

ENGLAND AND WALES / JUDGMENT

R v Wilson

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IN THE HIGH COURT OF JUSTICE SENIOR COURTS COSTS OFFICE Neutral Citation No. [2026] EWHC 720 (SCCO) Case No: T20227148 SCCO Reference: SC-2024-CRI-000110 Thomas More Building Royal Courts of Justice London, WC2A 2LL Date: 25 March 2026 Before: SENIOR COSTS JUDGE ROWLEY R v WILSON Judgment on Appeal under Regulation 29 of the Criminal Legal Aid (Remuneration) Regulations 2013 Appellant: Montague Solicitors The appeal has been successful for the reasons set out below. The appropriate additional payment, to which should be added the sum of £750 (exclusive of VAT) for costs and the £100 paid on appeal, should accordingly be made to the Applicant. SENIOR COSTS JUDGE ROWLEY SENIOR COSTS JUDGE ROWLEY Approved Judgment Senior Costs Judge Rowley: R v Wilson 1. 2. 3. 4. 5. 6. This is an appeal by Montague solicitors against the decision of the determining officer to calculate the fee payable to the solicitors as a guilty plea under the terms of the Criminal Legal Aid (Remuneration) Regulations 2013, as amended. The solicitors were instructed on behalf of Colt Sherman Wilson who, together with a number of others, was indicted on a conspiracy to supply Class A drugs. He also faced a count of possessing the same drug (cocaine) along with one other person. He pleaded guilty at the magistrates court and submitted no basis of plea. He was sentenced together with a number of the co-conspirators at a sentencing hearing on 19 April 2024. The solicitors say that, during the sentencing hearing, submissions were made by Wilson's advocate along with the Crown counsel and at least one of the co-defendants' counsel in respect of the quantity of cocaine said to have been involved in the conspiracy. The solicitors say that the need for the judge to make a factual finding on this disputed issue amounted to a "Newton" hearing such that the fee to which they are entitled under the 2013 Regulations ought to be calculated as a trial fee rather than a guilty plea fee. After the trial had finished and before the sentencing hearing, the prosecution produced two statements from PC Frost, the Officer in the Case, which stated that the amount of drugs involved was 28.01 kg in weight. According to the written submissions of Colin Wells, of counsel, who represented the solicitors at the hearing of this appeal, the defence had always considered the drugs to be around 12 kg in weight overall. One of the co-defendants commissioned an expert report from a Dr Simon Harding, which put the drug quantity at 12.12 kg, and all parties were agreed that there was a significant difference which required resolution. Consequently, the junior prosecution counsel emailed the trial judge, HHJ Duncan on 6 March 2024 and the judge responded the following day to state: "My view is that I can hear submissions on the competing arguments on the day, I can then take everything that I have heard into account, together with the weeks of evidence which I heard at trial. I can then, as is usual for the sentencing judge, sentence each defendant in accordance with my findings of fact and the jury's verdicts." The difference in the weight of drugs said to have been involved in this conspiracy came about

because, although there were 48 journeys in which drugs were thought to be transferred as part of the conspiracy from one part of the country to another, the weight of the drugs was only known in relation to 13 of those journeys. PC Frost's statements used the information from those journeys to calculate an average amount of drugs said to have been transported in the 48 journeys as a whole at just over 28 kg. The report of Dr Harding took the view that it was only safe to rely on the journeys where the weights had in fact been measured in order to come to his conclusion that the drug quantity was around 12 kg. SENIOR COSTS JUDGE ROWLEY Approved Judgment R v Wilson 7. HHJ Duncan expressed the view in trenchant terms that this was not a matter of expert evidence. The question was whether or not the judge considered there to be sufficient evidence to be satisfied that there were drugs carried in all of the journeys, or at least rather more than the 13 journeys on which there was specific evidence. In her sentencing remarks, she said this: "A report submitted by the defence also purports to provide assistance on this. It is not, in my judgment, a matter for expert evidence. It is a matter of common sense, factual conclusions on the evidence that was presented at length in the trial. What amounts are being shipped out? What evidence is there as to the deals taking place? How many deliveries were there? It is as simple as that. I have considered all of this, and I consider myself, as the trial judge, to be best placed to make a finding of fact on this issue, and I've asked myself this: "What is the least weight of cocaine I can be sure this group dealt in?" An algorithm which attempts to estimate, based on average addict usage and the frequency of unit calls to a dealer, for example, how much they are dealing over a period of time is not applicable in this case. This is a wholesale operation several steps above street dealing. No expert can, in fact, assist." 8. The judge had been more impressed by the evidence of PC Frost, which she described as follows: "I've also now seen further evidence from the officer in the case, who helpfully sets out, on the basis of all that evidence that was presented, what the Crown say are the quantities of cocaine involved. There were 48 trips in total, that is covering the widest period of the conspiracy, made by various individuals. For most of these trips, there is no direct, explicit evidence of the weights to be delivered. For some, however, there is. Half kilos, kilos, and, on at least one occasion, two kilos are referred to. There was also the seizure of five separate kilo packages from Tyla Richard's address, which were plainly intended to be delivered as the previous consignments were. 9. The judge concluded: "For those who pleaded guilty, 28 kilos is a fair representation of the scale of the operation. For those convicted after trial, 31 kilos is both fair and conservative." 10. In schedule 2 of the 2013 Regulations, a "Newton Hearing" is said to mean: "a hearing at which evidence is heard for the purposes of determining the sentence of a convicted person in accordance with the principles of R v Newton (1982) 77 Cr App R 13..." SENIOR COSTS JUDGE ROWLEY Approved Judgment R v Wilson 11. According to the case of R v Robert John Newton itself, the purpose of the hearing is to resolve a factual dispute or disputes so that the judge is able to pass sentence appropriately. In Newton, three procedural possibilities were described: i) ii) iii) the disputed facts could be put before the jury for their decision the judge could hear evidence and then come to a conclusion; or the judge could hear no live evidence, but instead listen to submissions from counsel and then come to a conclusion 12. 13. 14. As with almost all appeals from determining officers regarding the existence of a Newton hearing, it is the third procedural possibility which is said to have occurred in this case. Nothing was put before the jury. Indeed, PC Frost's

statements were not served until after the trial had ended. Neither PC Frost nor Dr Harding were called to give evidence and nor were, for example, any of the defendants. As HHJ Duncan expressed in her email prior to the sentencing hearing, she heard submissions on the competing arguments on the day in order to make findings of fact. Based on the quotations set out above from the sentencing remarks (and, unsurprisingly, relied upon by Mr Wells on the appeal), the judge plainly heard competing arguments as to the weight of the drugs before coming to a conclusion that she preferred the submissions of the Crown and found that the weight of the drugs was either 28 or 31 kg and not the 12 kg contended for by the co-defendant and relied upon by the counsel for Mr Wilson. That might be thought to be sufficient for the determining officer to conclude that the sentencing hearing should properly be categorised as a Newton Hearing and therefore a trial fee should be payable. To be fair to the determining officer, from whom this appeal originates, she did not have access to the transcripts of the hearing, but merely the court logs. She did not consider that those logs demonstrated that an effective Newton Hearing had proceeded, or that the judge was required to resolve a significant factual dispute. The court logs were not put before me on the appeal as the transcripts were obviously preferable as to what was said.

15. Ms Francesca Weisman appeared on behalf of the Legal Aid Agency at the appeal and accepted that the dispute between the parties was relatively narrow. She queried the extent of the submissions made by Mr Wilson's counsel and also the fact that the judge obviously did not conclude that it was not a matter for expert evidence, to which both Dr Harding's report and, to some extent, PC Frost's opinion evidence could be described. As Costs Judge Leonard said in the case of *R v Williams* [2024] EWHC 3159 (SCCO), the length of the advocate's submissions is really not the point. It is a question of whether the judge was called upon to make findings of facts which would inform the sentence to be received by the defendant and, as in *Williams*, the judge evidently was required to make such findings. 16. I have cited the case of *Williams* because Ms Weisman's arguments before me also suggested that it supported the proposition that the evidence considered by the judge had to (at least) involve evidence that was not simply heard at the trial. Reliance is placed on paragraph 20 of Judge Leonard's decision, where he said: SENIOR COSTS JUDGE ROWLEY Approved Judgment *R v Wilson* 17. 18. 19. 20. 21. "Further, it would not be right to find that there had been a Newton Hearing where the judge at a sentencing hearing drew factual conclusions not from evidence presented at the hearing itself, but entirely from a previous trial." From this statement, Ms Weisman's written submissions contended that there was no new, factual evidence, material to the issues at hand, which was presented at the sentencing hearing. The delay in the progress of this appeal, due very largely to the delay in being able to obtain the relevant transcripts, enabled both sides to update their written submissions. In relation to Ms Weisman's submissions, the later version included the case of *R v Bakr* [2025] EWHC 2087 (SCCO), where Costs Judge Brown cited Judge Leonard's comments in *Williams* and agreed with them. He referred to the definition of a Newton hearing in the Regulations which described it as a hearing "at which evidence is heard" and concluded that therefore some fresh evidence was required to be heard at the sentencing hearing for it to be a

Newton Hearing. He then also pointed out that otherwise, a sentencing hearing which only relied upon evidence from the trial might cause ordinary sentencing hearings to be considered to be extensions of the trial. There is definitely a risk of sentencing hearings being sought to be characterised as Newton hearings given the stark difference in the fee payable under the 2013 Regulations. There are numerous decisions from the costs judges in respect of such appeals, where the factual dispute is no more than an attempt to persuade the sentencing judge as to the correct position within the sentencing guidelines in terms of culpability and harm. But I do depart from Judge Brown's requirement for fresh evidence to be produced at the Newton Hearing. Whilst the definition of a Newton Hearing in the 2013 Regulations says that evidence has to be heard, it then goes on to say that it has to be in accordance with the principles of *R v Newton*. As I have set out above, the court in *Newton* described the third procedural way of determining the factual dispute was simply to hear submissions from the respective advocates before making a finding of fact and that is the method described by HHJ Duncan in her email in this case. It seems to me to put an unnecessary gloss on the principles espoused in *Newton* to say that the evidence before the court at a Newton hearing has to include evidence that was not before the trial judge previously. Indeed, looking at the first procedural possibility, where the jury makes a decision on the disputed facts, then that could only occur during the trial period. If there was a requirement for fresh evidence to be needed at the subsequent sentencing hearing, then that procedural possibility could never take place. As mentioned above, Judge Brown's comments relied upon those of Judge Leonard at paragraph 20 in *Williams*. That was a case where the evidence itself was undisputed, but it was a question of factual conclusions being drawn upon the undisputed evidence. At paragraph 4 of his decision, Judge Leonard sets out the principles of *Newton* and specifically says that live evidence need not be heard and that the essential point is that there must be a fact-finding exercise for the judge to conduct. That is a point to which he returns in his conclusions at paragraph 24 which I have referred to above. Given that description, it seems to me the context in which paragraph 20 is written is one where, a Newton hearing would not be established if SENIOR COSTS JUDGE ROWLEY Approved Judgment *R v Wilson* the trial judge at a subsequent sentencing hearing was not carrying out a fact finding exercise but simply relying upon evidence from the trial in coming to conclusions for the purposes of sentencing. But to the extent that paragraph 20 does support Judge Brown's view, then I depart from Judge Leonard's description as well for the reasons given in the preceding paragraph.

22. Ms Weisman also submitted that the finding in respect of the quantity of cocaine did not have a material impact on the sentence imposed. It is true to say that whether the Crown or the defence's position was adopted by the judge, it would be well outside the guideline of 5kg. There is therefore some discussion in the submissions made to the judge and, indeed, in her sentencing remarks about there being less of an impact as a result of this issue than might otherwise have been the case. However, in my view, it seems clear that the judge considered it to be a material fact in terms of the length of sentences imposed and the fact that she dealt with this issue at the outset of her sentencing remarks suggests the

importance of it to the conclusions that followed. 23. Accordingly, I have concluded that the hearing in this case was in fact a Newton hearing since HHJ Duncan was required to make factual findings which materially affected the sentencing that she imposed. Consequently, the determining officer needs to recalculate the litigator's fee on the basis of a trial fee. Since the appeal has been successful, the solicitors are also entitled to the costs of the appeal.

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