



SENIOR COURTS
COSTS OFFICE

SCCO Ref:
SC-2020-CRI-000164

8 January 2021

ON APPEAL FROM REDETERMINATION

REGINA v ZAMIR

CROWN COURT AT MANCHESTER

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

CASE NO: T20197415

DATE OF REASONS: 4 MAY 2020

DATE OF NOTICE OF APPEAL: 15 MAY 2020

APPLICANT: COUNSEL JONATHAN TURNER

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

**JASON ROWLEY
COSTS JUDGE**

REASONS FOR DECISION

1. This is an appeal by Jonathan Turner of counsel in respect of the calculation by the determining officer of the fee payable under the Advocates Graduated Fee Scheme.
2. Counsel was instructed on behalf of Iqrar Zamir who faced a single count indictment for conspiracy to rob a jewellers. On the day before his trial, Zamir put in a defence statement which indicated that he wished to plead guilty to the theft of jewellery and wished to add that offence as a second count to the indictment.
3. According to his defence statement, Zamir and his co-conspirators had intended to commit a burglary of the jewellers on the previous night. However the intention came to nothing given the presence of people on the street outside the shop. Consequently, it was agreed that a smash and grab raid would take place the following day using sledgehammers and jewellery in the window display would be grabbed from the street. Zamir apparently got cold feet on the following day and did not take part in the raid itself. His co-conspirators donned masks and entered the shop where they set about smashing the glass counters with hammers.
4. On the basis that he had not wished for anyone to be hurt by the actions of the gang, Zamir argued that he had only agreed to steal. As such he wished to plead guilty to theft and, if necessary, to be tried on the offence of robbery.
5. According to counsel, the essence of the trial of Zamir (his co-conspirators having previously been convicted at an earlier trial) was the single issue of whether he had conspired to rob the jewellers or simply to steal its contents. The jury did not accept Zamir's version of events and found him guilty of conspiracy to rob.
6. The method of calculation of the advocate's fee under the graduated fee scheme is contained in the Criminal Legal Aid (Remuneration) Regulations 2013 as amended, particularly in relation to the banding of offences which came into force in 2018. The original version of that banding document applied up to December 2018 and so it is the revised 1.2 version which applies to this case.
7. Category 11 applies to Burglary and Robbery. Aggravated burglary or armed robbery, amongst other offences, are in band 11.1. Other burglary and robbery offences are in band 11.2. In this case, the determining officer has applied band 11.1 in coming to her calculation of the appropriate graduated fee.
8. Following on from his client's argument that in fact he was only guilty of a conspiracy to commit theft, counsel appeals the decision of the determining officer on the basis that the appropriate banding ought to be in Category 6 which is described as dealing with "Dishonesty (to include Proceeds of Crime and Money Laundering)". There are five bands within Category 6 which are in

descending order of severity, starting with cases which have a value of over £10 million and going down to band 6.5 where the value is under £30,000.

9. Counsel described it as a quirk of the banding that, unlike other dishonesty offences, payment for robbery does not vary depending upon the amount stolen, or indeed the amount of pages of prosecution evidence (which can also apply in bands 6.1 and 6.2). The essence of counsel's argument is set out in his appeal documentation as follows:

“It is submitted that the advocate ought not to be penalised because the defendant may choose to use force when committing a theft, thus causing the indicted offence to be one of robbery. The elements of theft and robbery are identical, the only difference being that in a robbery trial the Crown have the additional burden of establishing that force was used or threatened.

It is therefore submitted that given the elements of the offence are consistent, bar the use of force, and that a jury can return a verdict of the lesser offence should that additional element not be established to their satisfaction, that the advocate can elect to seek payment for the lesser offence of theft.

In this particular case the issue becomes particularly stark as this was the singular point for the Jewellery. Additionally, it was a tactical decision by the Crown in electing not to plead separately the offence of theft as in doing so it may suggest to the jury that they were not wholly convinced that force was agreed to be used by the defendant when conspiring. The Crown could not be forced to plead the count separately as it was already subsumed within the count pleaded.”

10. It is a novel argument since I am not aware of any other situation where a less serious offence appears to be remunerated more highly than a more serious offence. It is a long established principle that where there is more than one offence on the indictment, the advocate or litigator is entitled to choose on which offence they wish to bring their fee claim.
11. However, it does not seem to me to be appropriate to conclude that a similar approach can be taken of seeking to base a fee on an offence which could have been placed on the indictment but in fact was not. In this particular case, counsel, on behalf of his client, attempted to add the lesser offence onto the indictment in order to make it plain to the jury that they had a choice as to the level of offence. However, the trial judge decided that it was not necessary. As such there is no offence of theft on the indictment and on which to base the graduated fee.
12. Zamir was convicted of conspiracy to rob. It is often said that the graduated fee scheme is intended to be mechanistic i.e. the fee is capable of being calculated without there needing to be much consideration or interpretation of the case. Here there is a specific banding which the determining officer has used in respect of the offence with which Zamir was both charged and convicted. The

idea that a putative offence which the defendant did not ultimately face should be used brings in an entirely unnecessary level of complexity.

13. The argument appears to be put forward on the basis that it is a result of the new arrangements for the banding of offences. However, consideration of the previous table of offences shows that exactly the same approach was taken. Robbery and burglary were to be found in class B if aggravated/armed and in class C / E if not. Theft was separately classified in classes F,G and K involving "other offences of dishonesty" which varied depending upon the value.
14. It might be thought therefore that a similar argument would have been run at some point since the scheme originally came into being. I am not aware of any such case. It may be that there is no similar anomaly between lesser and graver offences, but I think that it is most likely that where a single offence was charged, the fee was simply calculated (and accepted) based upon that offence.
15. In any event, this appeal must fail because I have concluded that counsel could only bring a claim for a graduated fee based on the offence with which his client was charged and ultimately convicted.

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