SENIOR COURTS
COSTS OFFICE

SCCO Ref: SC-2019-CRI-000155

Dated: 9 November 2020

ON APPEAL FROM REDETERMINATION

REGINA v DAVIDSON

IN PRESTON CROWN COURT

APPEAL PURSUANT TO REGULATION 29 OF THE CRIMINAL LEGAL AID (REMUNERATION) REGULATIONS 2013 AS AMENDED FOR CASES WITH REPRESENTATION ORDERS GRANTED ON OR AFTER 31 DECEMBER 2018

CASE NO: T20197257

LEGAL AID AGENCY CASE

DATE OF REASONS: 9 December 2019

DATE OF NOTICE OF APPEAL: 9 December 2019

APPELLANT: Jonathan Turner (Kenworthys Chambers)

The appeal has been dismissed for the reasons set out below.

MASTER NAGALINGAM
COSTS JUDGE

REASONS FOR DECISION

Background

1. The Defendant was charged, along with 19 others, on a nine-count indictment relating to various drug related conspiracies.

2. The Defendant featured on:

   Count 1: Conspiracy to supply controlled drugs of Class A to another, contrary to section 1(1) of the Criminal Law Act 1977 in that between the 1st day of May 2018 and the 2nd day of December 2018 the Defendant conspired with others to unlawfully supply crack cocaine.

   Count 2: Conspiracy to supply controlled drugs of Class A to another, contrary to section 1(1) of the Criminal Law Act 1977 in that between the 1st day of May 2018 and the 2nd day of December 2018 the Defendant conspired with others to unlawfully supply diamorphine.

   Count 3: Arranging or facilitating travel of another person with a view to exploitation, contrary to section 2(1) of the Modern Slavery Act 2015 in that between 1st July 2018 and 10th August 2018 the Defendant along with others arranged or facilitated the travel of Tyrese Terralonge with a view to him being exploited.

   Count 4: Arranging or facilitating travel of another person with a view to exploitation, contrary to section 2(1) of the Modern Slavery Act 2015 in that between 1st July 2018 and 10th August 2018 the Defendant along with others arranged or facilitated the travel of Tyreece Boswell with a view to him being exploited.

3. At a plea and trial preparation hearing on 12 July 2019, a trial was listed for 18 November 2019 with a case management hearing to take place on 24 September 2019.

4. The 24 September 2019 case management hearing proceeded as listed which the Defendant attended. The charges facing the Defendant were consolidated into a single joint indictment, which contained all relevant counts against all relevant defendants. The judge then elected to direct that two trials take place, the first of which would feature the Defendant alongside four of his co-defendants. It is said the reason for this is that the judge felt it was “not appropriate” to have a trial of 10 defendants. The Defendant was not to feature in the second trial.

5. The 18 November 2019 trial did not reach its conclusion due to an advocate being taken ill, and the jury being discharged. I am advised that trial has been rescheduled but I do not know if it has yet taken place. However, nothing turns

on this because the Appellant is seeking a cracked trial fee for the hearing on 24 September 2019 on the basis that was a concluded hearing, and intends to seek a further trial fee in relation to the rescheduled November 2019 trial.

6. The Respondent's position is that the 24 September 2019 hearing was not a concluded hearing or a cracked trial, but rather forms part of the fees to which the Appellant is entitled at the conclusion of the proceedings, based on there being one indictment against the Defendant.

The Parties' Submissions

7. This is a decision on the papers. The Appellant relies on the appeal notice, grounds of appeal, general correspondence with the Legal Aid Agency, and a submissions document dated 13 November 2019. The Respondent relies on the written reasons dated 30 October 2019 and a written submissions document dated 31 January 2020.

8. The Appellant seeks to categorise the 24 September 2019 as a hearing where the original indictment against the Defendant was quashed. In doing so, the Appellant relies on their analysis of whether the original indictment was quashed or amended, concluding it must have been quashed.

9. The documents put before the court are limited, and in this respect I have accepted the submissions of the parties as to what was said by the court at the time of the 24 September 2019 hearing.

Decision

10. The Appellant cites parts 3.21 and 3.22 of The Criminal Procedure Rules in conjunction with section 5 of the Indictments Act 1915.

11. Part 3.21 of The Criminal Procedure Rules deals with instances where a party applies to the Crown Court for an order for

    the joint trial of—

    (a) the joint trial of (i) offences charged by separate indictments, or

    (a) the joint trial of (ii) defendants charged in separate indictments;

    (b) separate trials of offences charged by the same indictment;

    (c) separate trials of defendants charged in the same indictment; or

    (d) the deletion of a count from an indictment.

    However, this is not a case of The Crown Court making an order following an application. In this respect I draw a distinction between how the court sought to order separate trials, as compared with The Crown's application to join two

more defendants to the 17 handed indictment.

12. Therefore, one must consider the circumstances in which The Crown Court may make such an order of its own volition. In that regard, of relevance is part 3.22 of The Criminal Procedure Rules which provides:

> Order for joint or separate trials, or amendment of the indictment
>
> (1) This rule applies where the Crown Court makes an order—
>
> (a) on an application under rule 3.21 applies (Application for joint or separate trials, etc.); or
> (b) amending an indictment in any other respect.

Drawing from the facts as presented in the appeal, I conclude that The Crown Court made an order under part 3.22(1)(b) of the Criminal Procedure Rules and I note this discretion may be exercised "in any respect".

13. The Appellant invites me to consider section 5 of the Indictments Act 1915 in order to interpret when an indictment may be amended.

14. The Appellant quite rightly cites sections 5(1) and 5(3) as examples of where the court may amend an indictment for reasons of defect, prejudice or embarrassment in his defence.

15. However, what the Appellant has not addressed is the fact that section 5(3) also permits an amendment "for any other reason" where "it is desirable to direct" to "order a separate trial of any count or counts" on the indictment. It seems to be that the judge in The Crown Court did precisely that, i.e. expressing a desire based on appropriateness and directing how the subsequent trials would be managed.

16. Further, I do not consider that the section 5 of the Indictments Act 1915 could be read as an exhaustive list of the circumstances in which an amendment to an indictment could arise. It is neither implicitly nor explicitly that prescriptive. I cannot see anything in the decision in *Johal and Ram* (1972) 56 Cr.App.R 348 that concludes a court may not amend an indictment for reasons of procedural administration. I should add that I am loathe to adopt the Appellant's reference to "the courts (sic) convenience". The court does not make case management decisions for its own convenience, but rather for the proper administration of justice.

17. Finally, section 5(6) of the Indictments Act 1915 provides "Any power of the court under this section shall be in addition to and not in derogation of any other power of the court for the same or similar purposes." In that regard, the "in any other respect" provision of part 3.22(1)(b) of The Criminal Procedure Rules does not fall to be considered solely within the prism of the Indictments Act 1915, but rather may be applied to the exclusion of it.

18. For the avoidance of doubt, and not that it is being argued by the Respondent anyway, I agree that this is not a case of amendment due to defect. However, I disagree that amendment is confined to defects, prejudice or embarrassment.

19. On the evidence and information before me, I reject the argument that the original indictment was quashed and further reject the argument that the 24 September 2019 hearing was anything but a case management hearing.

20. I also reject the argument that the court did not have the power to order the separate trials of defendants charged in the same indictment. That is plainly open to the court by virtue of parts 3.21 and 3.22 of The Criminal Procedure Rules. I therefore conclude the Appellant is wrong to submit or seek to infer that original indictment was either severed or quashed.

21. Accordingly, this appeal is dismissed.

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