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IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
Strand
London, WC2A 2LL

Friday, 15 March 2019

B e f o r e:

LADY JUSTICE SHARP DBE

MR JUSTICE GOOSE

RECORDER OF NEWCASTLE
(HIS HONOUR JUDGE SLOAN QC)

(Sitting as a Judge of the CACD)
R E G I N A
v
LEE LIVESEY
SHAUN MORFITT
COLIN McCAFFREY

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Mr H Bernstein (Solicitor Advocate) appeared on behalf of the **Applicant Livesey**
Mr A Cameron QC appeared on behalf of the **Applicant Morfitt**
Mr S Robinson appeared on behalf of the **Applicant McCaffrey**

J U D G M E N T
(Approved)

1. LADY JUSTICE SHARP: In the Crown Court at Manchester, before His Honour Judge Walsh, the applicants, Lee Livesey, Shaun Morfitt and Colin McCaffrey, were convicted in their respective trials of conspiracy to supply controlled drugs of Class A, contrary to section 1 of the Criminal Law Act 1977. Morfitt and McCaffrey were convicted after their joint trial on 23 September 2016 and they were sentenced respectively to 18 years' imprisonment and 22 years' imprisonment. Livesey was convicted, after his trial, on 19 April 2017. On 26 April 2017 he pleaded guilty to a further offence of conspiracy to supply drugs of Class A, contrary to the 1971 Act and was sentenced to a total of thirteen-and-a-half years, of which his sentence on the trial indictment was 12 years.

2. Permission to appeal against conviction and sentence by Morfitt and McCaffrey, and in relation to sentence only by Livesey, was refused by the single judge. All three applicants now renew their applications before this court.

3. Between April 2015 and November 2015 an organised crime group involving over 17 men, which was based in Manchester but operated throughout the north of England, supplied substantial quantities of Class A drugs, namely heroin and cocaine to others.

4. During the course of the police investigation a total of 14 kilograms of Class A drugs was recovered from four seizures, with a potential street value of £4.2 million. Five of the conspirators, including these three applicants, were convicted after a trial, while the remainder pleaded guilty to the conspiracy charge. The judge dealt with each of these trials and all of the sentencing that took place in relation to the conspirators.

5. The prosecution case at trial was that these applicants, together with other conspirators, were parties to and actively involved in a wide-ranging conspiracy. The operation of the

conspiracy involved the active participation by a large number of individuals, all of whom had a different role to play. In addition to the known participants, of whom there were 17, others who remained identified were also involved. The conspirators had carefully planned and undertaken their task using methods to reduce, so far as possible, the risk of detection. Elaborate steps were taken to frustrate investigative techniques including using multiple mobile phones, the systematic and sequential changing of phones, the use of different phones for communicating with individual conspirators and the use of intermediaries. Stash houses were used both for the storage of drugs and for venues for conspiratorial meetings. Encrypted communication devices were employed and vehicles were specially adapted so as to hide large quantities of drugs in the course of their distribution.

6. The three applicants did not dispute the attribution of phones but explained that any contact they had with others was innocent and unrelated to any criminality. Of those who were arrested and charged with a conspiracy, 11 pleaded guilty. These applicants did not.

7. The conspirators were headed by Colin McCaffrey and his brother, Dean McCaffrey. The group operated from stash houses in the Greater Manchester area. Those responsible for the logistics of the operation collected drugs from the stash houses and delivered them to distributors. In turn the drugs were moved onto street dealers on the direction of the distributors. Usually the drugs were distributed in 1 or 2 kilogram blocks bound by tape and marked with an indication of their purity. High purity drugs being above 70% were identified with the names "Rolex", "Prada" or "AMG". Lower purity drugs had different markings indicating the cutting agent used in order to increase

weight but reduced purity.

8. In early April 2015 McCaffrey and his brother were in contact with Morfitt. All three men had previously served prison sentences together when they had began to plan to deal in drugs. Once released on licence they set up their drugs "business". Morfitt's role was as head of an organised crime group in the northeast of England to whom the McCaffrey brothers supplied substantial quantities of drugs for onward distribution. Other conspirators included Raymond Gilham, who was a warehouseman to store drugs for onward distribution, and Matthew Marshall, the operations manager for the group, responsible for overseeing the day-to-day activities for those involved in moving the drugs round the north of England. By June 2015 the group was supplying large quantities of drugs to distributors and to Morfitt's group in the northeast of England. An encrypted e-mail sent on 6 June 2015 to McCaffrey referred to having received payments totalling just over £100,000 for that week alone.

9. The distribution was carefully planned and organised. A distributor contacted Marshall who then instructed another conspirator, Luke Stefaniak, whose role was to act as one of the main couriers responsible for moving drugs round the country. Stefaniak's role was to contact Gilham and collect the drugs from the stash houses, secreting them within the concealed space within a vehicle and then travelling to another distributor. Other conspirators shared similar roles.

10. On 18 June 2015 two other conspirators, Lee Stenson and Alan Stenson, who lived in Preston, contacted Marshall and requested a delivery of drugs. There was repeated trade between July and August 2015 which involved Stefaniak collecting drugs from Gilham and travelling to Preston with the drugs concealed within his vehicle. Later, after the

arrest of Stefaniak, records were discovered proving the payments of large sums of money in excess of £100,000 for a delivery.

11. On 8 September 2015 Stefaniak was stopped by the police while travelling to the northeast of England. His vehicle was searched and two packages were discovered: one contained just under 1 kilogram of cocaine at 73% purity and the other contained 1 kilogram at 76% purity, also £1,000 in cash, a series of mobile telephones and a diary with a dealer list were recovered.

12. Evidence of large amounts of money being owed or paid was also found. The police conducted a search of Gilham's home address in Northenden and seized eight packages of cocaine totalling almost 6 kilograms with a purity of between 61% to 78%. Seven packages of heroin were also recovered weighing almost 4 kilograms and with a purity of between 40% and 58%. The two arrested conspirators were prevented from having any contact with third parties during the hours after their arrest. During that period significant mobile phone contact was made by Colin McCaffrey and others.

13. The arrest of Stefaniak and Gilham temporarily disturbed the operation of the conspiracy but within 2 weeks it was operating again. During this period Livesey played a greater role within the conspiracy. He was in regular contact with Marshall and had frequent meetings with him. He was involved in the delivery of drugs but, more significantly, he was responsible for a stash house in Willow Court, from which other distributors and couriers could obtain drugs for the purposes of the business of the conspiracy.

14. On 6 October 2015 a further drugs seizure was made and the police followed a delivery by Marshall and another conspirator to Thrapson Avenue described as the "crack cocaine

factory". When the police entered the property the two men ran carrying quantities of cocaine. Marshall made good his escape while the other man was arrested. Found in the rear garden of the property were four blocks of cocaine with a combined weight of 861 grams and a purity of 57 to 62%.

15. Inside the property was clear evidence of equipment necessary to produce crack cocaine. Marshall was later arrested. Shortly afterwards McCormack was arrested in a vehicle within which was almost 1 kilogram of cocaine at 67% purity. On the same date McCaffrey and his brother were arrested. Police sought to pursue the McCaffreys; they escaped through the rear of a property owned by Danielle McCaffrey and Dean McCaffrey's vehicle abandoned outside a flat-back truck was searched. Recovered from inside this vehicle was an address book which contained 134 entries with contact details including those of Morfitt, Marshall, Stefaniak and "Trevor Hurley", a man said to have assisted the McCaffreys in their flight from the police.

16. The final page of the book contained a handwritten note referring to encryption programmes. Most of the names were of men with previous convictions closely relating to drug dealing. On 3 November 2015 Livesey was arrested and found to be in possession of almost £8,000 in cash.

17. Morfitt was arrested in January 2016. He was in possession of a covert listening detection device.

18. Morfitt and Colin McCaffrey seek leave to appeal their convictions. Morfitt raises two grounds of appeal, the first of which is shared by McCaffrey. The first ground of appeal is that the judge wrongly permitted the admission into evidence, under section 100(b) of

the Criminal Justice Act 2003, of the previous convictions of non-defendants identified within the McCaffrey address book. Morfitt's second ground of appeal is that the judge failed adequately to present the defence case during his summing-up, thereby minimising the significance of his defence before the jury. The third ground of appeal by Morfitt concerning the discharge of a juror during the judge's summing-up is no longer pursued.

Ground 1

19. Section 100(b) permits the admission of bad character evidence of a non-defendant if it is of substantial probative value. In assessing probative value the court is required to have regard to the factors set out in section 100(3).

20. The prosecution submission was that the evidence which they sought to admit by reference to the address book, that is the records of conviction to which we have referred, had substantial probative value in relation to a matter in issue and was of substantial importance in the context of the case as a whole.

21. As was noted by Hughes LJ (as he then was) in R v Braithwaite [2010] EWCA Crim 1082, at paragraph 12:

    i. "i) The test of 'substantial probative value' is not the same as the test for gateway (d) of s 101(1) in relation to the common case of bad character evidence affecting the defendant which the Crown seeks to adduce. There the test is whether the evidence is 'relevant'. It is however the same as appears in gateway (e) in relation to an application made by one defendant against another.

    ii. ii) If the conditions of section 100(1) are met, there is no residual discretion in the judge to refuse to admit the evidence. Contrast the

common gateways (d) and (g) where such a residual discretion is found in section 101(3)....

iii. iv) What section 100(1) requires, except where there is agreement between the parties, is not discretion but judgment on the part of the judge. In a case such as the present, where 'important explanatory evidence' is not in point, he must assess:

b) the issue to which the evidence goes (s 100(1)(b)(i))

c) whether that issue is of substantial importance in the context of the case as a whole (s 100(1)(b)(ii)) and

d) whether the evidence has substantial probative value in relation to that issue (s 100(1)(b)).

i. This assessment is, by definition, highly fact-sensitive in each case. It is an assessment of whether the evidence in question substantially goes to show (prove) the point which the applicant wishes to prove on the issue in question."

22. The address book contained the name of 73 individuals. The contacts were predominantly male. Their names appeared in alphabetical order with addresses, contact numbers and next of kin details which included their contact numbers. In certain cases the entries included prison references and inmate reference numbers.

23. The prosecution asserted that this was in essence a business directory of contacts available to be approached if the need arise and was highly relevant. In making that determination the jury were entitled to know the details of the contact recorded in the book, with convictions which were relevant to the nature of the undertaking of the present conspiracy. In that connection it was noted that there were details of admitted

conspirators in the book. It was kept in Dean McCaffrey's car. The contacts lived not only in Greater Manchester but Merseyside, Lancashire, Yorkshire, Wales, Essex, West Midlands, London and the northeast and that the evidence that was sought to be admitted was of offences which were related to drug offending. These were offences of serious violence, money laundering, possession of firearms and witness/jury intimidation. Forty of the contacts had convictions for drugs related offences including supply, 26 had convictions relating to the supply of Class A drugs, 38 had convictions for serious offences and 21 had convictions for possession of weapons including firearms and prohibited weapons. Others had convictions for offences of money laundering and witness/jury intimidation. The book also contained the details of two overseas contacts including a Colombian national with a conviction for being concerned in the importation for a controlled drug of Class A. In addition to containing the details of some of those who had pleaded to involvement in the conspiracy, contact details of other linked co-conspirators were recorded. The prosecution said that these convictions were highly relevant having regard to the nature of the conspiracy, ie organised drug distribution at a very high level, the offending behaviour being the hallmark of drug dealing at this level.

24. It was submitted on behalf of Colin McCaffrey that the application was a disguised attempt to pursue a defendant's bad character application, which should have been made under section 101 of the Act, and the prosecution would have been unable to succeed in such an application.

25. It was also submitted on behalf of each of them that the antecedent history of those identified in the address book was not relevant. The antecedents did not have any or any substantial probative value in relation to a matter in issue in the proceedings and

deducing such evidence would be akin to seeking to establish guilt by association. Even if the evidence was admissible it should have been excluded because its admission would have such an adverse effect on the fairness of proceedings that the court ought not to have admitted it.

26. The address, it was said, was no more than a book containing the social contacts of Dean McCaffrey, presumably social contacts which he had made during the time that he was in prison and the fact that there were many serious criminals was not relevant. The book also contained details of non- criminal associates and organisations.

27. The judge ruled that the evidence was admissible applying the principle set out in section 100. He also applied the safeguards provided for by section 78 of the Police and Criminal Evidence Act 1984 although having regard to the observations in Braithwaite, to which we have referred, it may be that an issue arises as to whether the judge was required to have regard to section 78 in circumstances where he did so. No point in relation to that matter can be usefully developed for the purposes of the applications before us. As it was, the judge said that the case against each of the defendants was primarily based upon the frequency, timing and nature of communications between them and co-conspirators and in particular with Stefaniak, Marshall and Gilham.

28. The prosecution alleged that through these three and others they masterminded and controlled the operation which must have involved others who had not been identified. He said that the defence maintained that the contact between them was innocent and social and they were unaware of the conspiracy and the part played by others within it. It was important to note that there was an abundance of evidence upon which a jury could conclude that Dean and Colin McCaffrey and Morfitt were in contact with admitted

conspirators at significant times and on occasions when they were together. The defence case was that, when such a communication occurred it was coincidental, that others involved in the conspiracy were at the material time involved in significant conspiratorial activity.

29. The judge said it was not suggested that the address book itself was inadmissible. The address book contained details of numerous contacts including those of individuals alleged to have been involved in the conspiracy, including Boone, Stefaniak, Marshall, Morfitt and "Trevor Hurley" who assisted the McCaffrey brothers in their flight from the police. In the end his conclusion was that there was evidence upon which the jury could conclude that the book fulfilled, in part at least, the function assigned to it by the prosecution. There was also force in the argument that the antecedent details of the contacts were relevant to the consideration which the jury would have to give to the question of whether contact with admitted conspirators in the case was or may have been innocent or whether the jury were sure it was conspiratorial. The evidence in principle was relevant, probative and admissible and appropriate direction would be given to the jury as to the way in which they should approach the evidence and the weight to be attached to it.

30. It is now submitted on behalf of Morfitt and McCaffrey that the admission of the evidence was highly prejudicial, irrelevant and the nature of this could not be overcome even with appropriate directions to the jury. The arguments in this connection have been principally advanced by Mr Cameron QC, for Morfitt, who was not trial counsel. He invites us to look at the background and evidential overview or context, as he describes it, which he has set out very helpfully in his grounds of appeal. It is not necessary for us to

repeat any of that material, given the detail of the facts to which we have already referred.

31. Against that background, or in that context he makes four submissions in relation to ground 1. First, that the judge applied the wrong test. Second, that if he did apply the right test, the evidence in this case did not surmount that test. Third, particularly so, having regard to the nature of Morfitt's case and fourth, if it is necessary for us to reach this point of consideration, that applying the test in section 78 of the Police and Criminal Evidence Act the judge should have excluded this evidence because the prejudicial effect of it far outweighed its probative value and it was unfair to the applicants to admit it.

32. Mr Robinson, on behalf of Colin McCaffrey, adopts the submissions made by Mr Cameron. He submits, in essence, that the Crown's argument for the admission of this evidence, under section 100(b), was a circular one and the evidence amounted to no more than an invitation to the jury to speculate in relation to convictions, which were admitted by category, and in relation to evidence which diverted the jury's mind away from the essential issues they had to consider and directed them towards and impermissibly towards guilt by association.

33. Full reasons for rejecting the application for permission to appeal against conviction were given by the single judge (Sir John Royce) and we agree with them. First:

    i. "The Judge correctly summarised the test under section 100(1)(b) that the evidence is admissible if and only it has substantial probative value in relation to a matter which is in issue in the proceedings and is of substantial importance in the context of the case as a whole."

34. We do not accept the submission of Mr Cameron that the judge either misdirected himself, as a matter of law, or that when he came to his conclusion, he was obliged to set out the test again. It is plain he had that test in mind and that he applied it. To return to the single judge's reasons:

i. "He [that is the judge] analysed the prosecution case. He analysed the case for the applicant and his brother [that is in relation to McCaffrey] which were effectively the same namely that they had no involvement in the conspiracy and their contact with other admitted conspirators was social and innocent. He set out the competing arguments with care.

ii. The book itself has clearly admissible. Were these social contacts or was this a resource for use by men at the top of a major drugs conspiracy? The analysis of the background by the Judge entitled him to conclude that the convictions of many of those in the diary gave rise to the obvious inference that they were involved in drug dealing or money laundering. As the Judge pointed out the network of contacts was far reaching geographically and significantly included contacts in the northeast and a Colombian with a conviction importing Class A drugs. It also included a number of those who had pleaded to the conspiracy. The fact that such a large number of contacts had convictions for drug dealing and associated offences was a factor in rebutting the suggestion it was simply a social contact book.

iii. The Judge was entitled to find that a jury could conclude the book was a resource to be utilised by [the McCaffreys] in pursuance of this criminal conspiracy.

iv. The evidence did have substantial probative value in relation to a matter in issue and was of substantial importance in the context of the case as a whole.

v. The Judge carefully considered whether the prejudice was such as so adversely to affect the fairness of the trial that it should be excluded. He was entitled to conclude that it did not."

35. Further:

i. "The direction given in the summing-up...properly and fairly directed the jury how they should approach the fact that many of those in the book had previous convictions. It included a proper warning against 'guilt by association'."

ii. It is of note that the Judge excluded the applicant's relatively recent previous conviction for conspiracy to supply the class A drugs on the basis that it would be too prejudicial and the version of the book before the jury was edited to remove his prison number."

36. The single judge's remarks in relation to Morfitt:

i. "Ground 2 The summing up.

ii. A summing up is a summary. It is not supposed to deal with every piece of evidence. Here the Judge sensibly wove into his review the applicant's case. The Judge made a sensible suggestion...that the jury might want to consider the cases against Dean and Colin McCaffrey first, but made it clear it was entirely for them to decide how they went about their task. There can be no conceivable complaint about this. The jury were told they must reach separate verdicts in relation to each defendant. They were told this on three

separate occasions.

iii. The suggestion that the jury begin by considering the events of 7th and 8th September was again a sensible one.

iv. For the reasons set out in the RN the further criticisms about the detail of the summing up are of little or no weight.

v. The summing up summarised the case fairly and properly.

vi. Ground 3 The discharge of the juror.

vii. The juror's note and the way it was handled leading to his discharge was perfectly proper. It was common ground that it was necessary, in fairness to the defendants, for him to be discharged.

viii. The grounds individually and collectively do not make the conviction arguably unsafe."

37. We then turn to ground 2. In relation to ground 2 Mr Cameron makes two points. First, that the judge effectively pooled the cases of the defendants together when he was summing-up the case to the jury and in an inferential case such as the one mounted against Morfitt it was particularly important that his case was separately and discretely dealt with.

38. Second, that in relation to an individual called "Cleaveland 2" there was no evidence of Morfitt's association with him but his case in this regard was never clearly set out.

39. We have examined the summing-up very carefully. This was a conspiracy with, as is not unusual in cases of this kind, many moving parts and, in our view, none of the criticisms made under this head are soundly based whether looked at on their own or together. None give rise to an arguable ground of appeal. The judge gave a careful, clear and succinct summary of the issues in the case and the evidence that went to those issues and to the case made by the parties on that evidence. We do not accept the submission that Morfitt's case was not fairly put to the jury, whether in the respects contended for before us today or in those more fully set out in the grounds of appeal.

40. As we have already said, the case of each of the defendants including that of Morfitt was accurately and fairly set out. We would add that during the course of his summing-up, not once but on three occasions and twice before the part of the summing-up particularly complained of, the judge directed the jury about the importance of reaching separate verdicts on each defendant. The jury can have been in absolutely no doubt whatever that they were required to consider the case of each defendant separately or of what the defence of each defendant was.

41. In the circumstances, and for the reasons given by the single judge, as we have already indicated, not only in relation to ground 1 but also in relation to ground 2, the applications for permission to appeal against conviction are all refused.

42. We turn now to the applications for permission to appeal against sentence. First, that of Lee Livesey. Livesey is aged 41 and he has seven previous convictions. In 1998 he was sentenced to 57 months' imprisonment for four offences of supply of a Class A drug and in 2005 he was sentenced to 12 years' imprisonment for section 18 wounding and firearms offences. At the times of the instant offences he was on licence in relation to

that sentence.

43. In sentencing Livesey the judge concluded that his role was "significant" and in assessing harm he found it to be within category 1. The judge reached the conclusion that the drugs involved and the whole conspiracy greatly exceeded the 14 kilograms recovered from seizure by the police. Although he was not able to reach a concluded total the inference that more than 14 kilograms of Class A drugs had been supplied was unavoidable given the traceable movement of the conspirators over the period of time of the conspiracy.

44. There was some evidence of an estimated 62 kilograms based on the opinion of a police witness. However, the judge was unable to be sure of such a figure. The judge was however satisfied that Livesey had played a part in the execution of the conspiracy from an early date but that his involvement became much more prominent after the arrest of Stefaniak and Gilham on 8 September. The closeness of Livesey to Marshall, with whom he was in regular contact and had frequent meetings, coupled with his management of a stash house made his role "significant". He had a clear financial motivation for participating in the conspiracy and had an awareness and understanding of the operation that he was involved in.

45. Adopting the starting point of 10 years under the guidelines, with a sentence range of 9 to 12 years, the judge identified the additional seriously aggravating factors, namely that he was serving a licence after being released from custody and had previous drugs convictions. This caused the sentence to be increased from a starting point of 10 to 12 years. In our view, there was nothing wrong with the judge's approach nor with the sentence which he arrived at. It cannot be said to be arguably manifestly excessive.

The argument therefore on behalf of Livesey that it did so cannot be accepted.

46. It is to be noted, of course, that the judge heard evidence in the case over the course of some 2 months and he was entitled to reach the conclusions he did both as to Livesey's role and the issues of culpability and harm which were not confined, as Mr Bernstein's submissions might otherwise suggest, to the amount of drugs which were found or which could be directly connected with Livesey but would have regard to the nature of the conspiracy as a whole and to the level of purity of the drugs that were concerned.

47. As for the application on behalf of Morfitt, in sentencing Morfitt after his conviction, the judge concluded on the evidence that he was in charge of the operation in the northeast of England. He received repeated supplies of Class A drugs which he distributed to others for onward supply onto the streets. It was clear that others were used by Morfitt to facilitate the collection of drugs and their delivery. He was involved in meetings with McCaffrey and his brother from the beginning of the conspiracy and arranging supplies of drugs. His role was assessed by the judge as a "leading" one. The quantity of drugs was described as being on a commercial scale, with 10 completed trips from Manchester to the northeast of England. The judge concluded that Morfitt had a controlling role over others unidentified to facilitate his drugs trade. He had a clear expectation of very substantial gain and had used his significant business interests to provide cover for his criminal activity. There was no dispute that the harm category was under the guideline at the highest level. On the basis of a "leading" role and category 1 harm the starting point for sentence was 14 years with a range from 12 to 16 years.

48. Given that the judge concluded that the quantity of Class A drugs involved in the conspiracy were substantially higher than the starting point assumption of 5 kilograms,

the judge concluded he was required to impose a sentence above the top of the sentencing range.

49. Morfitt also committed the offence whilst on licence, after his release from custody for a sentence of 75 months, for an offence of section 8 wounding in 2010. This significantly aggravated the seriousness of the offence further. The judge concluded that the appropriate sentence after a trial was 18 years' imprisonment.

50. In our judgment, there was nothing wrong once again with the judge's analysis or the conclusions that he reached. We are unable to accept therefore the submission on behalf of Morfitt that his role should not have been determined as a leading one.

51. Mr Cameron QC refers to earlier case summaries before the trial began, where Morfitt was described as a "customer distributor" and to some documents which have been produced in relation to confiscation proceedings. In our judgment, such matters are neither here nor there. What mattered was the evidence called at trial and the judge's analysis of it. The judge in the event gave cogent reasons for concluding that Morfitt's role was a leading one and Morfitt's renewed application for permission to appeal against sentence is therefore refused.

52. Finally, we turn to the application in relation to sentence by Colin McCaffrey. In sentencing McCaffrey to 22 years' imprisonment the judge concluded that he, together with his brother, was the organiser and orchestrator of the Manchester connection. Although there may have been others who played a leading role their identities remained unknown. Nevertheless, the judge reached the sure conclusion that the McCaffreys played a leading part in the formulation and execution of the conspiracy.

53. In view of the quantity and purity of the drugs seized, the judge stated that McCaffrey was close to the original source of supply of drugs and was responsible, together with his brother, for directing and organising the activities of a significant number of others in the chain of supply.

54. Having regard to the quantity of the drugs involved and their valuation, there was a clear expectation of very substantial financial gain. The judge concluded that the harm under the drugs guidelines was in category 1, given the substantial drugs quantity involved. However, the starting point being based on 5 kilograms of Class A drugs was substantially in excess of that.

55. In referring to the guideline at step 1, the judge concluded that this conspiracy to supply Class A drugs was on the most serious and commercial scale, which required sentences of 20 years and above. Given the leading role played by McCaffrey, the judge moved outside the guideline range of up to 16 years and imposed a sentence of 22 years' imprisonment.

56. Once again, our conclusion is that the judge's reason for reaching the conclusions he did were cogent. He had heard the evidence at trial and was very well placed indeed to determine the role of all defendants including this applicant, Colin McCaffrey.

57. On McCaffrey's behalf Mr Robinson submitted that there was, in this context, evidence that he was the right-hand man of his brother but he was not at his level and he makes that submission by reference to the particular factors identified by the judge in his sentencing remarks to support the finding that he arrived at. We do not accept those submissions. As we have already said, the judge's reasons for arriving at his conclusions

were cogent and we do not accept that he ascribed or even arguably ascribed McCaffrey with the incorrect role, whether by reference to his brother or otherwise.

58. In the event, we have considered these renewed applications for permission to appeal against conviction and sentence by Morfitt and McCaffrey and sentence by Livesley and we find there is no arguable merit in them. We therefore agree with the single judge in his refusal of permission to appeal against both conviction and sentence and these renewed applications are all refused.

59. We thank all counsel.

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