

ENGLAND AND WALES / JUDGMENT

# R v Rossitter

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IN THE HIGH COURT OF JUSTICE SENIOR COURTS COSTS OFFICE Neutral Citation No. [2026] EWHC 1156 (SCCO) Case No: 46ZY1511024 SCCO Reference: SC-2025-CRI-000142 Thomas More Building Royal Courts of Justice London, WC2A 2LL Date: 14 May 2026 Before: SENIOR COSTS JUDGE ROWLEY R v ROSSITTER Judgment on Appeal under Regulation 29 of the Criminal Legal Aid (Remuneration) Regulations 2013 Appellant: Simon N Smith (Counsel) The appeal has been dismissed for the reasons set out below. SENIOR COSTS JUDGE ROWLEY SENIOR COSTS JUDGE ROWLEY Approved Judgment Senior Costs Judge Rowley: R v Rossitter 1. 2. 3. 4. 5. 6. 7. This is an appeal by Simon N. Smith of Counsel against the fees allowed to him by the determining officer under the Advocates Graduated Fee Scheme as set out in the Criminal Legal Aid (Remuneration) Regulations 2013, as amended. Counsel was instructed on behalf of Tara Rossitter in respect of a one count indictment (46ZY1511024) regarding robbery which she was said to have committed together with two others. She pleaded guilty at the Pre-Trial Preparation Hearing at the Crown Court at Canterbury on 12 August 2024. Her sentencing hearing was listed on 6 November 2024, but was adjourned in order for the defendant's legal team to obtain a psychiatric report in respect of her mental health. On 16 January 2025 the defendant was sentenced to 6 years and 3 months' imprisonment. Separately, the defendant was convicted in respect of three separate proceedings brought at the Magistrates' Court and for which she was committed for sentence at the Crown Court. Those three sets of proceedings were as follows: 46ZY1948423 – handling stolen goods 46ZY1748523 – shoplifting 46ZY1938923 – nine counts of shoplifting, one count of possession of cocaine and one count of failure to surrender to Folkestone police station. According to the determining officer's written reasons, the defendant, who was sentenced for these offences at the same time as the robbery, received an additional one month imprisonment (thereby making the total six years four months) with the extra month being concurrent amongst the offences at the Magistrates' Court but consecutive to the robbery. Counsel has been paid for the guilty plea in respect of the armed robbery and has been offered a fee for the first committal for sentence together with a 20% uplift for the other two committals. This fee would be paid for each of the hearings, i.e. in November and January, making a total of £490 plus VAT. I have said "offered", because it came to light during discussions prior to this appeal hearing that the determining officer had not actually paid the fee that he had determined in respect of the committals for sentence. It also transpired that the form 5145 submitted by counsel, a so-called "red corner claim", required amendment and that amended document has been provided during the course of this appeal. By that document, Counsel seeks a fee of £2,000, representing 11 hours' work for the November hearing, together with a further £500 in respect of the January hearing by way of a refresher fee. The relevant part of the 2013 Regulations is Schedule 1, and in particular

paragraphs 2 and 20. Paragraph 2, states that the Schedule applies, not only to every case on indictment, but also, according to 2(1)(b) the following proceedings in the Crown Court: i) an appeal against conviction or sentence; SENIOR COSTS JUDGE ROWLEY Approved Judgment R v Rossitter ii) a sentencing hearing following a committal for sentence to the Crown Court; and iii) proceedings arising out of alleged breach of an order of the Crown Court... 8. At paragraph 20, under the heading “fees for appeals, committals, sentence and breach hearings” fixed fees are specified in a table (following paragraph 24) for the trial advocate in respect of any of the hearings referred to in 2(1)(b), subject to sub paragraphs (4) and (5). 9. Subparagraph (4) states: “Where it appears to the appropriate officer that the fixed fee allowed under subparagraph (1) would be inappropriate taking into account all of the relevant circumstances of the case the appropriate officer may instead allow fees of such amounts as appear to the appropriate officer to be reasonable remuneration for the relevant work in accordance with subparagraph (5).” 10. 11. 12. 13. Subparagraph (5) allows for fees in respect of work for preparation and attendance at the first day of the hearing, as well as refresher fees and subsidiary fees. In Counsel’s first note for taxation, he sets out where much of the time claimed of 11 hours was spent. There is no need to set out the provisions regarding the calculation of a guilty plea in Schedule 1. That fee was paid in respect of the robbery. It was unhelpful therefore, for the early challenges to the determining officer’s decisions to use the “24” reference, which related to the robbery, rather than the three sets of proceedings which had been committed to the Crown Court for sentence. It would have clarified the determining officer’s need for written reasons which have, unnecessarily, in my view, had to deal with the fact that the “escape” provisions in subparagraph (4) above does not apply to a guilty plea, but merely to those matters set out at subparagraph 2(1)(b). Nevertheless, by the time that counsel appealed the determining officer’s written reasons, one of the committal to sentencing “23” references was used instead. Counsel’s argument, on the appeal hearing before me, was very much that dealing with the sentencing for the four different matters was intertwined. But there is no general discretion for the determining officer to seek to exceed fees in a deserving case. There has to be some structure to allow this and so, unless counsel comes within subparagraph (4), then the guilty plea fee for the robbery is a fixed sum and so too are the fees to be claimed per hearing and with an uplift to reflect the number of committals for sentencing involved. Counsel went through the various matters set out in his notes for taxation at the hearing of his appeal. He emphasised the difficulty in dealing with the defendant in matters of taking instructions where she had a borderline personality disorder, according to the psychiatric evidence. He illustrated the difficulty by referring to the draft basis for plea which he had produced for the robbery and which the client needed time to consider. The basis was changed by counsel’s instructing solicitor upon instruction from the defendant before submission and it was altered once more SENIOR COSTS JUDGE ROWLEY Approved Judgment R v Rossitter 14. 15. 16. 17. 18. on the second day of the sentencing hearing, as a result of further instructions from the defendant. She was, as counsel described her, being far from consistent. The offences contained within the three proceedings committed for sentencing occurred during the period of July to November 2023 and as such led up to the robbery in June 2024. Counsel took the view that the co-accuseds and/or the Crown might seek to attack the defendant. However, counsel saw it as an opportunity to explain the trigger for the offending behaviour as a result of a

larger picture put before the sentencing judge. The strategy evolved after the guilty plea for the robbery had been entered since at that point counsel was unaware of the other three sets of proceedings. However, by the time of the first sentencing hearing, counsel, and his instructing solicitors, were convinced that the larger picture should be presented and the judge was similarly convinced that further information was required in order to sentence the defendant appropriately. The jeopardy for the defendant was apparent from indications given by the judge initially and which caused the prosecution counsel, who had changed from the original counsel, to produce a new sentencing note based on the judge's indication (and which sought sentence based on a higher finding of culpability.) In the circumstances, counsel was very pleased that he was able to secure a sentence of less than seven years against the defendant so that her opportunity for early release would begin halfway through the sentence rather than no earlier than two thirds of the way through the sentence that a sentence of seven years or more would have involved. The two co-accused both received sentences of more than seven years and counsel considered that the use of the committal for sentencing matters had been successful in distinguishing the defendant from the others. This had involved rather more time, effort and paperwork than usual for a committal for sentence, which was why the determining officer's decision not to invoke subparagraph (4) was challenged. It seems to me that this is an unusual case and the decisions made by counsel and his instructing solicitors appear to have been justified. I have little doubt that extra work was incurred as a result. The difficulty with this appeal, however, seems to me that the additional work in terms of the psychiatric report, the sentencing hearing going over two days and the complexities of the defendant changing instructions can all be put at the door of the guilty plea for the robbery, just as much as they can be seen as relevant for the cases committed for sentence.

19. When these factors are seen through the prism of the sentencing of six years three months for the robbery and a further month for the other three offences, it is difficult to conclude that the importance of the laudable efforts of the defence team were not primarily directed at the minimising of the sentence for the robbery. All of those circumstances do not then appear to lend much weight to the argument that the fee for the committal for sentencing hearing was unreasonable. 20. It is similarly difficult to criticise the determining officer for being "unpersuaded" that any work done in relation to the very modest sentencing of the additional offences could justify an escape under subparagraph (4) on the basis that the standard fee did not provide reasonable remuneration. SENIOR COSTS JUDGE ROWLEY Approved Judgment R v Rossitter 21. The aggregate of the sum for the guilty plea and the further sums for the committal for sentencing hearing are intended to provide reasonable remuneration for the advocate based on the standard fees. To the extent that the work involved in this particular case exceeded the norm, I am afraid that this is one further example of a swings and roundabouts system. Such work is not, in my view, sufficient to trigger the escape clause enabling the advocate to seek additional fees. 22. Accordingly, this appeal fails.

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