitors**

This Appeal has been dismissed for the reasons set out below.

COSTS JUDGE LEONARD

1. This appeal concerns whether, under the Graduated Fee provisions of Schedule 2 to The Criminal Legal Aid (Remuneration) Regulations 2013, the Appellant is due a trial fee or the fee appropriate to a guilty plea. The issue turns upon whether, for the purposes of the 2013 Regulations, a “Newton Hearing” (a fact-finding hearing for sentencing purposes, which is treated as a trial under the Regulations) took place.
2. The relevant Representation Order was made on 9 July 2021. The 2013 Regulations apply as in force at that date. Schedule 2 at paragraph 1 provides the following definitions:

... “Newton Hearing” means a hearing at which evidence is heard for the purpose of determining the sentence of a convicted person in accordance with the principles of *R v Newton* (1982) 77 Cr App R 13...

3. Paragraph 2(4) of Schedule 2 provides:

‘...Where, following a case on indictment, a Newton hearing takes place—

- (a) for the purposes of this Schedule the case is to be treated as having gone to trial;
- (b) the length of the trial is to be taken to be the combined length of the main hearing and the Newton hearing; and
- (c) the provisions of this Schedule relating to cracked trials and guilty pleas will not apply.’

4. Because of these provisions, whether there has been a Newton hearing, as opposed for example to a sentencing hearing, may have a significant effect on the Graduated Fee payable under the 2013 Regulations. Such is the case here.
5. It may be useful for me to restate some of the principles referred to in previous judgments on the question of whether there has, in a given case, been a Newton hearing.
6. In *R v Robert John Newton* (1983) 77 Cr. App. R. 13, the Court of Appeal identified the three forms of what is now known as a “Newton Hearing”. The purpose of such a hearing is to resolve disputed facts, which may be put before the jury for a decision. Alternatively the judge may hear evidence and then come to a conclusion; or the judge may hear no live evidence but instead listen to submissions from counsel and then come to a conclusion.
7. On the wording of the 2013 Regulations in isolation, it might appear that live evidence must be heard for a hearing to qualify as a Newton hearing. In fact, if reference is made to the principles of *R v Newton*, to which they expressly refer, it becomes apparent that such is not the case.
8. I have been referred by the parties to several decisions by Costs Judges, including my own, which apply that approach. They include *R v Johnson* [2017] 1 Costs LO 125; *R v Hoda* (SCCO 11/15, 13 May 2015); *R v Morfitt* (SCCO 55/16, 29 July 2016); and *R v Makengele* (SCCO SC-2019-CRI-000072, 6 January 2019).

The Background

9. This case turns on the events of 2 September 2022. The Appellant seeks payment of a trial fee, on the basis that there was a Newton hearing on that date. The Determining Officer took the view that there was no Newton hearing and that payment was due for a guilty plea.
10. I am grateful to Mr McCarthy for the Appellant, and Ms Weisman for the Respondent, for helpful written submissions from which I have extracted the following brief account.
11. The Appellant represented Revi Shehu (the Defendant”) in the Crown Court at Bradford. The Defendant was charged alongside six co-defendants on a seven-count indictment. He faced one count of production of a class B drug (Cannabis). His role involved taking charge of the property at which cannabis plants were being grown and looking after the plants.
12. On 6 August 2021 the Defendant attended court for a pre-trial preparation hearing and pleaded guilty. The matter was put over for sentencing to take place at the conclusion of the trial of his co-defendants.
13. After the Defendant entered his guilty plea, his defence team asked for his matter to be listed for a hearing so that he could vacate his plea. That was set down for a hearing which, for reasons that are not entirely clear, did not take place. The Defendant instead submitted a basis of plea, filed on 1 September 2022.
14. On 2 September 2022 the Defendant appeared before HHJ Nadim for a sentencing hearing. He was sentenced to 12 months’ imprisonment.
15. Mr McCarthy for the Appellant makes the point that whether the 2 September 2022 hearing was listed as a Newton hearing, rather than (as, apparently, it was) a sentencing hearing, is not to the point. The question is rather whether it can properly be characterised as a Newton hearing.
16. In that respect the Appellant relies upon the fact that the Prosecution did not accept the Defendant’s written basis of plea, arguing that the Defendant played a significant, rather than as he contended a lesser, role in the cannabis operation: and upon the fact that the sentencing Judge heard submissions before making a finding to the effect that the Defendant did play a significant role, and sentencing accordingly.
17. The Appellant also relies upon a note from Mr Headlam, counsel representing the Defendant at the hearing, who says that because of a clear dispute between the Prosecution & the Defence as to the role played by the Defendant in respect of his Guilty plea, the Judge decided that the matter could only be resolved by a Newton Hearing by way of Submissions from Counsel.
18. Having reviewed a transcript of the proceedings on 2 September 2022, I am unable to agree with either the Appellant or Mr Headlam.

19. As is clear from *R v Newton*, the purpose of a Newton hearing is to resolve factual disputes so that the correct sentence can be imposed. Accordingly, for a Newton hearing to take place before a Judge, the Judge must be called upon to resolve any such disputes by making a finding or findings of fact.
20. I agree with Ms Weisman that on 2 September 2022 HHJ Nadim was not called upon to address any factual dispute or make to any finding of fact. That distinguishes this case from others such as *R v Johnson* or *R v Makengele*, in which Judges had been called upon to make such findings.
21. On 2 September 2022 the facts, with regard to the Defendant's role in the cannabis operation, were not in dispute. The question was rather whether on those established facts, it was in keeping with the sentencing guidelines to conclude that the activities carried out by their Defendant merited the more sentence appropriate to an individual in a "significant role". HHJ Nadim entertained some brief submissions in that respect and disposed of the issue with some succinct observations that were not resisted by Mr Headlam.
22. HHJ Nadim did (as his sentencing remarks confirm) make an express finding to the effect that the Defendant played a significant role, but he did so by applying the sentencing guidelines to undisputed facts.
23. For those reasons, I find that the hearing on 2 September 2022 was not a Newton hearing. It was a sentencing hearing. The appeal must be dismissed.