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201205158 B4, 201205156 B4

**IN THE COURT OF APPEAL (CRIMINAL DIVISION)**

**ON APPEAL FROM Liverpool Crown Court**

**His Honour Judge Aubrey**

**T20117949, T20117957, T20117958, T20117940**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: Friday 24<sup>th</sup> January 2014

**Before :**

**LORD JUSTICE FULFORD**  
**MR JUSTICE POPPLEWELL**  
and  
**HIS HONOUR JUDGE WAIT**

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**Between :**

**Regina**

**- and -**

**John Cooke, David Jolly, Paul McDonald, James Swarez,  
Jonathan Cromwell, James Beck and John Wildman**

(Transcript of the Handed Down Judgment of  
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**Mr M Bagley** (instructed by **Potter Derby** for **Mr McDonald**), **Mr I Harris** (instructed by  
**ABR Solicitors** for **Mr Swarez**), **Mr K Seal** (instructed by **HPJV Solicitors** for **Mr**  
**Cromwell**), **Mr S Nolan** (instructed by **David Phillips and Partners** for **Mr Wildman**), **Mr**  
**Barraclough** (instructed by **Hogan Brown** for **Mr Cooke**)

Judgment  
As Approved by the Court

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## **Lord Justice Fulford :**

1. This case relates to an extremely grave conspiracy, based in Liverpool, to supply heroin and cocaine to organised criminal gangs in Scotland, South Wales, Lancashire and Cheshire. In all, 13 members of the conspiracy were charged and during the course of the proceedings they either pleaded guilty or were convicted by a jury of a single count of conspiracy to supply a Class A drug. Eight of the conspirators have renewed their applications for leave to appeal their sentences following the refusal of the single judge.
2. The procedural history relating to the applicants presently before this court can be shortly described. On 12<sup>th</sup> March 2012 at the Crown Court in Liverpool John Cooke, James Swarez, Paul McDonald, Jonathan Cromwell, David Jolly and John Wildman pleaded guilty to conspiracy to supply a controlled drug of Class A.
3. On 11<sup>th</sup> June 2012 and on the 6 July 2012 at the same court the applicants James Richard Beck and Gordon Smith, were respectively convicted of conspiracy to supply a controlled drug of Class A.
4. On 8<sup>th</sup> August 2012 the eight applicants were sentenced by Judge Aubrey Q.C., who had presided over all these proceedings, as follows: Cooke and Swarez 17 years' imprisonment; McDonald 15 years' imprisonment; Beck 13 years' imprisonment; Cromwell, Jolly and Smith 12 years' imprisonment and Wildman 9 years 4 months' imprisonment.
5. The judge sentenced the applicants' co-accused to the following terms of imprisonment: Edward McCreadie 12 years 8 months, David Law 10 years 8 month, Roseanne McCreadie 9 years, Brian Harrison 6 years 8 months and John Earley 6 years. These five defendants either did not appeal their sentences or have not renewed applications for leave to appeal following refusal by the single judge.
6. The conspiracy lasted between May and November 2011. It involved very large-scale supply and distribution of heroin and cocaine, and the operation was highly sophisticated, efficient and profitable. The headquarters were in Liverpool, and, as we observed above, the drugs were provided to criminal gangs in Scotland, South Wales, Lancashire and Cheshire. As the judge stressed, the objective was "to flood the streets, the pubs and clubs in many corners of the country with Class A controlled drugs" and the strategy involved a complete disregard of the impact of this criminality on our society. The judge highlighted the extent to which drugs wreck lives, causing misery and desperation, and they often lead those who are addicted to commit crimes in order to fund their dependency.
7. There were eight seizures of drugs between July and November at diverse locations, including Glasgow, Crosby, Ross-on-Wye, Cardiff and Blackpool. Some of the drugs were of very high purity, revealing close proximity to the source in that it is to be inferred that the consignments had just arrived in this country. In all some 17 kilos of heroin were intercepted, but this represented only a proportion of the overall amounts involved in the conspiracy, as demonstrated by the movements of some of the defendants. The repeat journeys of the couriers – 54 relevant trips have been identified – put beyond doubt the scale of this operation. On the basis that on average two kilograms were transported on each occasion there was a delivery, and that the

purpose of the trips was alternately to deliver drugs and collect money, this criminal enterprise involved in the order of 54 kilograms of drugs. However, there is evidence that drugs were delivered and monies were collected at the same time, and therefore the applicants have been dealt with on the basis of a lenient assessment, indeed the one most favourable to them. In any event, this offending represents at least 20 kilograms at 100% pure heroin and the wholesale value of the drugs was somewhere between £1,775,000 and £3,555,000. As the judge determined, this was drug dealing on an extensive commercial scale, albeit not on a massive scale.

8. Although the judge decided that the definitive guideline did not apply because the defendants were due to be sentenced for a conspiracy and the amounts involved in this case far exceeded the quantities addressed in the Sentencing Council's Definitive Guideline, where appropriate he assessed culpability by reference to the approach set out by the Council for drug offences. We note that authority has subsequently clarified that the guideline covers conspiracy offences (see *R v Khan* [2013] EWCA Crim 800; [2014] 1 Cr. App. R. (S) 10, p. 42 at [23]). It is necessary to emphasise that in determining the category of harm, the guideline's highest category (category 1) identifies an indicative quantity of 5 kilograms of heroin or cocaine for the purposes of identifying the starting point. In the accompanying narrative it is observed "*where the operation is on the most serious and commercial scale, involving a quantity of drugs significantly higher than category 1, sentences of 20 years and above may be appropriate, depending on the role of the offender*". Historically, the decisions of this court have revealed that sentences in excess of 20 years are justified in cases involving very large quantities of cocaine and heroin (see *Morris* [2009] EWCA Crim 32; *Attorney Generals References 99 – 102* [2005] 2 Cr App R (S) 82, p. 505 and *Attorney General's References 15 – 17 of 2012* [2012] EWCA Crim 1414; [2013] 1 Cr App R (S) 52, p. 289).
9. The judge found that in addition to the highly significant quantities involved, there were a number of other factors to which we will turn when considering the individual cases of these applicants. He determined that a significant number of the defendants fell to be sentenced on the basis that they had played a leading role. In this context, the judge referred to the judgments of this court in *Attorney General's References 15 – 17 of 2012 (supra)* and *R v. Boakye and others* [2012] EWCA Crim 838; [2013] 1 Cr. App. R. (S) 2, p. 6 in which it was noted that couriers who are aware of the harm they are inflicting and who have nonetheless chosen to participate will be assessed as having played a leading or a significant role, depending on the circumstances.
10. The judge found that the organisers included Cooke and Swarez, and that as a result they played leading roles. He decided that Cromwell and Beck had "*extremely significant roles*" as major drug dealers in their own right, McDonald had a leading role and that all the other defendants played significant roles, by acting as couriers, providing safe houses or acting as a conduit or go-between, given particularly that without their contribution "*the aim and goal of this conspiracy could not succeed*".
11. We turn now to the individual applicants.
12. **John Vincent Cooke** is 33 years of age. He was sentenced to 17 years' imprisonment (the starting point was 23 years' imprisonment). He has no relevant previous offences in that his only convictions relating to drugs in 2002 and 2007 concerned possession of cocaine. He was described by the judge as being at the heart of the business, which

he controlled, directed and organised. He had been present at significant meetings and an analysis of the telephone traffic revealed his involvement and close communication with his co-conspirators. The judge noted particularly that when 3 kilograms were seized on 1 September in the possession of Cooke's courier in Crosby, it reflected "*off the boat purity*". The judge was certain that this applicant was simply concerned to make as much money as possible. Indeed, the author of the pre-sentence report dated 23<sup>rd</sup> March 2012 reported that Cooke had indicated that he had willingly entered the business of selling drugs and understood the effects of the drugs trade. It was recognised that he was involved in the drugs trade at a higher level than "*street dealer*".

13. Perhaps somewhat surprisingly given the key role he played in this offending, he was assessed as posing a low risk of re-offending. His attitude in prison has been commendable, both in terms of addressing his consumption of drugs and his general behaviour.
14. His counsel advances two principles submissions in support of the general proposition that the sentence was manifestly excessive: first that the judge adopted too high a starting point in all the circumstances of the case, and, second, he failed to give sufficient discount for his early guilty plea (he had told the prosecution he intended to plead guilty before the Plea and Case Management Hearing (PCMH)). In support of the first ground, it is argued that "*the overall guidance from the Court of Appeal in relation to [cases such as this] is that the starting point would not exceed 20 years as a very top figure and 18 would be appropriate*". Counsel emphasises the circumstances of the applicant, and particularly his age and lack of relevant convictions, and it is suggested the judge erred as to the starting point he identified.
15. As regards the discount for plea, counsel cites *R v Underwood* [2004] EWCA Crim 2256; [2005] 1 Cr App R 13. p. 178 in which it was indicated that if any factual issues in dispute between the prosecution and the defence are resolved entirely in the accused's favour, credit should not be withheld. However, we note that the court went on to add that if the defendant showed no insight into the consequences of his offence and no genuine remorse, then the discount may be reduced [11]. Furthermore, it is to be observed that although Cooke pleaded guilty on 12 March 2012, he submitted more than one basis of plea, and on 14 July 2012 he only accepted he was an organiser of the distribution of drugs in Wales and Scotland, and he denied involvement in the activities in Cheshire and Lancashire. He suggested his involvement related to low purity class A drugs, and he contended he was concerned with no more than 3 kilograms of heroin and up to 20 kilograms of heavily diluted cocaine.
16. We have already addressed the issue of the starting point for defendants dealing in drugs at the level of these applicants. In refusing leave the single judge observed "*having regard in particular to the part played in the conspiracy by the applicant, the scale of the conspiracy and the amount of drugs involved, the judge's starting point of 23 years, whilst severe, cannot be regarded as manifestly excessive*". We would add that given the particular role of this applicant, which was that of a singularly active controller of an extensive drug-supply enterprise, the severity of the sentence was entirely appropriate.

17. As set out above, the applicant tendered his guilty plea at the PCMH in March 2012 on a basis of plea which was revised in July 2012. At the date set for a Newton hearing on 1 August 2012, he did not pursue that revised basis of plea. His decision had been communicated to the prosecution in advance of the hearing. Given he advanced, as set out above, the proposition that he had not been involved in the operations in Lancashire and Cheshire, and he had been concerned with only a small amount of heroin and 20 kilograms of low grade cocaine, we are – without hesitation – of the view that the sentencing judge was fully justified in reducing the credit accorded to the applicant to about 25% to reflect the fact that his plea was for a significant period unjustifiably limited and qualified.
18. Accordingly, the sentence of 17 years cannot arguably be faulted and his application is dismissed.
19. **James Jack Swarez** is 44 years of age. He was sentenced to 17 years' imprisonment, with a starting point of 20 years' imprisonment. The judge found that he was at the heart of the conspiracy in Liverpool and he was, more generally, heavily involved in this criminal enterprise, most notably in Wales, Lancashire and Cheshire but also in Scotland. He played an organisational and leading role; he was present at significant meetings; and he directed and controlled operations, albeit just below Cooke (the Crown described his role as "*slightly subordinate*" to Cooke). The judge found during the Newton hearing for this applicant that he was an organiser who was "on the board of directors", although he was not the managing director. He disbelieved the applicant's evidence in a significant number of respects. In a lengthy and careful ruling the judge analysed Swarez's movements, the telephone calls and his contact with other conspirators, leading to the conclusion that he had a controlling role. The judge isolated and analysed particular key days and events in support of this conclusion, such as 12 July 2011 (the Pond Restaurant day), 28 July 2011 (the Coastal Southport day), 1 September 2011 (the day of Law's arrest) and 13 October 2011 (the Hob Inn day). He accepted that this applicant had been involved in some legitimate building works but he rejected many of Swarez's other contentions, such as the reasons why he visited Wales on a number of occasions.
20. His offending was, in the view of the learned judge, aggravated by a conviction in 1995 for conspiracy to supply ecstasy for which he received a sentence of 4 years imprisonment.
21. In support of this application it is argued that the judge's findings did not sufficiently reflect the difference in the respective positions of Cooke and this applicant, and it is suggested the judge gave insufficient credit for his guilty plea notwithstanding the fact that he fought an unsuccessful Newton hearing. Accordingly, it is argued that the starting point for Swarez was too high and he should have been accorded more than 15% credit. It is observed that witnesses were not called during his Newton hearing and the evidence of the officers was not challenged. It is said that some activity had taken place before the applicant became involved in the conspiracy and that generally the evidence demonstrated that Cooke was "*far superior*" to Swarez in the hierarchy. It was contended that there is no evidence to suggest that this applicant was involved throughout the conspiracy, and – consistent with that submission – the telephone evidence only implicated him to a limited extent. This, it is argued, raises the question as to the true nature of his role. Put otherwise, it is suggested that Cooke had regular control and there was less activity by Swarez, and the few trips on his part may

simply have been in the role of a courier. In this context, it is highlighted that Jolly and Swarez tended to be in contact after meetings with Cooke, which would tend to reveal that a consignment had been delivered.

22. The single judge, when addressing whether the starting point was too high, concluded that having regard in particular to the part which the sentencing judge found that the applicant had played in the conspiracy, the scale of the enterprise, the amount of drugs involved and the applicant's previous conviction for supplying ecstasy, the starting point of 20 years, whilst severe, cannot be regarded as manifestly excessive. We concur with that observation. The judge was entitled to conclude that Swarez controlled and directed aspects of this criminal enterprise, and enabled a very large quantity of Class A drugs to be supplied, to a number of areas. He issued instructions to subordinates and he operated at the heart of the conspiracy, albeit below Cooke. In *R v Khan (supra)* Treacy LJ in giving the judgment of the court observed:

“32. Many conspiracies will involve multiple supply transactions. In those circumstances the judge would be entitled to look at the aggregate quantity of the drug involved.

33. Of course involvement in a conspiracy may vary for individual offenders within it. One core variant is culpability, which is demonstrated in the guideline by the role of the offender, and which is to be assessed by the non-exhaustive indicative factors set out in the guideline. That will enable the judge to assess the level of involvement of an individual within a conspiracy.

34. However, a particular individual within a conspiracy may be shown only to have been involved for a particular period during the conspiracy, or to have been involved only in certain transactions within the conspiracy, or otherwise to have had an identifiably smaller part in the whole conspiracy. In such circumstances the judge should have regard to those factors which limit an individual's part relative to the whole conspiracy. It will be appropriate for the judge to reflect that in sentence, perhaps by adjusting the category to one better reflecting the reality.

35. As a balancing factor, however, the court is entitled to reflect the fact that the offender has been part of a wider course of criminal activity. The fact of involvement in a conspiracy is an aggravating feature since each conspirator playing his part gives comfort and assistance to others knowing that he is doing so, and the greater his or her awareness of the scale of the enterprise in which he is assisting, the greater his culpability.”

23. We entirely agree with those conclusions, and simply add that the central organisers may well not be involved personally in each and every transaction and instead the judge will need to focus on their overall position in the hierarchy and the particular role that they played. Although defendants in a position of authority may have joined the enterprise at some stage after the conspiracy began and they may not have

featured in every aspect of the operation, this does not necessarily lead to a reduction in the level of sentence.

24. As to the limited credit for the applicant's guilty plea, this was tendered at the PCMH in March 2012 on a significantly restricted basis. There was a 3-day Newton hearing at which the applicant's evidence was rejected. In the circumstances, the judge was fully justified in reducing the credit accorded to the applicant to 15%. The judge recognised his lesser role to that of Cooke, and in the event the sentence of 17 years cannot credibly be criticised.
25. **Paul McDonald** is 45 years of age. He was sentenced to 15 years' imprisonment, with a starting point of 20 years' imprisonment. The judge determined that he was a major player within the network; he had a leading and an active role, and he was always able to obtain large quantities of heroin. As a result he supplied very large quantities of heroin to the organisers of the conspiracy, although he was not their exclusive supplier and they were not his only customers. The sheer quantities of heroin supplied by McDonald need emphasising: as a single example, on 26 October 2011, together with Harrison, this applicant supplied 5 kilograms of heroin to Coburn in Blackpool of 25 – 26% purity. He was connected (*via* Caddock and Jolly) to the Scottish limb of this conspiracy and the delivery of drugs in that country on 4 July 2011. McDonald was wholly undeterred by the arrest of other conspirators when they were in possession of very large quantities of drugs (*viz.* the arrests of Petherick in Wales on 13 September 2011 with one kilogram of cocaine and Jolly on 22 September 2011 with two kilograms of heroin). McDonald tried to call Jolly following his arrest, and he continued supplying class A drugs notwithstanding that event.
26. In passing sentence, the judge indicated that McDonald had played a leading role because he was supplying very large quantities of heroin to the organisers of the conspiracy, as one of the individuals fulfilling that role. The judge described McDonald thus: "*You were hands on and you were always able to get your hands on large quantities of heroin. In my judgment, you were a major player in this network*".
27. The judge concluded that his offending was aggravated by a conviction in 1997 for being concerned in the supply of drugs for which he received a sentence of 3 years imprisonment.
28. In his grounds of appeal, the applicant suggests the judge adopted too high a starting point, in that he failed to give sufficient allowance for what is said to be the applicant's true role and his overall level of responsibility and activity. It is argued that the observation evidence reveals that only about 14 kilograms of heroin are sustainably linked with this appellant and that there is no evidence that he was involved in dealing with cocaine. In those circumstances it is suggested that he was not one of those running the conspiracy, bearing in mind he was only one of a number of suppliers. His position is compared with McCreadie who was "*running*" the Scottish limb of this criminal enterprise, to whom 18 kilograms of heroin are associated. He had relevant class A previous convictions, and was given a starting point of 19 years. In those circumstances it is argued that McCreadie's starting point is out of line with that identified for McDonald.

29. Finally, it is submitted the judge fell into error in not allowing the applicant full credit for his plea, which was entered at the PCMH on 12 March 2012. The judge ordered that a basis of plea was to be submitted in early May, for the Crown's consideration. It was served on 2 May 2012, and McDonald contended therein that he should only be sentenced on the basis of the seizures and not on any inferences that the Crown invited the Court to draw from the other evidence in the case. It was not suggested by the prosecution that this was an unrealistic and unacceptable basis until 15 June 2012, shortly before the hearing that had been set down for 29 June 2012 when the court proposed investigating whether Newton Hearings were necessary. Although McDonald's lawyers had difficulties visiting him in prison, it was indicated to the judge on the 29 June 2012 in open court they would not be pursuing the suggestion that he should be sentenced only on the basis of "*actual*" seizures. However, counsel needed to obtain McDonald's instructions on the issue, which it was expected would be provided on 6 July 2012. The judge then indicated: "*If I take the view that he is not entitled to full credit, the reduction from full credit will be small [...]*". McDonald's lawyers confirmed his instructions, which were communicated to prosecution counsel at the end of the following week by telephone and repeated in a letter on 23 July 2012.
30. By the time of the sentencing hearing this exchange was interpreted in submissions by prosecuting counsel as "*on 23 July you indicated [...] that Mr McDonald should expect a minimum of 25 % credit but that a maximum may not be available*".
31. Against that background, it is argued that McDonald abandoned his short-lived attempt to dilute the basis on which he was to be sentenced at an early stage – considerably in advance of any Newton Hearing – and accordingly there should have been no, alternatively only slight, reduction from full credit in those circumstances.
32. In the view of the single judge, having regard in particular to the part played in the conspiracy by McDonald, the scale of the conspiracy, the amount of drugs involved and the applicant's previous conviction for supplying drugs, the judge's starting point of 20 years, whilst severe, cannot be regarded as manifestly excessive. We agree unreservedly with that conclusion. McDonald was a substantial dealer in heroin, trading in very large quantities. The judge was entitled to view him as an organiser who played a leading role. He would have been aware that there were other suppliers and he nonetheless continued to associate with this criminal enterprise. It was not necessary to link him to every delivery of drugs to those involved in the conspiracy.
33. On the issue of the discount for plea, as set out above, the applicant tendered his plea of guilty at the PCMH on 12 March 2012. On 2 May 2012, he tendered a basis of plea which was subsequently withdrawn substantially before the date set for the Newton hearing on 1 August 2012. Given the prosecution did not object to the suggested basis of plea until 15 June 2012 and the observation of the judge on 29 June 2012 that the reduction from full credit for his plea would be slight (creating a strong expectation in the mind of the applicant), it was wrong in principle for the judge to reduce his credit to 25% (a reduction that cannot sustainably be described as "*small*"). Given the applicant did not accept the full extent of his criminality at the outset, the credit should have been approximately 30%. Otherwise, given the quantities of drugs with which this applicant was involved, the 20 years starting point was wholly appropriate. Having adjusted the credit by 5%, the sentence will be 14 years. We grant leave and adjust the sentence to this limited extent.

34. **James Richard Beck** is 49 years of age. He was sentenced to 13 years' imprisonment, following a trial. He had a close relationship with Jolly with whom he was seen on many occasions, and he attended a significant number of meetings and purchased drugs from the organisers. He received drugs from Jolly at his home in Lancashire for onward distribution at least 6 times. The learned judge acknowledged that in his case the quantities involved were difficult to determine, save that the amounts were smaller in Lancashire than those in Wales and Scotland. However, it was observed that following Jolly's arrest he continued to trade and this applicant was involved in supplying heroin in quantities of a number of kilograms. For instance, when Jolly was arrested on 22 September the 2 kilograms of heroin in his possession were destined for this applicant. Beck bought drugs from Cooke and Swarez which he sold on to others.
35. He has no relevant previous convictions in the sense that his previous drugs offences relate to possession of cannabis in 2007, 2008 and 2009.
36. This application is put on the basis that the judge adopted too high a starting point in relation to the applicant's role in the conspiracy.
37. In our judgment, the single judge correctly observed that since the trial judge had presided over the applicant's trial he was particularly well placed to assess his involvement in the conspiracy. As just summarised, the judge concluded wholly sustainably that Jolly's six visits to the applicant's home between June and September 2011 related to drug dealing, and that the applicant was buying drugs from Cooke and Swarez and selling them in his own right. The 2 kilos in the possession of Jolly when he was arrested on 22 September 2011 were intended for this applicant. In our view, give the scale of the conspiracy and the amount of drugs involved, the applicant's sentence of 13 years' imprisonment, following his trial, was not manifestly excessive.
38. **Jonathan Paul Cromwell** is 37 years of age and was sentenced to 12 years' imprisonment, with a starting point of 16 years' imprisonment. He has no relevant aggravating convictions (his previous drugs offences are all spent, and they relate to events between 10 and 20 years ago). The judge correctly determined that in the context of this enterprise he was a significant drugs dealer in his own right, who was involved in the conspiracy from June 2011. He was part of the group in Wales and certainly in the latter stages he acted in as a middleman, in that from September he became more significantly involved and he was sighted on a number of occasions when large consignments of drugs were being distributed. He identified large amounts of drugs in Liverpool for purchase and he had close contacts with the organisers who supplied him with drugs in kilogram quantities.
39. The author of his pre-sentence report suggests that his offending was the result of financial difficulties and he was assessed as posing a high risk of re-offending.
40. This application is put on the basis that the judge was wrong not to give the applicant full credit for his guilty plea and the judge failed to reflect sufficiently the fact that he was not one of the original conspirators, that his role developed during the period of his involvement and that he was not the leader of the operation in Wales. Taking the latter issue, it is suggested that although he was an independent actor, he was dealt

with on an inappropriate basis. There were 19 relevant trips to South Wales out of a total of 27. The purity of the drugs was at a low level – 18 to 25% – and the total amount involved in his case was 4 - 5 kilograms. It is contended that he straddled a leading and a significant role. Additionally, it is suggested the judge set the sentence for this applicant too high at 16 years (on the basis of a conviction following a not guilty plea) when a starting point of 14 years was considered appropriate for the co-accused Wildman. However, the prosecution argues that his position is not analogous to that of Wildman, who was more of a 'gofer'.

41. The applicant pleaded guilty on 12 March 2012, on a basis which was not accepted by the prosecution. In the event the applicant did not pursue the basis he suggested at a Newton hearing: he had sought to limit the period of his involvement by 2 months (it was suggested his role commenced in August) and he asserted he was not a dealer but a courier and a middleman. This was rejected by the prosecution and following discussions around 27 June 2012, this basis of plea was withdrawn and the applicant acknowledged he had been involved since June.
42. It is suggested that since there was no Newton hearing, there should have been no, alternately a lesser, reduction in credit for his plea. However, having regard to the fact that the applicant pleaded guilty on a limited basis, in our judgment the judge was fully entitled to reduce his credit to 25%, and unlike the position with McDonald no legitimate expectation was created as regards the extent of the reduction for the credit that was to accompany the guilty plea. Moreover, we agree with the single judge that having regard in particular to the applicant's involvement in the conspiracy (he graduated rapidly into becoming a significant participant in the enterprise), the scale of this criminal enterprise in which he participated and the amount of drugs involved, the judge's starting point of 16 years' imprisonment was not manifestly excessive, and the sentence of 12 years was wholly appropriate.
43. **David Robert Jolly** is 46 years of age. He was sentenced to 12 years' imprisonment, with a starting point of 18 years' imprisonment. He has relevant previous convictions. He was a very active, trusted and professional courier who played a very significant role and who acted as a middleman between the organisers and their dealings with James Beck. He reported to the organisers, he delivered (on a conservative estimate) 25 kg of drugs to the four areas: Scotland (which he visited on at least 18 occasions), South Wales, Lancashire and Cheshire until his arrest on 22<sup>nd</sup> September 2011. He collected payment on behalf of the organisers and he was present at important meetings.
44. He seeks an extension of time, approximately 14 days, in which to renew his application for leave to appeal against sentence and for a representation order after refusal by the single judge. In support of the application to extend time, the history relied on is that the judge refused leave on 18<sup>th</sup> December 2012. The refusal form was sent to the applicant on 31<sup>st</sup> December 2012 and received by him on 7<sup>th</sup> January 2013. He suggests he handed the completed form to the prison officer on 11<sup>th</sup> January 2013. Enquiries were subsequently made with the prison records department who stated they had no record of having received the single judge's form from the applicant or having sent a relevant fax message to the court. The renewal form was then re-submitted in identical form as the one completed in January. We have given the applicant the benefit of the doubt as regards the suggested breakdown in the system and we grant the extension of time.

45. In support of the renewed application, it is argued the judge incorrectly ascribed to the applicant a role which was inconsistent with the evidence in that he should not have been viewed as a "*middleman between others and Cooke*". In consequence it is suggested a starting point of 18 years was wrong. Further it is argued that the judge failed to reflect the applicant's remorse and his admissions in interview. In additional submissions received since the single judge considered his case, it is pointed out that the applicant has no previous drug-related convictions; Law and McCreadie were on licence for an offence concerning the importation of drugs; and the applicant was fully co-operative with the police.
46. In our judgment, on the evidence, the judge was fully entitled to conclude that the applicant was an active courier who had transported, as we have just observed, not less than 25 kilos of Class A drugs. He provided a critical link and conduit between the leaders of the conspiracy, Cooke and Swarez, and another conspirator, Beck. He was clearly involved with all four areas in which drugs were distributed and he had dealings with the lead conspirators, particularly at meetings. Given that involvement, the scale of the conspiracy and the amount of drugs involved, we consider the single judge was wholly correct in her view that this sentence of 12 years' imprisonment (representing 18 years' imprisonment after a trial) is not manifestly excessive.
47. **John Frederick Wildman** is 41 years of age. He was sentenced to 9 years 4 months' imprisonment with a starting point of 14 years' imprisonment. He was active and "*hands on*" throughout the conspiracy "*at the Liverpool end*" and, on the evidence before the judge, as a trusted assistant to the organisers who gave him numerous tasks to perform, and he was seemingly entirely aware of their activities. He was close to a number of the conspirators and the observation evidence revealed the scale of his involvement in this conspiracy: he was an extremely active participant who was seen at many of the relevant locations with a number of participants in this criminality. Accordingly, although he played a lesser role, he was "*very much hands on*", to use the judge's expression to which we have just referred. There was significant telephone contact between Wildman and Cook and Swarez and he delivered drugs to Cardiff and elsewhere.
48. He has no relevant previous convictions, in that his previous drugs involvement is limited to possession of cocaine in 2002. There was no basis of plea submitted and the applicant accepted the prosecution case.
49. The author of his pre-sentence report indicated that Wildman accepted responsibility for his actions but claimed he was entirely unaware of the true activities of his co-accused. He suggested to the probation officer that others had taken advantage of him and he had been "*used*" by the organisers. He contended that he routinely agreed to act for Swarez as a driver on the understanding that he would receive legitimate labouring work on properties allegedly owned by Swarez. The applicant's counsel candidly accepted during mitigation before the learned judge that the pre-sentence report falsely purported to minimise his role and culpability, and he had little personal mitigation save for the support of his wife, a favourable report from the Prison Service and a reference from an employer. He is said to be a vulnerable man, who has had little education and is unable to read or write.
50. It is argued that he was a trusted drug mule (the trusted assistant of Cook and Swarez), but he was not a worldly wise man. Against that background, this renewed

application is advanced on the basis the judge adopted too high a starting point for the applicant in the context of the conspiracy.

51. However, in our judgment, given the role the judge justifiably identified as played by the applicant in this conspiracy, as a trusted and active lieutenant, and bearing in mind the scale of the operation and the amount of drugs involved, the judge's starting point of 14 years' imprisonment was not manifestly excessive.
52. **Gordon Smith's** application was refused at an earlier hearing by a different Division of this court.
53. It follows that save in the case of McDonald all these applications are refused. For McDonald, we grant leave and reduce his sentence to 14 years.