



SENIOR COURTS
COSTS OFFICE

SCCO Ref: SC-2019-CRI-000091

Dated 18 March 2020

APPEAL FROM REDETERMINATION

REGINA v MAHMOUDI

CROWN COURT IN LIVERPOOL

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

CASE NO: T20157061

LEGAL AID AGENCY CASE

DATE OF REASONS: 29 May 2019

DATE OF RECEIPT OF NOTICE OF APPEAL: 17 October 2019

APPLICANT/APPELLANT: Counsel, Thomas
Schofield

The appeal is unsuccessful the reasons set out below.

**SIMON BROWN
COSTS JUDGE**

REASONS FOR DECISION

1. By his Notice of Appeal the Appellant seeks to challenge the Determining Officer in respect of a Special Preparation Fee claimed under paragraph 17 of Schedule 1 of the Criminal Legal Aid (Remuneration) Regulations 2013.
2. At the hearing on 3 March 2020, which took place by telephone, the Appellant represented himself and the Legal Aid Agency (the LAA) was unrepresented.
3. The fee claimed relates to work done under a Representation Order which was issued to the Appellant in respect of the Defendant Mahmoudi who was charged with being concerned in a money laundering arrangement. The case arises out of investigation into an alleged conspiracy by a large organised crime group to supply controlled drugs. The Prosecution alleged that the Defendant and his nephew, Aziz Fateh, acted as bankers for the group, receiving large cash payments and entering the cash into the 'Hawala' alternative remittance scheme. It was alleged that money was transferred by two individuals, who were involved in the larger drugs conspiracy, to a convenience store under the control of the Defendant and his nephew. I understand that whilst the original case summary suggests that 27 defendants were charged, I have seen a Prosecution Opening Note for the first trial which is directed only at the case against the Defendant and his nephew Fateh.
4. The case went to trial on 14 March 2016 and ended in a conviction on 30 March 2016. On 30 March 2017 the Court of Appeal overturned the conviction and a retrial commenced on 11 January 2018. Following legal argument the Defendant sought a 'Goodyear' indication and after it was indicated that he would receive a suspended sentence the Defendant pleaded guilty.
5. In the course of proceedings evidence was served in electronic form. The Prosecution relied on CCTV, observation evidence, call site data and the seizure of some £110,000 said to be in the possession of the defendant's nephew. I understand that a significant amount of material was served. In the Notice of Additional Evidence, the Prosecution stated that the total pages of electronic evidence amounted to 54,390. The total pages both in respect of paper and electronic evidence amounted to 60,803.
6. The appeal notice was lodged out of time and the first matter for me to address is whether an extension of time should be given for the appeal; such an extension having been sought in the Notice of Appeal.
7. Under the 2013 Regulations, an appeal under Regulation 29(2) must be instituted within 21 days of the receipt of the appropriate officer's reasons. The letter setting out reasons in this case is dated 29 May 2019. The Appellant was unable to state precisely when this letter was received but I understood him to accept that they were probably received in early June 2019. The Notice of Appeal is stamped received on 17 October 2019. Allowing 21 days from the date of assumed receipt, that would suggest a period of delay of substantially over 2 months; in any event it seems to me there has been a significant period of delay.
8. The reason for the delay, the Appellant said, that he was waiting for decisions in appeals by other Advocates including in particular his junior in the case, Mr Jutla,

(the relevant Representation Order permitted representation by two Advocates) and an appeal by counsel, Mr. Sekhon, for the co-defendant. He says that it was reasonable to await these decisions before deciding whether to appeal because if the result went in their favour it might avoid for the need for him to lodge an appeal (so that the drafting of Notice of appeal and incurring a fee of £100 would be avoided). As I understand it he anticipated being able to negotiate a higher fee on the basis of a favourable decision in their appeals.

9. The relevant provisions (at Regulation 31) require a “good reason” for an extension of time save that where a representative without good reason has failed (or, if an extension were not granted, would fail) to comply with a time limit a Costs Judge may, in exceptional circumstances grant an extension. The Appellant did not contend that there were exceptional circumstances here.

10. It seems to me clear that the reason advanced is not a good reason for the delay. If the Appellant had wanted to await the outcome of the other appeals he could have written to the LAA to request an extension; alternatively he could have sought an extension of time from the SCCO. He did not do so and there was, it seems to me, no reason for not doing so - even accepting his intention to await the outcome of the appeals. Moreover, I would add that it is not clear to me on what basis it could be assumed by the Appellant that (absent an agreement to extend time) a revised fee could be negotiated with the LAA even on the assumption that the other Appellants had been successful, given that his appeal would be out of time.

11. As the rules themselves make clear there is a legitimate interest in matters being resolved promptly. There are a large number of appeals to the SCCO, many of which involve the same underlying criminal proceedings. Where possible an attempt is made to ensure that appeals which concern the same underlying case and/or issues are heard together; this is to avoid conflicting and inconsistent decisions, potential unfairness to the parties and to ensure, as far as possible, that Court time is used efficiently. If it were the case that one representative could await the outcome of an appeal in order to attempt to appeal the same or similar points such an approach would be frustrated.

12. In the event the written decision of Master James rejecting the appeal by Mr. Sekhon and Mr. Jutla is dated 31 July 2019 (*R v Hiva Mahmoudia*; *R v Aziz Fateh*, 18/19 and 100/10). No formal evidence has been provided by the Appellant as to when he discovered the outcome of those appeals. He had some recollection that it was in early September (in any event some time before the date when this appeal was filed) when he was in a trial with one for the other Advocates. That might have prompted him to lodge his appeal but it was clear that he had no arrangements in place to obtain the decision on those appeals promptly, nor am I satisfied that he lodged an appeal promptly after finding out about the decision by Master James. In any event I was not satisfied that there was an adequate explanation or good reason for this further delay.

13. For all these reasons I reject the application for an extension of time.

14. Since I heard the Appellant’s contentions in the substantive appeal I should also say that I would have dismissed it in any event for the following reasons.

15. The Appellant received a Graduated Fee and a Special Preparation Fee for the first trial. The fee was based on 573 hours of work done on the first trial. In respect of the retrial the defendant has received a Graduated fee and a Special Preparation Fee based on 80 hours of work. It is against this latter decision, concerning Special Preparation Fee, that the appellant sought to appeal. It was contended that the fee should be based on 284 hours and not 80.

16. The Determining Officer accepted that in principle a Special Preparation Fee was payable, the basis being that the number of pages of prosecution evidence (PPE) exceeded 10,000. However he considered that 80 hours, which he suggested was about two weeks' work, was appropriate to allow for the consideration of any new material, rereading key material and reviewing a revised Sequence of Events (SOE) chart.

17. The Appellant contended that *“the essence of the Determining Officer’s decision to tax [his] claim down by 72% is that [he] “had already read/viewed the evidence as part of [his] preparation for the first trial, and that [his] claim is for doing exactly the same work all over again”*. He asserted that this Special Preparation claim related to different work done, or done from a different perspective. He says that work done on instructions not given advance of the first trial and was based on a different approach taken by the Prosecution. In particular the SOE chart was, he said, radically amended so as to persuade the court that inferences could be drawn that the Defendant was involved in the wider conspiracy. The Defendant gave instructions to present the defence case in a different way requiring counsel to check the accuracy of the SOE chart. Moreover, he says, the claim relates to preparation for the second trial which took place almost 2 years after the first. He says that after this period time it was reasonable to expect an Advocate to prepare a case afresh. Bearing in mind that the Determining Officer on his initial claim had accepted this case was so substantial that 573 hours of special preparation was reasonable the allowance of just 80 hours, to read/view the case again unrealistic. The Determining Officer’s early acceptance that the case was substantial suggests *per se* that his claim was reasonable.

18. Paragraph 17 of Schedule 1 of the 2013 Regulations provides as follows:

Fees for special preparation

17.—(1) This paragraph applies where, in any case on indictment in the Crown Court in respect of which a graduated fee is payable under Part 2 or Part 3—

..

(b) the number of pages of prosecution evidence, as defined in paragraph 1(2), exceeds 10,000 and the appropriate officer considers it reasonable to make a payment in excess of the graduated fee payable under this Schedule; or

...

(2) Where this paragraph applies, a special preparation fee may be paid, in addition to the graduated fee payable under Part 2 or Part 3.

(3) The amount of the special preparation fee must be calculated—

..

(b) where sub-paragraph (1)(b) applies, from the number of hours which the appropriate officer considers reasonable to read the excess pages; and

...

and in each case using the hourly fee rates set out in the table following paragraph 24 as appropriate to the category of trial advocate.

....

.....

(6) In determining a claim under this paragraph, the appropriate officer must take into account all the relevant circumstances of the case, including, where special preparation work has been undertaken by more than one advocate, the benefit of such work to the trial advocate.

19. I think it is clear that the Determining Officer had in mind that SOE chart had been substantially amended. He stated that he accepted that it was necessary to review the material. However he held that the earlier work should have greatly assisted the Appellant in doing so.

20. The Determining Officer said that the fact that material was served in electronic format should have been conducive to identifying key dates and times so as to assist the defence in reviewing key material as a result of new instructions. This he said was particularly so when the Prosecution chose to present the SOE by breaking it down into multiple smaller charts for the trial focusing on individual deliveries. The Determining Officer considered that the work log of the Appellant was “*unhelpful in identifying precisely what was reconsidered and why*”; he commented that it seemed that “*a full reread was undertaken with no structured approach to the electronic material*”.

21. The Determining Officer also commented that raw telephone data having been served in Excel meant that the information could be interrogated through the application of search and filtering techniques (eg searching for a specific telephone number or date). He referred to the analysis of colleague who was dealing with the instructing solicitor's claim for Special Preparation which indicated that only 83 pages of material related to the Defendant's phone records, that the Defendant was linked only to a single number and there were a limited number of entries detailing the Defendant's involvement.

22. Despite the reference to the material having been served in Excel form in the decision of the Determining Officer the Appellant told me that it was not possible to search and filter. I had not myself seen any of the raw electronic material prior to the hearing. At the hearing it was suggested that it may have been sent in. I allowed the Appellant time to submit the material indicating that I had not received it, if it had been sent in. My subsequent enquiries with the clerk to the Criminal Appeals confirmed that such material had not been received by him. I communicated this to the Appellant so that he had an opportunity to address the matter but no material was then provided. The Appellant said that he would check with his clerks "when and how the data stick was provided". However after allowing a further period of time I emailed the Appellant (copying in the he LAA) to ask him whether he was content to for me to proceed to make a decision. He indicated he was. As should have been clear to the Appellant I have not therefore seen the underlying raw data. In the circumstances I am not satisfied that it would be appropriate to proceed on the basis urged upon me given the Officer's clear finding. I would add that not only were the Determining Officer's findings as to the format of the material not the subject of challenge in the Notice of Appeal I note from the decision of Master James that she found that the material "*was served electronically and pages could have been searched electronically*".

23. I have been provided with the both SOE chart used in the first trial and that used in the second trial. They are substantial charts setting out inter alia a significant amount of income and outgoing call contact from various telephones on various dates in early 2014. I understand that these communications were highly material to the Prosecution's allegations that there had had been at least 8 deliveries of cash (criminal property) in this period. The material needed to be considered carefully. However in agreement with the reasons given by Determining Officer and for the reasons set out above, even if I had been persuaded to extend time, I would not be satisfied that the allowance made by the Officer should be increased. It seems to me that the Determining Officer had in mind and addressed substantially the matters now raised in the Notice of Appeal. I agree with the observations of Master James and the Officer as to the relatively discrete role of the Defendant, noting that the Defendant was not charged with involvement in drug dealing. Further, I am not satisfied that the raw material could not have been searched and/or filtered in some way in a manner so as to substantially reduce the amount of material that needed to be closely considered and that had this been done with a concentration on the material relevant to the allegation, it would have led to very substantially less time being taken than is claimed.

24. I should add that as I have previously commented (*R v Daugintis* (SCCO Ref. 154/17) (and I believe other Costs Judges have commented similarly) there are real difficulties in ascertaining a page count for the purposes of PPE from an Excel

spreadsheet. Such spreadsheets are designed to be read in electronic form and application of the Print Preview function in Excel might divide up the columns or rows such that one column or row appears on one page and on another; material may be distorted and incomprehensible if it were printed out and also Excel has a tendency to produce a significant number of empty pages. As the Determining Officer commented in this case, there were significant portions of many spreadsheets which contained no relevant data. Pressing Print Preview in Excel to achieve a 'page count' – which is what may have occurred here- can produce a figure which is wholly unrepresentative of the work done.

25. I would also observe that the Determining Officer noted in his decision that Representation Order provided for two counsel and he had been concerned to ascertain whether there were any divisions of labour between counsel. I accept that the task had to be undertaken was one requiring considerable care. However I was not provided in the hearing with any satisfactory explanation as to why consideration of the electronic material was not the subject of delegation or division between the representatives (as was apparently the case); it is clear that others were capable of undertaking the task of considering and checking the raw material and the work of one of the team should have lessened the burden on others.

26. In short for all these reasons this appeal should be dismissed.

TO: Thomas Schofield,
No5 Chambers
Fountain Court,
Steelhouse Lane,
Birmingham,
B4 6DR

COPIES TO: Graham Hughes,
Criminal Cases Unit,
DX 745810
Liverpool 35

Also
Legal Aid Agency
DX 10035
Nottingham

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.