

ENGLAND AND WALES / JUDGMENT

R v Mark Christopher Eldridge

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[2023] EWCA Crim 1696 Royal Courts of Justice Strand London WC2A 2LL Thursday 7 December 2023 Before: LADY JUSTICE MACUR DBE MR JUSTICE GOOSE MR JUSTICE FREEDMAN
REX V MARK CHRISTOPHER ELDRIDGE

Computer Aided Transcript of Epiq Europe Ltd, Lower Ground, 18-22 Furnival Street, London EC4A 1JS Tel No: 020 7404 1400; Email: rcj@epiqglobal.co.uk (Official Shorthand Writers to the Court)

MR G HARRIS appeared on behalf of the Appellant. J U D G M E N T MR JUSTICE GOOSE:

Introduction

1. This is an appeal against sentence, with leave of the single judge, by Mark Eldridge, who is aged 55. On 25 January 2022 in the Crown Court at Kingston, HHJ John sentenced the appellant to 20 years' imprisonment. On 10 March 2022, before the same judge in chambers, the sentence was amended under the Slip Rule, to reduce the sentence to 17½ years' imprisonment. The offences to which the appellant had pleaded guilty were as follows. Conspiracy to supply Class A drugs (cocaine), contrary to section 1(1) of the Criminal Law Act 1977 (count 1), conspiracy to acquire criminal property, contrary to section 191 of the same Act (count 2) and possession of criminal property, contrary to section 329(1) (c) of the Proceeds of Crime Act 2002 (count 3). He was sentenced on count 1 to 17½ years'

imprisonment with concurrent sentences of 67 months' imprisonment and 8 months' imprisonment on counts 2 and 3 respectively. He appeals against that sentence. The Offences

2. The appellant was party to a large-scale conspiracy to supply substantial quantities of cocaine in wholesale and retail quantities. Further, he was also party to a conspiracy to acquire the proceeds of the drug trafficking. The conspiracies were fully in operation in March 2020 and continued until June 2020. The appellant, together with a co-defendant, Patrick Ince, played the leading roles in conspiracies and were assisted by other co-defendants who acted as their couriers. The conspiracies came to light when the authorities received call data and information from EncroChat-enabled devices used by criminals in encrypted messaging in furtherance of their criminal enterprises. 3. It was clear on the evidence that in March 2020 the beginning of provable conspiracy the appellant and co-defendants were fully engaged in their offending. It is likely therefore, that it had begun some time earlier than March 2020. Upon arrest, the appellant made no comment in police interviews.
4. The evidence demonstrated that the appellant organised the buying and selling of cocaine on a commercial scale. During trial, the prosecution had initially asserted that the quantity of Class A drugs was in excess of 165 kilograms. That was reduced upon further examination to be in excess of 102 kilograms. It was on that basis that the judge sentenced the appellant. It should be noted that since conviction and sentence the prosecution has accepted that the provable quantity of drugs with which the appellant was engaged was 92 kilograms. That became clearer during the confiscation proceedings under the Proceeds of Crime Act 2002. During the conspiracy the appellant had close links to the original source of the drugs. Messages showed that together the appellant and Ince sent money to Panama for the importation of cocaine. The messages spoke about consignments being landed, and being of import purity. Reference was made to 7 tons between September 2019 and April 2020. When speaking of the drugs, the appellant sent a message saying that he could "get as many as want", and also said that he could "smash through supplying 12 kilos of cocaine". It was clear on the evidence that the appellant had an expectation of substantial financial gain, as had his co-defendant, Ince.
5. As a result of the Class A drug trafficking, the appellant had acquired substantial amounts of money, comprising the offence charged in count 2 on the indictment. Adjusted downwards to reflect the final assessment of 92 kilograms of cocaine, the value of benefit, based upon an assumed cost per kilo of cocaine, determined that the appellant and his co-defendants acquired criminal property in the order of £3.2 million. There was evidence of extravagant spending within the appellant's home and in his bank accounts in Spain. The Proceedings
6. The appellant's guilty pleas to counts 1 to 3 were not entered at the earliest stages of the proceedings. The appellant pleaded guilty 9 weeks before trial, for which he received a guilty plea discount of 20 per cent when he was sentenced. 7. In sentencing the appellant, the judge concluded that, together with Ince, he was at the top of the organisation within the

conspiracies. Although other accused were identified as playing a leading or significant role, the quantities of drugs with which they were concerned were very significantly lower during the operational period identified in the EncroChat conversations. FOLLOW ON PARA BELOW

8. For count 1, the judge identified culpability as leading role and category 1 for harm. The guideline, based on 5 kilograms of Class A drugs, provides a starting point of 14 years' imprisonment, with a range of 12 to 16 years. In the appellant's case, whilst the judge sentenced on the basis of harm in excess of 102 kilograms, that figure has now been accepted by the prosecution as being slightly lower at 92 kilograms. The judge identified the appropriate Sentencing Guidelines on counts 2 and 3 when imposing concurrent sentences.
9. The aggravating features of seriousness were the use of highly sophisticated technology and expensive EncroChat-enabled mobile devices, to impede detection. Further, the appellant had a previous conviction for similar offending, and he was on licence for that offence when he committed the current offences. On 1 September 2008 he was sentenced to 12½ years' imprisonment for conspiracy to supply Class A drugs (cocaine). His licence did not expire until 22 July 2020.
10. In mitigation, the judge took into account the conclusions of a psychological report, which described the appellant as displaying symptoms of anxiety and PTSD. The report suggested that the appellant was easily led. The judge observed that it was significant that the appellant had not informed the psychologist that he had committed similar offending before and was on licence at the time of the current offences. The judge rejected the conclusion that the appellant had been highly suggestible or easily led and found that there was little by way of mitigation from that material.
11. The judge concluded that a sentence after trial upon count 1 would have been 25 years' imprisonment, with concurrent sentences of 8 years on count 2 and 1 year on count 3. After allowing for a 20 per cent discount for guilty plea, the sentences were reduced to 20 years' imprisonment on count 1, 6 years and 4 months' imprisonment on count 2 and 9 months' imprisonment on count 3. The Slip Rule Hearing
12. On 10 March 2022, the judge conducted a further hearing of the appellant's case under section 385 of the Sentencing Act 2020. In a brief hearing, the judge varied the sentence, taking into account all the mitigating factors in the appellant's case. The sentences imposed on the appellant were reduced to 17½ years on count 1, 5 years and 7 months on count 2 and 8 months on count 3.
13. Unfortunately, the reduced sentence was not pronounced in public contrary to Criminal Procedure Rule 28.4(2)(b) which requires a decision to be given in a public hearing. We shall return to this issue later in this judgment. Grounds of Appeal

14. The appellant argues two grounds. Firstly, that the sentence of 17½ years was excessive, and secondly, that the judge failed to discount the sentences by 20 per cent for his guilty plea. Mr Harris, for whose submissions we are grateful, submitted that the judge failed to give sufficient weight to the available mitigation. Further, that the reduction in drugs quantity to 92 kilograms meant that the sentence should have been further reduced. Discussion and Conclusion
15. We are in agreement with the judge that this drugs conspiracy was operating at the highest level and required a substantial uplift from the starting point under the Drugs Guideline. We should also observe that the further report obtained from Mr Engstrom, dated 13 March 2023, which identified the total drugs as 92 kilograms rather than the total referred to by the judge, still left the court with a very substantial increase in the benchmark for sentencing within category 1 leading role of the guideline. The extent to which the harm exceeds the benchmark is not a simple mathematical exercise. There can be no doubt that this drugs conspiracy was on the most serious and commercial scale, with close association by those leading the offending with the original source of the drugs. Whilst quantities may vary substantially in the most serious drugs conspiracies, 92 kilograms over a 3-month period of established operation, merited the sentences imposed. We reject the first ground of appeal.
16. However, we are persuaded that the judge fell into error in the further hearing on 10 March 2022, when he did not give the appellant the 20 per cent guilty plea discount when he resented him, after taking into account all the available mitigation. Therefore, the sentence of 17½ years on count 1 should have been discounted by 20 per cent to 14 years; on count 2 to 53 months and count 3 to 6 months. We will make that discount. The Failure to Pronounce the Varied Sentence in Public
17. We return to the requirement under CPR 28.4(2)(b) for the decision and reasons to be pronounced in open court when a sentence is reviewed or varied, as it was by the judge on 10 March 2022. The circumstances in this appeal, which concerns a variation of sentence, means that the sentence should have been pronounced in open court. However, the failure to publically pronounce the reduced sentence on the appellant, does not render that sentence a nullity (see R v Cox [2019] EWCA Crim 71). The appellant's sentence was being reduced not increased.
18. Accordingly, we allow this appeal against sentence, to the extent that the sentence on count 1 is reduced to 14 years and concurrent sentences of 53 months and 6 months imposed respectively on counts 2 and 3. Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof. Lower Ground, 18-22 Farnival Street, London EC4A 1JS Tel No: 020 7404 1400 Email: rcj@epiqglobal.co.uk

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