

Neutral Citation Number: [2014] EWCA Crim 1624

No: 201306311/A7

IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
Strand
London, WC2A 2LL

Tuesday, 17th June 2014

B e f o r e:
LADY JUSTICE RAFFERTY DBE
MR JUSTICE BURNETT

MRS JUSTICE ELISABETH LAING DBE
R E G I N A

v

ROBERT HALL

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(Official Shorthand Writers to the Court)

Mr S Routledge appeared on behalf of the **Applicant**

J U D G M E N T
(As Approved by the Court)

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1. MR JUSTICE BURNETT: The applicant was sentenced to 13 years' imprisonment on 7th November 2013 by Mr Recorder Slater in respect of two counts of conspiracy to supply drugs. Count 1 related to Class A drugs and count 2 to Class B drugs. The 13 year sentence was imposed on count 1, 7 years concurrent were imposed on count 2. This is the renewed application for leave to appeal against sentence following refusal by the single judge.
2. The applicant had pleaded guilty on 14th October 2013. That was the last day on which those facing the court, which also included the appellant's brother and another man called Thompson, could get full credit. This applicant pleaded on a basis which was not accepted by the Crown. It was later superseded by another, which in effect accepted the prosecution case. Therefore a Newton hearing was not required.
3. In those circumstances he lost his full credit. The Recorder treated him as if he had pleaded on the first day of trial and indicated credit of about 10%. In fact the Recorder gave him a little more given that the expressed starting point was 15 years. For the purpose of the guidelines the Recorder fixed the offending in level 1, albeit towards the lower end and concluded that the applicant played a leading role. He indicated the trade in two different drugs as an aggravating feature and also identified as an aggravating feature the previous conviction for supplying drugs in 1995, for which the applicant received a 30 month sentence of imprisonment. There had been no convictions in the intervening period.
4. It is sufficient to note that the conspiracy involved the wholesale trading of drugs from the north east of England to the north west and to the Midlands. Large amounts of money were involved. The cannabis count came about after a total of about 125 kilograms of cannabis were seized. The total amount of cocaine seized was 3.54 kilograms.
5. There had been an extensive intelligence led operation undertaken by the police which resulted in various forms of surveillance over a number of months.
6. It is accepted before us this morning by Mr Routledge, on behalf of the applicant, that the Recorder was entitled to conclude that this was a Category 1 leading role offence. That had not been conceded before the Recorder nor in the written grounds. Nonetheless, Mr Routledge submits that the starting point of 15 years was too high, given that the Recorder had accepted that although in Category 1 he should consider the drug quantities concerned as placing the offending towards the lower end of Category 1, at least in so far as it reflected the Class A drugs.
7. The Recorder dealt with the matter by enhancing the starting point to reflect the very substantial quantities of Class B drugs that were involved in this conspiracy. Mr Routledge did not dissent from the proposition put to him during the course of argument that if the Recorder had been concerned only with the Class B drugs a starting point of about 7 years would have been appropriate. In the circumstances, we are unable to accept the submission that a 15 year starting point for both was too high.

8. The next submission advanced on behalf of this applicant is that the Recorder afforded him too little by way of discount for plea. The argument is not advanced by reference to the discount in fact given to this applicant but rather by comparing the discount which the Recorder had afforded to one of his co-accused, namely his brother. His brother pleaded guilty on the day of trial. The Recorder gave him a 20% discount. In the course of his sentencing remarks the Recorder said this:

"I agree that the credit situation as far as you are concerned is rather different. There certainly were, it seems, problems with disclosure. These cases are by their nature expensive, they require careful evaluation both by lawyers and their clients together and Mr Davis has persuaded me that I should afford you some credit more than the 10 per cent normally afforded to people who plead guilty on trial day."

Mr Davis was representing the applicant's brother Thomas.

9. Mr Routledge has disavowed any straightforward appeal to disparity in the course of his submissions. He has reminded us that ordinarily it will not avail a defendant in a Crown Court to withhold his plea until the Crown has made full disclosure because, of course, a defendant knows full well whether he is guilty or not. That may be the usual position. But the circumstances in this case are that the Recorder was persuaded exceptionally to give the applicant's brother Thomas a little more by way of discount. It may well be that the applicant's brother was lucky. However, the difference in approach regarding discount for plea does not, in our judgment, found any basis for attacking the sentence which was imposed in this case.
10. In those circumstances this renewed application for leave to appeal against sentence is refused.