No. 96/1441/W5, 96/1443/W5
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IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
The Strand
London WC2

Thursday 23 April 1998

B e f o r e:

THE LORD CHIEF JUSTICE OF ENGLAND
(Lord Bingham of Cornhill)

MR JUSTICE TURNER

and

MR JUSTICE PENRY-DAVEY

R E G I N A

- v -

A & B

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(Official Shorthand Writers to the Court)

MISS I GILLARD appeared on behalf of **BOTH APPELLANTS**
MR D FISHER QC and **MR M BRYANT-HERON** appeared on behalf of **THE CROWN**

SIR ALLAN GREEN QC appeared as **AMICUS CURIAE**

J U D G M E N T

THE LORD CHIEF JUSTICE: Any report of this case is to be as R v A & B, as referring to the first and second appellants respectively.

There are before the court two appellants, A and B. A pleaded guilty on 30 August 1995 to one count of conspiracy to contravene section 170(2) of the Customs and Excise Management Act 1979 in relation to the importation of a Class A controlled drug. On 1 February 1996 he was sentenced to 13 years' imprisonment. B pleaded guilty on 9 August 1995 to the same count. On 1 February 1996 he was sentenced to 14 years' imprisonment. There were two other co-defendants. The first of those, C, who is not a party to the present appeal, pleaded guilty on 4 October 1995 to a count to similar effect as that to which A and B pleaded guilty, save in one respect to which we shall draw attention. On 1 February 1996 he was sentenced to 12 years' imprisonment. D pleaded guilty to importing a Class A controlled drug and was sentenced to 10 years' imprisonment. Both A and B appeal against sentence by leave of the full court. Leave to appeal was granted in order to consider whether, and to what extent, the Court of Appeal Criminal Division should take account, on an appeal against sentence, of help given by an appellant to the authorities after sentence.

The prosecution of A and B and the other defendants arose out of two importations of ecstasy tablets. The first importation took place on 23 July 1994 when 50,000 ecstasy

tablets were found by Customs Officers in a lorry arriving at Dover. They were seized. The driver of the lorry was tried separately from the present appellants and was acquitted.

The second importation took place on 30 August 1994 when a car with 50,000 ecstasy tablets concealed under the floor of the boot was seized. The couriers on this second occasion were indicted and one of them was convicted. He was the man whom we have described as D, who was sentenced to 10 years' imprisonment. Both A and the man whom we have called C escorted the couriers on this occasion and were responsible for the oversight of this importation.

The two importations were the product of a single conspiracy. The Crown case was that B was the main organiser, assisted by A. C was only involved on the second occasion and D was the courier on the second occasion only. The total value of the ecstasy tablets involved in both importations was about £2m.

The Crown case depended on information supplied by an undercover officer, known in the case as 'Billy', who infiltrated the conspiracy and passed himself off as a potential buyer of ecstasy tablets.

The narrative can for present purposes be briefly summarised. On 13 August 1994 Billy met B at a public house off the M25, and arrangements were made for the importation of 50,000 ecstasy tablets, for which Billy was to pay £157,000. B, as recorded by Billy at the time, talked about the failed

importation on 23 July, when he had sent in 50,000 tablets, which had been stopped. On 18 August there was a telephone conversation between A and Billy, which was again recorded, in the course of which A implicated himself in the 23 July importation. On 22 August 1994 there was a further meeting between B and A and Billy. At this stage arrangements were in place to receive a further importation, but the plans fell through at the last minute and in the event no drugs were on that date received. It was however plain that A was instrumental in arranging the importation on 30 August.

B was arrested on entering the country on 19 October 1994. A and C were arrested on 30 August, just after the car containing the drugs was stopped. Documents were found which showed that the two cars occupied by A and C and D respectively had travelled in convoy across Holland and Belgium, and A's personal file contained Billy's telephone number.

It is plain that the judge faced a very difficult sentencing task. He had to assess the relative responsibilities of those engaged in these transactions and on the case as presented to him he put B as the conspirator nearest to the top of the supplying hierarchy. Below B he placed A and then C. In passing sentence he had to take account of the differing ages and states of health of the various defendants. B was older than the others and was also in a fragile state of health, having previously suffered a stroke. The judge also had to take

note of the different stages at which various defendants had pleaded guilty: B on 9 August 1995 and A on 30 August 1995. C's plea of guilty came later, as already indicated, on 4 October 1995, and appears to have been the result of the pleas of guilty already indicated by A and B and by their willingness to give evidence against C if necessary. The judge also had to take account of the fact that this was one conspiracy, but that C was not personally implicated in the first importation.

The Crown in opening the case put forward their understanding of the relative roles of the different parties. Counsel indicated that B was the organiser of both importations but was closely assisted by A. He described C as an important assistant who accompanied A on 30 August. In passing sentence the judge adopted this account. He described both B and A as being profoundly involved on any view with no less than two massive importations which luckily went wrong. On that occasion he described B as not being obviously at the apex of the organisation -- but well up in the organisational levels -- and A as being only a little below him. C he regarded as being what is commonly known as a minder.

The sentencing judge directed himself in accordance with the guidance given in R v Warren and Beeley [1996] 1 Cr App R(S) 233. In that case it was taken as the norm that one ecstasy tablet contained 100 milligrammes of active ingredient, so that 5,000 tablets ordinarily contained 500 grammes. The

guidance given was that, for importation of 5,000 or more tablets, the starting point for sentence should be 10 years' and upwards, and for 50,000 tablets or more, 14 years' and upwards. Here both A and B were involved in importing 100,000 tablets of a somewhat greater strength than was treated as the norm in Warren and Beeley.

Before the judge there was a text dated 1 February 1996 settled by a responsible officer of the Customs and Excise, of which the judge took account. He was therefore aware that both A and B were pleading guilty and were already giving assistance. Before this court there is an additional text settled by the Metropolitan Police dated 19 August 1997, which refers to some additional pieces of information which, we are told, have resulted in a number of different operations. We understand the information to relate to major crime, mostly international, and the information has been found to be correct. We have also received certain further information which a responsible officer has described as being high in the scale of valuable intelligence.

The main point taken by both A and B on this appeal is that insufficient credit has been given to them for the help which they have extended to the authorities, particularly since conviction. This argument prompts consideration of the principles upon which the court acts in a situation such as this, and in considering those principles we are particularly

indebted to the assistance we have received from Sir Allan Green QC, whom the Attorney General has kindly appointed to act as an amicus. The relevant principles are in our judgment these:

(1) Sentences are routinely discounted to reflect pleas of guilty, a practice recognised by section 48 of the Criminal Justice and Public Order Act 1994. A defendant who indicates an intention to plead guilty at a very early stage will ordinarily earn a greater discount than a defendant who pleads guilty at a very late stage of the proceedings.

(2) Where defendants co-operate with the prosecuting authorities, not only by pleading guilty but by testifying or expressing willingness to testify, or making a witness statement which incriminates a co-defendant, they will ordinarily earn an enhanced discount of their sentences, particularly where such conduct leads to the conviction of a co-defendant or induces a co-defendant to plead guilty.

(3) It has been the long-standing practice of the courts to recognise by a further discount of sentence the help given, and expected to be given, to the authorities in the investigation, detection, suppression and prosecution of serious crime: see, for example, R v Sinfield (1981) 3 Cr App R(S) 258, R v King (1985) 7 Cr App R(S) 227, R v Sivan (1988) 10 Cr App R(S) 282. The extent of the discount will

ordinarily depend on the value of the help given and expected to be given. Value is a function of quality and quantity. If the information given is unreliable, vague, lacking in practical utility or already known to the authorities, no identifiable discount may be given or, if given, any discount will be minimal. If the information given is accurate, particularised, useful in practice, and hitherto unknown to the authorities, enabling serious criminal activity to be stopped and serious criminals brought to book, the discount may be substantial. Hence little or no credit will be given for the supply of a mass of information which is worthless or virtually so, but the greater the supply of good quality information the greater in the ordinary way the discount will be. Where, by supplying valuable information to the authorities, a defendant exposes himself or his family to personal jeopardy, it will ordinarily be recognised in the sentence passed. For all these purposes, account will be taken of help given and reasonably expected to be given in the future. It is important that information be given in the form indicated by the decided cases.

(4) If a defendant denies guilt but is convicted and sentenced following a contested trial without supplying valuable information to the authorities before sentence or

expressing willingness to do so, the Court of Appeal Criminal Division will not ordinarily reduce a sentence to take account of information supplied to the authorities by the defendant after sentence. So much is made clear by R v Waddingham (1983) 5 Cr App R(S) 66, 68-69, and see the commentary in [1983] Crim LR 492; R v Debbag and Izzet (1991) 12 Cr App R(S) 733, 736-737; and R v X (1994) 15 Cr App R(S) 750, 753, and see the commentary in [1994] Crim LR 469. The reason for this general rule is clear: the Court of Appeal Criminal Division is a court of review; its function is to review sentences imposed by courts at first instance, not to conduct a sentencing exercise of its own from the beginning. Thus it ordinarily relies entirely, or almost entirely, on material before the sentencing court. A defendant who has denied guilt and withheld all co-operation before conviction and sentence cannot hope to negotiate a reduced sentence in the Court of Appeal by co-operating with the authorities after conviction. In such a situation a defendant must address appropriate representations to the Parole Board or the Home Office.

(5) To this general rule there is one apparent, but only partial, exception. It sometimes happens that a defendant pleads guilty and gives help to the authorities, for which help credit is given, explicitly or not, when sentence is

passed. In such a case the sentencing court will do its best to assess and give due credit for information already supplied and information which, it is reasonably hoped, will thereafter be supplied. But it may be that the value of the help is not at that stage fully appreciated, or that the help thereafter given greatly exceeds, in quality or quantity or both, what could reasonably be expected when sentence was passed, so that in either event the credit given did not reflect the true measure of the help in fact received by the authorities. Such, it appears, was the case in R v Lowe (1978) 66 Cr App R 122, and also in R v Sehitoglu and Ozakan [1998] 1 Cr App R(S) 89. In such cases this court does, as it should, review the sentence passed, adjusting it, if necessary, to reflect the value of the help given, and to be given, by the defendant.

Applying those principles to this case, we conclude that A and B are entitled to some additional credit for help given to the authorities, which has not yet led to arrests or seizures but has proved to be more valuable in terms of quality and quantity than the judge could reasonably have appreciated when passing sentence. Both A and B did plead guilty; they did both express willingness to testify, and one of them gave a witness statement. The result of their conduct was to prompt C and

D to plead guilty. They did supply information of value to the authorities before sentence. They have conspicuously continued to supply information which has proved to be more valuable than the judge could have expected.

We think it appropriate to reflect that help by a reduction in the sentences imposed on each of them by two years in each case. Thus the sentence on A will be reduced from 13 years' to 11, and on B from 14 years' to 12.

Counsel on behalf of the appellants has relied on a number of other matters relating to their respective roles in the conspiracy, to their health, to their personal circumstances, to their good character and to their employment records, but these are all matters which were brought to the attention of the sentencing judge and of which he took full account in passing the sentences which he did. It is also argued that the judge's starting point was too high. It must however be remembered that the quantity of ecstasy tablets involved was double that for which the starting point was said in Warren and Beeley to be 14 years', and the tablets themselves contained more of the active ingredient than was treated in that authority as the norm.

Despite the very attractively presented arguments of counsel we are not persuaded that these appellants are

entitled to any further reduction. To the extent indicated however these appeals are allowed.

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