



SENIOR COURTS  
COSTS OFFICE

SCCO Ref: 190/18

Dated: 12 March 2019

**ON APPEAL FROM REDETERMINATION**

**REGINA v JOYCE**

COURT OF APPEAL (CRIMINAL DIVISION)

APPEAL PURSUANT TO ARTICLE 30 OF THE CRIMINAL DEFENCE SERVICE  
(FUNDING) ORDER 2007 / REGULATION 29 OF THE CRIMINAL LEGAL AID  
(REMUNERATION) REGULATIONS 2013

CASE NO: 201602984A1

CRIMINAL APPEAL OFFICE CASE

DATE OF REASONS: 20 September 2018

DATE OF NOTICE OF APPEAL: 23 October 2018

APPELLANT: Mr David Hislop QC

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

The appropriate additional payment, to which should be added the Appellant's summarily assessed costs in the sum of £500 inclusive of VAT and the £100 paid on appeal, should accordingly be made to the Appellant.

**MASTER NAGALINGAM  
COSTS JUDGE**

## REASONS FOR DECISION

### Introduction

1. Mr David Hislop QC, ('the Appellant') appeals the decision of the Determining Officer at the Criminal Appeal Office ('the Respondent') to reduce his brief fee from £11,250 plus VAT to £2,500 plus VAT.

### Background

2. The representation order in this matter states the following purpose: "The preparation and presentation of an appeal against sentence, on the grounds for which leave to appeal was granted by the Single Judge or may subsequently be granted by the full Court."
3. The Appellant presented fees of £11,250 plus VAT based on 44 hours and 45 minutes of work and was remunerated the sum of £2,500 plus VAT.
4. The Determining Officer concluded the time claimed was too high, citing the Appellant's prior knowledge of the case (having acted below prior to the sentencing appeal), that the representation order prevented arguments on renewed grounds of appeal / was granted on one ground of appeal only, and that because Queen's Counsel in the conjoined appeal of *R v Kay* rose to speak first / spoke for longer / advanced the same appeal point this meant that Queen's Counsel in *R v Kay* had undertaken more preparation and assumed more responsibility than the Appellant. Thereafter, the Determining Officer explained that the Appellant had in any event been paid the same amount as Queen's Counsel in the conjoined appeal of *R v Kay*.
5. The Appellant accepts that the facts as set out in the written reasons are accurate. Namely, that on 19 May 2016, in the Crown Court at Oxford, the Defendant pleaded guilty to manslaughter on the grounds of diminished responsibility (having been indicted on an offence of murder), two counts of making threats to kill, one count of assault occasioning actual bodily harm and one count of threatening with an offensive weapon. On 13 June 2016 the Defendant was sentenced to life imprisonment with hospital and limitation

directions under section 45A of the Mental Health Act 1983. The period of nine years was specified as the minimum term.

6. On 27 June 2016 an application for leave to appeal against sentence was received with grounds of appeal dated 14 June 2016 drafted by the Appellant. Two grounds of appeal were pursued:

Ground One: The defendant entered his guilty plea to Count 1 (manslaughter on the grounds of diminished responsibility) at the earliest opportunity and therefore should have received a discount of one-third and not one one-quarter from the Judge's starting point.

Ground Two: The Judge's starting point for the offence of manslaughter on the grounds of diminished responsibility was too high in all the circumstances.

7. The appeal against sentence was listed and conjoined with an appeal in *R v Kay* because both cases concerned defendants with recognized medical conditions (schizophrenia) who were both under the influence of illegal drugs and/or alcohol at the time they unlawfully killed their victims. Both appellants had sentence applications before the court in which culpability was raised.

#### The Regulations

8. The Representation Order is dated 13 June 2016 and so the applicable regulations are The Criminal Legal Aid (Remuneration) Regulations 2013 ('the 2013 Regulations').

#### The submissions

9. The Criminal Appeal Office (CAO) rely on the Determining Officer's original decisions and subsequent written reasons from which the CAO's view has not altered.
10. The CAO accept that a specially constituted appeal court was convened because of an apparent conflict between two relevant leading authorities relating to sentencing, and the impact of forms of dependency syndrome versus forms of voluntary intoxication on sentencing.

11. The written reasons confirm that careful consideration was given to the weight, seriousness, importance and complexity of the case having regard to all the relevant facts. However, thereafter the written reasons do not depart from the basis upon which the Determining Officer arrived at their original decision. The written reasons placed particular emphasis on the Appellant acting below, being the second to speak at the specially constituted court appeal hearing, the apparent absence of an appeal from the fee paid to Queen's Counsel in the conjoined appeal of *R v Kay*, and the conclusion that the appellant had assumed less responsibility than Queen's Counsel in *R v Kay*.
12. The Appellant relies on the documentation lodged with his appeal and additionally made oral submissions.
13. The Appellant argues that whilst the Determining Officer was correct to observe the Single Judge gave leave to appeal in respect of Ground One, they failed to adequately take into account why the Registrar joined the Defendant's sentencing appeal to the conviction and sentence in the appeal of *R v Kay*. The explanation is set out at paragraph 1 of the subsequent Court of Appeal (criminal) judgment, which states:

"1. These two appeals have been heard together because each involves a consideration of the judgments in *R. v Stewart (James)* [2009] EWCA Crim 593; [2009] 2 Cr. App. R. 30 (p.500) and *Attorney General's Reference* (No.34 of 2014) (*R. v Jenkin*) [2014] EWCA Crim 1394; [2014] 2 Cr. App. R. (S.) 84 (p.649). Both defendants suffered from schizophrenia and killed whilst under the influence of alcohol and/or drugs."
14. Paragraphs 53 and 54 of the appeal judgment (which deal with the appeal against the Defendant's sentence) put the consideration of that approach into context:

"53. First, we consider residual culpability or responsibility. It is for the judge, not the experts, to decide on the level of responsibility retained albeit she no doubt found considerable assistance in the expert reports. At least two of the doctors were of the opinion that the defendant was to a degree culpable. He

may have limited insight into his condition but he knew of the impact on his mental state of certain substances such as spice, and he knew how aggressively he might react. Yet he chose to take them. There was no evidence of dependency. On the contrary the medical evidence suggested he was capable of refraining from taking illegal drugs and alcohol when his funds ran out and he was perfectly capable of refraining from taking spice.”

“54. In those circumstances the Judge was entitled to find that the Defendant retained what she called a significant degree of responsibility.”

15. The competing authorities which the appeal court fell to consider in the conjoined appeal dealt directly with the relationship between culpability and responsibility in the context of the relative impact on voluntary ingestion of illegal drugs and alcohol, and the impact of the same on offence and sentencing.
16. The relationship between culpability and responsibility was considered by the Full Court in order to consider the notional determinate sentence. Ultimately, even though the sentencing exercise was approached afresh, a sentence of 27 years was imposed – being the same notional determinate sentence set by the court below. The appeal court observed this was severe but not excessive. Thereafter, accepting a discount of one third should apply reducing the sentence to 18 years, a minimum of term of 9 years continued to be imposed.

#### My analysis and conclusions

17. I am satisfied that the Defendant’s appeal would not have been joined with *R v Kay* in a specially constituted appeal court hearing were the intention of the Full Court to deal only with matters of sentencing discount in complete isolation from sentence starting point. This is borne out by the fact that the appeal court proceeded to “approach the sentencing exercise afresh to determine whether the minimum term of nine years was excessive.” This was directly as a result of the Judge below omitting to set out the credit she would give on the manslaughter charge following the early guilty plea entered (and notwithstanding the Defendant was indicted on a charge of murder), and

doubt as to the extent to which the Judge below reflected on the other offences when setting a notional determinate sentence.

18. The amount paid to Queen's Counsel in *R v Kay* is not persuasive, regardless of whether that fee is or was appealed or not. The order in which Counsel stood is irrelevant where each Counsel was briefed to represent their own client, albeit on similar points of law. The Appellant was entitled to prepare in terms that they may have been the only advocate on their feet by the time of the hearing.
19. On that basis the amount allowed, which was on the notional basis of allowing "just over 10 hours" leading to a fee of £2,500 plus VAT was inadequate.
20. Having considered the documents prepared, documents considered, authorities relied on and the work log provided by the Appellant, and having given my own careful consideration to the weight, seriousness, importance and complexity of the case having regard to all the relevant facts I am satisfied that the appropriate fee to be paid to the Appellant is £10,000 plus VAT.

TO:

Mr David Hislop QC  
Doughty Street Chambers  
DX 233 Chancery Lane

COPIES TO:

The Criminal Appeal Office  
  
Mr Sean Waldron  
Criminal Appeal Office  
Royal Courts of Justice  
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.