



SENIOR COURTS
COSTS OFFICE

SCCO Ref: 202/19

Dated: 15 October 2019

APPEAL FROM REDETERMINATION

REGINA v SAMI (ATTIQUE)

COURT OF APPEAL (CRIMINAL DIVISION)

APPEAL PURSUANT TO REGULATION 29 OF THE CRIMINAL LEGAL AID
(REMUNERATION) REGULATIONS 2013

CASE NO: T201502964 C2

CRIMINAL APPEALS OFFICE

DATE OF REASONS: 4 July 2019

DATE OF NOTICE OF APPEAL: (not dated but received on or before 17 July 2019)

APPLICANT/APPELLANT: Counsel

The appeal is successful for the reasons set out below. The Appellant is also to be paid the issue fee (£100), but (when asked) said that he did not claim any costs for his own time.

**SIMON BROWN
COSTS JUDGE**

REASONS FOR DECISION

1. The issue arising in this appeal was whether the Determining Officer of the Criminal Appeal Office was correct in his assessment of the fee due to the Appellant in respect of his representation of the Defendant in an appeal determined by the Court of Appeal in a written decision dated 23 March 2019.

2. In his Appeal Notice the Appellant indicated that he would be content for the matter to be dealt with on the papers and Legal Aid Agency had not objected to this course.

3. The background to the substantive appeal is set out in detail in the decision of the Court of Appeal which is reported at [2018] EWCA 552 (Crim) and I do not propose to rehearse this in this decision. I take the following summary from the decision letter of the Determining Officer in the costs proceedings dated 4 July 2019.

Background

4. On 10 March 2015 the Appellant was convicted of conspiring to import and supply a class A drug, diamorphine, and was sentenced to 19 years imprisonment. His trial legal representatives advised against appeal in respect of both conviction and sentence, leading to the instruction of fresh solicitors and counsel who drafted amended Grounds of Appeal against conviction. Leave to Appeal was refused by a Single Judge on 24 October 2015; the application was renewed on 16 November 2015 and in early April 2016 the Appellant was privately instructed. The Appellant amended the conviction Grounds and drafted an advice on Grounds against sentence on 13 and 25 April 2016 respectively. On 6 July 2016 a single Judge refused leave to appeal against sentence and the application was renewed 12 days later. Both renewed applications against conviction and sentence were heard by the full Court on 3 February 2017 with the Defendant represented by privately funded Counsel (the Appellant) and a solicitor-advocate (Mr Ghaffar). Leave to appeal against conviction and sentence was granted with a Representation Order providing for public funding of leading and junior Counsel to prepare and present the appeals going forward. Solicitors were also granted a Representation Order to prepare a composite bundle of documents for the appeal hearing. On 3 November 2017 the full Court heard evidence and submissions. In a reserve judgement of 23 March 2018 the appeal against conviction was dismissed but the sentence was reduced to 14 years.

5. The case concerned the importation of heroin with a street value of £37 million hidden in a Jaguar car exported from Pakistan on a container ship which arrived at Felixstowe on 1 December 2013, purportedly for repair. The prosecution case (based largely upon records of phone calls and observation evidence) was that the Defendant, who ran a car sales business in Ilford, was closely involved in the arrangements to move the Jaguar car so as to remove the heroin from it. That operation was covertly observed by officers of the National Crime Agency. The defence case was that the Defendant was not a party to any conspiracy and his communications were in respect only of vehicle sales and not drugs.

6. The three Grounds of Appeal against conviction upon which the matter proceeded to a hearing by the full Court related to the conduct of trial Counsel for the Defendant. The first ground of Appeal was the decision to call as a witness Mr Mohammed Safder, who had worked for the Defendant from time to time: it was said that this was a decision no reasonably competent Counsel could have taken and that Mr Safder's evidence was said to be highly damaging to the Defendant's case. The second ground of Appeal alleged that Counsel had failed to prevent the Judge from directing the jury that they could draw an adverse inference against the Defendant from the fact that he had not referred in his defence statement to the fact that the co-Defendant had asked him whether he would be able to repair his "non-runner" which was a matter going to his defence. The third Ground of Appeal alleged that Counsel had led the Appellant's previous convictions before the jury without explaining to him that he had a choice as to whether such evidence should be introduced: it was said that this evidence was damaging to the Defendant's credibility as a witness, that there was nothing to be gained from putting it in evidence and that it should not have been done. Both trial Counsel, leading and junior, gave evidence at the full Court appeal hearing. The grounds of appeal against sentence submitted that the 19-year sentence was excessive given the Defendant's limited role in the offences and given other significant family and personal circumstances.

7. In his bill for the work he had done, the Appellant claimed a fee of £10,000. His work log set out 46.5 hours preparation time of which 3.25 hours was said to be spent preparing for and in Conference. On 19 July 2018 the Determining Officer allowed a fee of £5,000. Objection was made on that basis that such a fee did not reflect the number of hours in preparation given all the difficulty and sensitivity of the case (in particular having to cross-examine leading and junior Counsel regarding their actions at the original trial).

8. On re-determination the Determining Officer refused to increase the allowance from a fee of £5,000. In his decision he says that the fee was broken down as follows:

Reading statements from trial Counsel and solicitors	6 hours
Reading trial material served by the prosecution	10 hours
Drafting skeleton argument	9.5 hours
Preparing for the hearing	18 hours
Total	43.5 hours
NB the additional time spent preparing for and in Conference was paid for separately	3.25 hours

9. The Determining Officer considered about half the time claimed to be reasonable and allowed what he said was about 30 hours preparation plus a full day's attendance at Court. He said that the issues had previously been extensively rehearsed by Counsel in a 15-page amended Grounds of Appeal dated 13 April 2016 which were drafted whilst the Appellant was instructed on a privately funded basis. He said that with regards to the preparation for the hearing, no details were given by Counsel save for two hours reading authorities and drafting a sentencing note. He acknowledged that Counsel had drafted a skeleton argument six months previously (so that it would need to be reviewed) and that the Appellant had to prepare to cross-examine trial Counsel. However, per the Determining Officer, the issues were already "*at his fingertips*" from the detailed Grounds already drafted. The Officer held that a reading of the amended perfected Grounds of Appeal made it clear that Counsel had extensive knowledge of the facts and issues to be able to draft the Grounds, and further, that Counsel had already had that knowledge at the time that Legal Aid was granted. He did not consider it appropriate to describe the work subsequently done as difficult: the basis of the Appeal was, he said, already known and did not change. Furthermore, Counsel did not have sole responsibility for the preparation and presentation of this Appeal as Legal Aid had also been granted for junior Counsel as well as instructing Solicitors who had undertaken a further 30 hours work in support.

10. Paragraph 1 of Schedule 3 of the Criminal Legal Aid (Remuneration) Regulations 2013 provides as follows:

(1) The provisions of this Schedule apply to proceedings in the Court of Appeal.

(2) In determining fees, the appropriate officer must, subject to the provisions of this Schedule—

(a) take into account all the relevant circumstances of the case including the nature, importance, complexity or difficulty of the work and the time involved;
and

(b) allow a reasonable amount in respect of all work actually and reasonably done

11. Paragraph 9 (1) of Schedule 3 prescribes certain rates in respect of work carried out by advocates. Paragraph 9 (4) however provides:

Where it appears to the appropriate officer, taking into account all the relevant circumstances of the case, that owing to the exceptional circumstances of the case the amount payable by way of fees in accordance with the table following subparagraph (1) would not provide reasonable remuneration for some or all of the work the appropriate officer has allowed, the appropriate officer may allow such amounts as appear to the appropriate officer to be reasonable remuneration for the relevant work.

12. The Determining Officer has accepted that the prescribed rates do not apply in this case and therefore, by implication, that there were exceptional circumstances. The Appellant contends in effect that the amounts the Officer has allowed do not amount to reasonable remuneration in the circumstances.

13. Guidance as to the correct approach in assessing Counsel's fees was given by Pennycuik J in *Simpson's Motor Sales (London) Ltd v Hendon Corporation* [1965] 1 WLR 112. He said (at 118 E-F):

"... [O]ne must envisage an hypothetical Counsel capable of conducting the particular case effectively but unable to or unwilling to insist on the particular high fee sometimes demanded by Counsel of pre-eminent reputation. One must then estimate what fee this hypothetical character would be content to take on the brief.... There is in the nature of things no precise standard of measurement..."

14. The above passages were cited by Hickinbottom J (as he then was) in *Evans v The Serious Fraud Office* [2015] EWHC 1525 (QB); he also noted that Pennycuik J went on to say that the assessment of a fee would be fact-specific ("*the same measure may not always be applicable in the infinite variety of cases which can arise*", at page 118G); and that the appropriate figure must be assessed by the master or Judge "*using his knowledge and experience*" (also at page 118G).

15. In my judgment the allowance of £5,000 for leading Counsel does not constitute reasonable remuneration taking into account all the relevant circumstances of the case including the nature, importance, complexity or difficulty of the work and the time involved

16. The skeleton argument was supplementary to the submissions contained in the Grounds of Appeal. The Appellant says it is therefore irrelevant that over a year previously he drafted the Grounds of Appeal. Having read the skeleton argument it is clear that it focused on material that had been recently served including that which been supplied by the Prosecution and trial Counsel: it built upon the submissions made in the Grounds of Appeal rather than repeating them (this is evident, for instance, from the analysis submitted by the Appellant as to whether there was any informed consent to call Mr. Safder).

17. The skeleton argument was drafted some six months before the hearing. It is clear that it would have been necessary to spend time going back over the detail of the case in the period immediately prior to the hearing. I accept that it would not have been possible to remember all of the details of the case given the period between preparation of the skeleton argument and the hearing. Moreover, the Appellant had to prepare for cross-examination of trial Counsel. This meant that he had to be familiar with the detail of the Solicitor's file and the notes submitted by Counsel.

18. In any event in my judgment the Determining Officer's decision substantially underestimates the difficulties with the case and the time required to prepare for appeal hearing. The appeal involved serious allegations of professional incompetence against Queen's Counsel and junior Counsel and their cross-examination in the Court of Appeal. In my judgment it is clear from all the material including the perfected Grounds of Appeal, the skeleton argument and the Court of Appeal judgment that this was indeed a complex and difficult case requiring very considerable skill. It was not simply a case of pursuing the submissions set out in the Grounds of Appeal. They were the starting point, albeit a detailed one, for the case that was eventually put to the Court.

19. The Appellant had to take responsibility for the case that was put to the Court of Appeal. It seems clear that, notwithstanding the assistance of junior Counsel and Solicitors, a very substantial amount of work was required by leading Counsel. He has prepared a work log; he does not break down work as between different elements of the preparation of the appeal, but that does not seem to me surprising as he would not necessarily have worked on the case in any clearly compartmentalised way. Certainly, I have no reason to consider that Counsel did not do the work that he has put into the work log. Thirlwall LJ commented in the Court of Appeal decision that the Appellant's submissions (in respect of the first Ground of Appeal) were made with "characteristic focus". It seems to me that there is no real basis for concluding that the work was not done with reasonable efficiency, which view appears to be confirmed by the learned Judge's comment. In any event, applying the guidance set out above, it seems to me that the fee claimed of £10,000 is a reasonable fee in all the circumstances.

TO: Henry Blaxland QC
Garden Court Chambers,
57-60 Lincoln's Inn Fields,
London
WC2A 3LJ

COPIES TO: Mr. Greenhill,
Criminal Appeals Office
DX 44450,
Royal Court of Justice,
Strand
London WC2A 2LL.

The Senior Courts Costs Office, Thomas More Building, Royal Courts of Justice, Strand, London WC2A 2LL: DX 44454 Strand, Telephone No: 020 7947 6468, Fax No: 020 7947 6247. When corresponding with the court, please address letters to the Criminal Clerk and quote the SCCO number.