

ENGLAND AND WALES / JUDGMENT

R v Khaine Henry-Godwin

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Computer Aided Transcript of Epiq Europe Ltd, Lower Ground, 46 Chancery Lane, London WC2A 1JE Tel No: 020 7404 1400; Email: rcj@epiqglobal.co.uk (Official Shorthand Writers to the Court)

MR DAVID JAMES appeared on behalf of the Appellant

J U D G M E N T (Approved) MR JUSTICE MARTIN SPENCER:

1. By leave of the single judge, the appellant appeals against his total sentence of 5 years 9 months' imprisonment imposed by His Honour Judge Potter on 7 July 2025 sitting in the Crown Court at Manchester for three offences of supplying or possessing with intent to supply class A drugs. No separate penalty was imposed for three further offences involving class B drugs and possession of criminal property. The single point of this appeal is whether the appellant should have been afforded a one-third discount as credit for his pleas of guilty rather than the 25% discount afforded by the learned judge.

2. The background facts are as follows. Operation Chill was an investigation into the supply of crack cocaine, cocaine, heroin and cannabis in the Wythenshawe area of South Manchester relating to a lucrative drugs line known as ACE (phone numbers 7474 and 4533 were attributed to this line). In total around £9,000 in cash had been seized from different properties associated with the appellant and his co-defendants Mark O'Grady, Javier Watson and Mmoriseng Motlathledi. The total weight of the cocaine, crack cocaine and heroin recovered was just over 1 kilo and 4440 grams of cannabis. All the defendants were trusted associates who played a significant role in operating the drugs line. The model of the drugs line meant that the drugs supply, possession of the drugs and communication of the drugs line were kept within a close group of individuals.
3. On 23 January 2025 the police attended a flat in Silvercroft Street, Manchester. The appellant and Motlathledi were present. The police were taken to the flat by the concierge and knocked on the door. Movement was heard within. The concierge unlocked the electronic door to the flat, but it would not open. The upper part of the door had been braced to prevent it being immediately opened. The police then forced entry into the flat. The appellant was seen by the doorway to the master bedroom, which had an en-suite. He was attempting to flush items down the toilet. An officer noticed the appellant leaning over the toilet with a white powdery substance in his hand, emptying it down the toilet. This was later tested and found to be cocaine. Once the appellant was detained, an officer returned to the bathroom and found a plastic bag with white powder inside the toilet, also found to be cocaine. In the sink were large amounts of little rock pieces that had been tipped out of a plastic container. These were found to be crack cocaine. On the floor of the bathroom was a bag containing scales, clingfilm and bags of white powder. Significant quantities of class A drugs were found in the flat, including a bag of brown rocks found to be 162 grams of heroin worth £16,200; three bags of white powder found to be 247 grams of cocaine valued at between £9,880 if low purity and £24,700 if high purity; a silver bag containing white powder; 17 packages of white rocks, including 426 wraps of crack cocaine with a total of 108 grams, worth £10,650; seven brown powder wraps or pellets found to be heroin totalling 45.23 grams of heroin, worth £4,690; several white rocks from the sink found to be 176 grams of crack cocaine, worth £17,600; wet white powder in a plastic bag in the sink found to be 70.9 grams of cocaine, worth between £2,840 if low purity and £7,100 if high purity; white powder from the toilet seat tested positive for cocaine; a white hard crystallised substance found to be 131 grams of crack cocaine with a street value of £13,100; a plastic tub containing a white substance found to contain 90 grams of cocaine, the value of this being between £3,600 if lower purity and £9,000 if higher purity; and also various wraps of crack cocaine and heroin.
4. Following his arrest, the appellant appeared before the Stockport Magistrates' Court on 24 January 2025 when the court directed trial by jury and sent the case to the Crown Court. The Better Case Management ("BCM") form confirmed that the defendant, who was represented by solicitors, had been advised about credit for guilty pleas and it was recorded that in relation to offences of being concerned in the supply of class A drugs and possession with

intent to supply class A drugs, no plea was indicated. Under the heading "Real issues in the case" it was recorded: "Likely guilty pleas - basis of plea to be determined. Important to note for the purposes of credit that there is no mention of the Defendant in the prosecution papers other than his interview." Amplifying the above, Mr James, for whose written and oral submissions we are very grateful, has stated that at this first stage of proceedings, neither the served material nor the case summary referenced the appellant or describes his criminality or how the case was being alleged against him. Before the magistrates, the prosecution themselves were unaware of how the case was being put against the appellant save that it was being suggested he was the person running the line, which would in fact have been inadequate. We note, however, that there was sufficient in the material before the magistrates for them to consider it appropriate to commit the matter to the Crown Court for trial.

5. The indictment was uploaded to the Digital Case System on 26 February 2025, and Mr James has told us that on that same date he had a case conference with his client, the appellant. The Plea and Trial Preparation Hearing ("PTPH") was listed for the following day, 27 February, but this was vacated by the court. Mr James tells us that there were no papers and none of the defendants could have been arraigned on that date. The PTPH was rearranged for 10 March 2025, and on that date he pleaded guilty. Mr James submits that in reality this was the first opportunity for the appellant to plead guilty. The case was adjourned for sentence and came before Judge Potter on 7 July 2025. 6. In advance of the sentencing hearing, Mr James submitted a Mitigation Note in which he submitted that 10 March 2025 was the first real opportunity for the defendant to indicate his pleas. He referred to the Sentencing Council Overarching Guidelines: Reduction in Sentence for Guilty Plea at paragraphs D1 and F1, which state that a reduction of one-third in sentence should be made where a guilty plea is indicated at the first stage of proceedings and that a reduction of one-third should still be made where the sentencing court is satisfied that there were particular circumstances which significantly reduced the defendant's ability to understand what was alleged or otherwise made it unreasonable to expect the defendant to indicate a guilty plea sooner than was done. Mr James submitted that this was not a case in which a guilty plea was delayed in order for the appellant to have sight of the evidence, but rather, until the PTPH at which the plea was entered, the Crown, the court and the defence were unaware of what was being alleged against the appellant. Mr James references the vacation of the first PTPH as illustrative of that submission. 7. The learned judge rejected the submission and applied a discount of 25%. He stated: "I have been asked to consider affording greater credit than [25%] in eloquent submissions from Mr James. I disagree with Mr James's submissions as to when his client's guilty pleas were probably first indicated in these proceedings." Mr James now essentially renews his submissions before this court, arguing that there were particular circumstances which significantly reduced the appellant's ability to understand what was alleged or otherwise made it unreasonable to expect him to indicate a guilty plea before the magistrates' court so that the learned judge erred in failing to apply a discount of one-third. Although in submissions Mr James has referred to the learned judge having a

discretion, what is in reality being submitted is that this discretion could not reasonably have been exercised to reduce the discount from one-third to a quarter.

8. Despite Mr James's repeated eloquent submissions, we find ourselves in agreement with the learned judge. The appellant knew at the first hearing before the magistrates' court that he faced charges of being concerned in the supply of class A drugs and being in possession of class A drugs with intent to supply and he knew of his involvement in those offences. He had sufficient knowledge to indicate to those advising him in the magistrates' court that he was guilty of those two types of offence. In our judgment, he was therefore in a position to indicate an unequivocal plea of guilty at that stage and that is what he should have done to preserve his right to full credit. We refer to the decision of this court in *Plaku and others* [2021] EWCA 568 where Holroyd LJ said: "9. Exception F1 makes provision for cases in which the accused needs further information, assistance or advice before indicating his plea. It states that a reduction of one-third should still be made where the court is satisfied that '... there were particular circumstances which significantly reduced the defendant's ability to understand what was alleged or otherwise made it unreasonable to expect the defendant to indicate a guilty plea sooner than was done.' Exception F1 goes on to distinguish, in this regard, between '... cases in which it is necessary to receive advice and/or have sight of evidence in order to determine whether the defendant is in fact and law guilty of the offence(s) charged, and cases in which a defendant merely delays guilty plea(s) in order to assess the strength of the prosecution evidence and the prospects of conviction or acquittal.' We emphasise the distinction drawn in the latter part of that quotation. Both the proper application of the guideline, and fairness to those who do indicate a guilty plea at the first stage of the proceedings, demand that the distinction be observed. " We reiterate the point that fairness to those who do indicate a guilty plea at the first stage means that the circumstances in which a defendant can avail himself of exception F1 where he has not so indicated should be kept within narrow bands. Whilst each case is fact sensitive, we consider that the learned judge was right to decide that this appellant did not require further information, assistance or advice before indicating his plea. 9. Otherwise, we find no error in the sentence imposed by the learned judge and this appeal is accordingly dismissed. Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof. Lower Ground Floor, 46 Chancery Lane, London, WC2A 1JE Tel No: 020 7404 1400 Email: Rcj@epiqglobal.co.uk

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