Application for leave to appeal against Sentence; on the basis that the sentence of 19 years' imprisonment is manifestly excessive.

[2022]GCA021

IN THE COURT OF APPEAL OF GUERNSEY

CRIMINAL DIVISION

Between: **CHRISTOPHER NEIL BEARE** **Applicant**

-v-

THE LAW OFFICERS OF THE CROWN **Respondent**

APPLICATION FOR LEAVE TO APPEAL AGAINST SENTENCE

Decision on the Papers

Decision of Richard James McMahon, Esq., Bailiff

Date of Decision: 4 April 2022

Counsel for the Applicant: **Advocate S E Steel**

1. The Applicant was sentenced by the Royal Court on 3 March 2022 to a total of 19 years' imprisonment. The Applicant had pleaded Not Guilty when first arraigned on 5 March 2020. However, on 20 May 2021, he was re-arraigned and pleaded Guilty to two Counts on the Indictment, for which he was eventually sentenced last month. At one stage, there was going to be a *Newton* hearing, but that was then found not to be needed, which explains why reaching a sentencing hearing took as long as it did.

2. In respect of the first Count, which related to an importation of Class A controlled drugs, being cocaine mixed with MDMA, the sentence imposed was 19 years' imprisonment. The second Count (involving the importation of cannabis resin, a Class B controlled drug) resulted in a concurrent sentence of 4 years' imprisonment. As no evidence was offered in respect of the remaining Count faced by the Applicant, a verdict of not guilty was recorded. The 19 years reckoned from when the Applicant was first detained on 9 November 2019.

3. The basis on which the Applicant now seeks leave to appeal is that the sentence of 19 years' imprisonment is manifestly excessive. There are two grounds advanced. The first is that the Royal Court did not take into account that the Applicant performed his role under direction from above him in the criminal organisation. The second is that insufficient weight was given to the Applicant being diagnosed with Autism Spectrum Disorder.

4. In respect of the first Count, the Royal Court explained that it was following the guidelines found in *Richards* [2000-02] GLR 247. The quantity of Class A drug involved was in the top band of 400 grams and over, with the indicative starting point being 14 years' imprisonment upwards. In this case, the quantity was 1,120.1 grams. One of the Applicant's co-defendants had appealed against the sentences she had received (*Willey v Law Officers of the Crown* [2021] GCA 064). On that appeal, this Court commented (at para. 31) that "*this was an importation at almost 3 times that level [of 400 grams] and involved an additional importation of a second drug*" before continuing that "*a starting point of 20 years is not to our mind objectionable in any way.*" This was referred to in the Court's sentencing remarks when dealing with the Applicant. It was noted that the Appellant Ms Willey was one of two couriers of the controlled drugs. That Appellant and the Applicant were jointly charged in respect of both Counts.

5. The starting point identified in respect of the Applicant was 24 years' imprisonment. The individual staring points for the first and second Counts were put as 20 years and 4 years respectively. The second Count involved the importation of 3,854.4 grams of cannabis resin. If viewed in isolation, in accordance with the *Richards* guidelines, this would potentially have led to a starting point in the range of 5 to 8 years. Accordingly, referring to just 4 years would fall outside of and below that range, but I regard what the Royal Court said as indicating how it had reached the combined, or "total", starting point referred to in para. 12 in *Richards*. In other words, this was a convenient shorthand to explain how the starting point in respect of the co-Defendants at 20 years had been increased because the Applicant had a more prominent role in the venture.

6. Where there were clearly aggravating factors in the Applicant's case that were not present in relation to a sentence that has already been appealed to this Court, I am satisfied that the combined starting point of 24 years is a starting point that can properly be adopted. The Applicant was regarded as being "*an overseer or arranger*" and also had previous convictions for drug-related offending, in addition to an unenviable history of other offending. He had not co-operated with the investigation and was found instead to have lied to those investigating the offending.

7. The first ground of appeal being advanced strikes me as both questioning this starting point and the discount for mitigation. By referring to there being other persons higher up in the chain of command for this enterprise, it either relates to some suggestion of having acted under the control of others, but that would not be directly relevant to the starting point anyway, or that the starting point chosen would only be appropriate for such a person higher up the chain of command. In my judgment, there is no real prospect of that argument succeeding because, as I have just noted, the starting point could properly be higher than the 20 years used for Ms Willey and so 24 years is not going beyond what is permissible here. Indeed, if someone higher up the chain of command had already come before the Royal Court, an increase beyond the combined starting point of 24 years for this Applicant may well have been justified.

8. From that starting point, the Applicant was entitled to some discount in respect of his guilty plea. The Royal Court stated that such a discount was "*markedly less than if [the Applicant] had had the decency to come clean when apprehended.*" The percentage discount was not expressed. The combined discount for all mitigation of 5 years under the starting point is, though, very roughly 20%.

9. In the sentencing remarks, the Royal Court commented that it was not the Court's "*function to cast around for mitigation, apart from the limited mitigation afforded by [the Applicant's eventual guilty pleas, [the Court] cannot see anything much at all on these facts apart from noting your condition.*" There was, accordingly, express recognition that the Applicant has Autism Spectrum Disorder. The was clear on the face of the report from the Probation Service,

which confirmed that the Applicant would be supported by the Prison for any additional needs arising.

10. There is no suggestion that it was argued before the Royal Court that the Applicant had been an unwilling participant in this venture. As such, I am not persuaded that the contention that there were persons above the Applicant in the organisation amounts to anything much by way of mitigation. As such, the first ground of appeal, even if it is not a challenge to the adoption of a starting point, is of little, if any, weight, in relation to mitigation.

11. In all these circumstances, I am not persuaded that either of the grounds of appeal raised on behalf of the Applicant is one that points towards the final sentence being manifestly excessive. In particular, it is clear that some notice was taken of the Applicant's condition. The real question, therefore, is whether a reduction in sentence of only five years from the starting point of 24 years' imprisonment supports the contention that this sentence is manifestly excessive on either or both bases.

12. In my view it does not. There is nothing prescriptive in this jurisdiction about how to apply a discount when a guilty plea is tendered. Paragraph 15 in *Richards* notes that a guilty plea will always be an important mitigating factor. The delay in tendering a guilty plea and the additional steps that followed in expending further Court time through the aborted *Newton* hearing, all has a bearing on the proper level of discount to which the Applicant was entitled. In May 2020, a trial was listed for October of that year, with a voir dire also listed beforehand for July. The voir dire was vacated and re-listed on several occasions. By May 2021, it was no longer needed and the pleas were changed to guilty. This was some months beyond when the original trial had been listed. In terms of any sliding scale for an appropriate discount, I am satisfied that the Applicant's discount had dropped to below 20%. It must be acknowledged that it took more than a year for the Applicant to be prepared to acknowledge his guilt. That means that the eventual reduction from the starting point to sentence imposed of five years inevitably includes an amount of additional reduction for the mitigation advanced on behalf of the Applicant relating to his condition and anything else relevant. If only by way of example, if the appropriate discount to apply was 15%, which may even be generous, it would have resulted in a reduction of a little over 43 months, with the balance of just under 17 months for other mitigation found being applicable. A combined reduction of five years, ie, 60 months, was, in my view, appropriate. Accordingly, I am not persuaded that there is an arguable case that insufficient account was taken of the mitigation available to the Applicant.

13. Viewed in the round, whilst the Royal Court appreciated that the sentence it imposed on the Applicant of a total of 19 years' imprisonment was a "*heavy sentence*", I take the view that it falls within the range that cannot be said to be manifestly excessive. This was a large importation of two types of controlled drugs, including a very significant amount of Class A. The Applicant was positioned above the two couriers, who both received substantial sentences of imprisonment, but where each had different, but in any case, considerably more by way of mitigation in their favours. Accordingly, I refuse the Applicant leave to appeal his sentence because I am not satisfied that he has an arguable case that it was manifestly excessive.

14. Having refused the Applicant leave to appeal, it follows that I will similarly refuse to grant him legal aid.

Richard McMahon
Bailiff