Neutral Citation Number: [2024] EWCA Crim 1198

Case No: 202301429 A5

IN THE COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM THE CROWN COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 15 October 2024

Before :

LORD JUSTICE SINGH
MRS JUSTICE MAY
and
MR JUSTICE GRIFFITHS

- -

Between :

REX	**Respondent**
- and -	
BFE	**Appellant**

- -
- -

Hearing date: 11 September 2024

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APPROVED PUBLIC JUDGMENT

This judgment was handed down remotely at 10 am on 15 October 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Pursuant to Section 11 of the Contempt of Court Act, 1981, it being necessary to avoid a substantial risk of prejudice to the administration of justice in these proceedings, or in any other proceedings pending or imminent, the Court has made an order that no information may be published that would tend to identify the Appellant, whose name is anonymised, or members of the Appellant's family. These include details of the Crown Court where these proceedings took place and the date on which sentence was passed.

Lord Justice Singh :

Introduction

1. This application for leave to appeal against sentence was referred by the Single Judge to the Full Court. We grant leave and will refer to the applicant as "the appellant".

2. For reasons that will become apparent, the judgment must be confidential to the parties. In summary this is because of the risk to the safety of the appellant and his family if it were to become known that he provided information to the authorities. Here we promulgate a public judgment to the extent that we can, which sets out the relevant legal principles and the facts without disclosing anything which would tend to lead to the identification of the appellant or his family. This means that, for example, the public judgment cannot mention details which would normally be commonplace, such as the court at which the proceedings took place or the date when sentence was passed.

Application for anonymity

3. The first application which we must determine is the application on behalf of the appellant for anonymity. In order not to pre-empt the outcome of that application, this case was listed by the Registrar anonymously, with the randomly chosen letters BFE, and we confirmed at the start of the hearing that we would make the anonymity order sought. We now set out our reasons for doing so in brief.

4. The principle of open justice is of fundamental importance to our criminal justice system but there are well-established exceptions to it. As this Court explained in *R v L and N* [2017] EWCA Crim 2129, at paras 12-13 (Hallett LJ, Vice-President of the Court of Appeal (Criminal Division)), an anonymity order differs from reporting restrictions because it restricts what can be said at a hearing, and not only what can be reported. An anonymity order must therefore be "strictly necessary" in the interests of justice, in particular because the Article 2 and 3 rights of a person are at risk. See also *R v Royle and Others* [2023] EWCA Crim 1311; [2024] 1 Cr App R (S) 41, at para 2 (Holroyde LJ, Vice-President of the Court of Appeal (Criminal Division)). The need for an order that the Court should hear an appeal in private (so that the public and media are excluded) must also be shown to be strictly necessary.

5. Counsel for the appellant submits that the maintenance of the confidential nature of the material in this case, and the fact that the appellant provided assistance to the authorities, is crucial both to the public interest and for the safety of the appellant and his wider family some of whom still live in the country of his origin.

6. We are satisfied that the risk of harm to the appellant and his family necessitates a derogation from the important principle of open justice. We make an order, pursuant to section 11 of the Contempt of Court Act 1981, that nothing may be included in any report of these proceedings which names or may otherwise lead members of the public to identify the appellant or his family.

The proceedings in the Crown Court

7. In the Crown Court, the appellant pleaded guilty to an offence and was given a sentence of immediate custody.

8. The Crown Court sentenced the appellant without a pre-sentence report. We confirm, in accordance with section 33 of the Sentencing Act 2020 ("the Sentencing Code") that, in our view, a report is not now necessary.

9. The Judge took into account all the points which had been urged upon him by way of mitigation. He accepted that this appellant had shown genuine contrition.

10. The Judge said that the evidence against the appellant was overwhelming but he had had the good sense of pleading guilty, albeit not at the earliest opportunity. The Judge was prepared to give the appellant generous credit for his plea.

The appeal

11. We turn to the substantive appeal. There is a single ground of appeal: Counsel for the appellant submits that the Judge failed to give any or sufficient reduction in the sentence in order to reflect the provision of confidential information to the authorities in this case. He submits that the Judge treated the information as being of no value and therefore would give only "minimal" credit to the appellant. Counsel submits that this is both wrong in principle and operates contrary to the public interest.

12. The principles which apply in this context are not in dispute, as counsel for the Crown made clear to us at the hearing. They were summarised, after citation of earlier authority, at para 33 in the judgment of Holroyde LJ in *Royle*:

> "Having regard to the case law, we identify the following factors which may be relevant to the decision as to what reduction is appropriate in a particular case:
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> i) the quality and quantity of the information provided, including whether it related to trivial or to serious offences (the risk to the informer generally being greater when the criminality concerned is more serious);
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> ii) the period of time over which the information was provided;
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> iii) whether it assisted the authorities to bring to justice persons who would not otherwise have been brought to justice, or to prevent or disrupt the commission of serious crime, or to recover property;
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> iv) the degree of assistance which was provided, including whether the informer gave, or was willing to give, evidence confirming the information he had provided;

> v) the degree of risk to which the informer has exposed himself and his family by providing the information or assistance;
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> vi) the nature and extent of the crime in which the informer has himself been involved, and the extent to which he has been prepared to admit the full extent of his criminality;
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> vii) whether the informer has relied on the same provision of information and assistance when being sentenced on a previous occasion, or when making an application to the Parole Board: in our view, an informer can generally only expect to receive credit once for past information or assistance, and for that reason the text should where applicable state whether particular information and assistance has been taken into account in imposing a previous sentence;
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> viii) whether the informer has been paid for the assistance he has provided, and if so, how much; but it is important to note that in *T* at [8] the court emphasised that a financial reward and a reduction in sentence are complementary means of showing offenders that it is worth their while to disclose the criminal activities of others: a financial reward, unless exceptionally generous, should therefore play only a small, if any, part in the sentencer's decision."

13. Counsel for the appellant accepts that, as Holroyde LJ said at para 34, the weight to be given to the provision of information and assistance is a matter for the sentencing Judge to assess, and that this Court will not interfere with their finding unless the decision involves an error of law or principle, or was outside the proper scope of their discretion or was "fundamentally lacking in any underlying reasoning".

14. Counsel for the appellant also relies on what this Court said in *R v T* [2021] EWCA Crim 1474; [2022] 1 Cr App R (S) 55, at para 6, where Fulford LJ (Vice-President of the Court of Appeal (Criminal Division)) said:

> "In *R v A and B* [1999] 1 Cr App R (S) 52, Lord Bingham CJ observed that those who help in the investigation of crime can expect a discount depending on the value of the help given, and similarly if a defendant exposes himself or his family to personal jeopardy, that will be suitably recognised. In *R v Yvan Nshuti* [2012] EWCA Crim 1530 the court observed at paragraph 7:
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> > 'In addition to the submissions which have been made to us both in writing and orally by Mr Murray, we have considered a number of authorities, in particular *King* [1985] 7 Cr App R (S) 227, *Wood* [1997] 1 Cr App R (S) 347, *P & Blackburn* [2008] 2 Cr App (S) 5, from which we distil the following principles: first, the assistance

> should be valued and discounted from the starting point before credit is given for a plea of guilty; second, the overriding principle is one of totality, namely that the sentence when reduced should reflect fully the value of the assistance and credit for a plea; third, the total credit available will generally be between 50 and 66 per cent, with the greatest credit being served for the maximum assistance and in particular those who put themselves at most risk for so acting.'"

15. On behalf of the Crown, counsel submits that the sentencing judge had the relevant principles well in mind and did not err. Further, she submits that the amount of credit he gave fell within the range of what was reasonably open to him as the sentencing judge. She reminds this Court that the correct order in which a reduction should take place is for assistance given to the authorities to be taken into account, as is personal mitigation, before credit is given for a guilty plea. On that basis, she submits that the reduction in sentence in this case before credit for plea was sufficient to reflect the modest personal mitigation and the information provided by the appellant, which the Judge had concluded was "of some assistance, but minimal".

16. We have seen, as the sentencing Judge did, the "text" in this case. It is not necessary for present purposes to set out what it states, which is highly confidential and disclosure of which may cause risk to the safety of the appellant and his family. It may also harm the interests of national security and international relations of the United Kingdom.

17. We will set out the factors which appear to us to be relevant against the framework of principles set out in *Royle*, at para 33:

    (1) *The quality and quantity of the information provided*. The information related to potentially serious offences. It was not possible fully to assess its value at this stage but it can be inferred that it was not of immediate or obvious actionable value. On the other hand it was not, so far as material, unlike other information, positively assessed as being *not* of value.

    (2) *The period of time over which the information was provided* was that it was provided on a single occasion shortly before sentence.

    (3) *Whether it assisted the authorities to bring to justice persons who would not otherwise have been brought to justice*. In our judgement, while this can be relevant in many cases, it is not exhaustive of the situations in which it will be appropriate to give some reduction in sentence or assistance to the authorities, for example where what is in issue is potentially useful intelligence for future purposes.

    (4) *The degree of assistance which was provided, including whether the informer gave, or was willing to give, evidence*. The possibility of the appellant giving evidence did not arise given the nature of the information provided in this case.

(5) *The degree of risk to which the informer has exposed himself and his family by providing the information*. The risk was assessed to be significant, particularly in respect of wider family resident in the country in question. The degree of risk was not the subject of a detailed case-specific assessment but a more general assessment that a person who provides information about that country puts himself at risk.

(6) *The nature and extent of the crime in which the informer has himself been involved, and the extent to which he has been prepared to admit the full extent of his criminality*. The appellant did admit his guilt and was given appropriate credit for that. It was not suggested that any further credit should be given for this reason because he provided information.

(7) *Whether the informer has relied on the same provision of information when being sentenced on a previous occasion*. This is not applicable.

(8) *Whether the informer has been paid for the information provided*. Again, this is not applicable.

18. In our judgement, the fact that information cannot currently be assessed as being of positive value does not preclude appropriate credit being given for the provision of it to the authorities. Further, in our judgment, the risk which a defendant assumes both for himself and his family is a distinct factor, which may need to be given appropriate weight, quite apart from the actual value of the information provided. Everything depends on the circumstances. No doubt there will be some cases in which it can already be positively assessed that the information provided is worthless. That, however, was not the situation in the present case.

19. We consider that it would have a detrimental impact on the public interest if no or minimal credit is given for the provision of information which is potentially useful to the authorities where there has been a substantial risk assumed by the appellant and where his family are at risk in the country concerned. The information can be said to be part of the "kitbag" which the authorities now have and which is available for their use in the future, although it may not be immediately apparent that it can be put to use straightaway.

20. In the circumstances of the present case, we have reached the conclusion that insufficient credit was given for the "text". There was good reason to give a reduction to the appellant before taking account of his guilty plea, because of the personal mitigation available to him. In all the circumstances, we have reached the conclusion that the correct sentence in this case would have given a further discount to reflect the risk which the appellant had assumed by providing the information concerned.

Conclusion

21. For the reasons we have given, we allow this appeal against sentence to the extent that we reduce the sentence of imprisonment.