



SENIOR COURTS
COSTS OFFICE

SCCO Ref: 11/15

13 May 2015

ON APPEAL FROM REDETERMINATION

REGINA v HODA

CENTRAL CRIMINAL CROWN COURT

APPEAL PURSUANT TO ARTICLE 30 OF THE CRIMINAL DEFENCE SERVICE
(FUNDING) ORDER 2007

CASE NO: T20137415

LEGAL AID AGENCY CASE

DATE OF REASONS: 2 JANUARY 2015

DATE OF NOTICE OF APPEAL: 23 JANUARY 2015

APPLICANT: COUNSEL

DOMINIC BELL
ONE PAPER BUILDINGS

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

The appropriate additional payment, to which should be added the sum of £350 (exclusive of VAT) for costs and the £100 paid on appeal, should accordingly be made to the Applicant.

COSTS JUDGE

REASONS FOR DECISION

1. This is an appeal by Mr Dominic Bell of counsel against the fee allowed by the Legal Aid Agency under the advocate graduated fee scheme.
2. Mr Bell represented Tefik Hoda who, along with others, was indicted in respect of dealing in drugs. Hoda originally pleaded not guilty but changed that plea prior to the case coming on for trial. The prosecution did not accept the basis of the plea and sentencing was adjourned until the end of the trial of Hoda's co-accused.
3. On 29 November 2013 the matter was listed for sentencing and it was indicated that a 'Newton hearing' might be required for some of the convicted defendants. Such a hearing involves the sentencing court being required to make findings, usually following the giving of evidence, in order to determine the correct level of sentence (R v Newton (1983) 77 Cr App Rep 13).
4. The issue on this appeal is whether the hearing involving Hoda amounted to a Newton hearing. If it did, Mr Bell is entitled to be paid on the basis of a 3 day trial. If he is not, he is only entitled to a guilty plea fee.
5. The Determining Officer says that a Newton hearing did not take place. In her written reasons she refers to the events of 19 to 23 December 2013 and says that:

"It is very clear from the court logs that, although the possibility of a Newton hearing was canvassed, no such hearing was considered necessary and no such hearing took place. Apart from mitigation and sentence, the issues dealt with at the hearings on 19, 20 and 23 December seem to relate to the making, or otherwise, of SCPOs [serious crime prevention orders], TROs [travel restriction orders] and directions for confiscation proceedings."

6. The Agency has submitted written representations on this appeal in support of the Determining Officer and these amplify the events at the hearing.

24 October - *"Trial judge will have to make a decision as to whether there needs to be a newton hearing after the evidence he has already in the trial."*

19 December - (having been told by the co-accused's counsel that they did not need a Newton hearing) *"Looks like we don't need to hold Newton Hearings now...but when we get to each case the deft will have the opportunity to give evidence."*

20 December - 10.39 - [Judge] *Highly likely will sentence Monday morning @11.00 but will see how we go today*
11.10 - *Mitigation (by Hoda's counsel)*

- 11.41 - Csl for T Hoda - makes application on the schedules of Money”
- 11.44 - [Judge] Asks Csl to address him on the TRO
- 12.02 - Submissions on the SCPO
- 12.07 - [Judge] Indicates this is an appropriate order but will hear from Csl on Monday.[Judge also gives provisional indication re: SCPO and directions]
- 12.10 - [Counsel] Conts Mitigation...

23 December - Judge gives his sentencing remarks and sentences all Defendants

7. Mr Rimer for the Agency submits that the court log does not support Mr Bell’s assertion that a Newton hearing took place at all. The log also does not support the suggestion that evidence was given. In these circumstances the Determining Officer was correct to have paid this claim as a guilty plea.
8. In his appeal notice, Mr Bell states that the Judge commented on 20 December that “I will be sentencing on Monday”. This statement appears to coincide with the entry on the log timed at 10.39 on 20 December.
9. Mr Bell also refers to the sentencing remarks of the Judge and in particular pages 41 to 46. The Judge’s remarks include the following extracts:

“At the sentencing hearing, no defendants have required any witnesses to be called. No defendants have chosen to give evidence, rather defence counsel have chosen to make submissions on the basis of prosecution evidence which is not challenged. I am invited to resolve factual issues on the papers before me. In doing so, of course, I have applied the criminal burden and standard of proof.”

“It is conceded on your behalf that you played a leading role. However, in the basis of plea documents submitted on your behalf, which is not accepted by the prosecution, it is contended...

Mr Bell, on your behalf, has repeated these submissions before me in mitigation...

On the evidence before me, in particular the sequence of events schedule, that explanation does not withstand close scrutiny... The explanation for the frequency of contact advanced by your counsel that you were ensuring the deal went through smoothly in an atmosphere where there can be an element of mistrust simply does not fit with the evidence.”

“In my view there is a clear inference from this [access to cash] combined with the fact that you were one of the controlling minds behind the conspiracy, that you had a financial interest in the drugs. On any view, I am quite satisfied that you stood to gain rich reward from your high level involvement in this conspiracy and I reject those assertions that you have made in your basis of plea.”

“As I indicated during the course of the mitigation, it is clear that you are entitled to full credit for what was in your case an early plea of guilty as you were arrested later than others and your case was fast tracked. Your attempt to diminish your role has led me to review that early indication. However, since you have always accepted a leading role I will allow you full credit of one third.”

10. Mr Bell, who appeared before me on this appeal, says that the sentencing remarks clearly show the Judge coming to findings of fact based on the evidence. The fact that the evidence was in writing rather than given live does not matter. Furthermore, the Judge’s consideration of reducing the standard one third discount for a guilty plea shows that a Newton hearing took place.
11. In the case of R v Newton, the Court described three kinds of hearing which could constitute a trial of the facts:
 - a. The disputed facts could be put before the jury for their decision
 - b. The judge could hear the evidence and then come to a conclusion
 - c. The judge could hear no live evidence but instead listen to submissions from counsel and then come to a conclusion
12. The purpose of a Newton hearing is to establish the facts so that the correct sentence can be imposed. From this can be gleaned the proposition that only cases where a material difference in the sentence will depend on the Judge’s findings will justify a Newton hearing. Consequently, it is unusual for the parties to be content to address the judge on the written evidence as the third option above sets out. But it is just as much a Newton hearing as one where live evidence is called.
13. Mr Bell provided me with a transcript of the proceedings on the second day of the three days involved (December 20th). Mr Bell was unable to attend on the previous day and Hoda had been represented by a Mr Smith. During the proceedings, on the 20th the judge had cause to say to the parties:

“Now, it seems to me that there is a very wide gulf between the way the Crown put the case and, Mr Bell, the way the case is put on behalf of your client. Yesterday, Mr Smith indicated that you did not wish to cross-examine any prosecution witness...”
14. Mr Bell confirmed to the judge that he did not intend to do so. (Mr Bell explained to me that he could have required a prosecution witness to be called in order to refer to the prosecution evidence but that would have been time consuming and cumbersome. He agreed with the prosecution counsel that he would refer directly to the prosecution’s timeline document which summarised (albeit at 200 pages) the prosecution evidence and which had been relied upon at the trial.)
15. It seems to me from reading the transcript that the judge was slightly troubled by this approach because there would be no cross-examination of the prosecution’s evidence. In the transcript there is the following exchange:

Judge: "Yes, very well. I just want you to be aware, as I suspect you are, that obviously I am going to have to make certain factual findings in this case...."

Mr Bell: Of course, yes

Judge applying the criminal burden and standard of proof. Your client must have the opportunity, having heard the way the Crown put its case, to give evidence himself if he so wishes."

16. In fact Hoda did not give evidence and so Mr Bell's submissions were based entirely on the prosecution's case. At the appeal hearing I quizzed Mr Bell about whether there was a difference between submissions at a Newton hearing where the prosecution evidence was unchallenged and submissions of mitigation which necessarily would have to take the case as it was found against the defendant.
17. Mr Bell did not accept the proposition that they were essentially the same exercise. Moreover, he informed me that Hoda was originally going to give evidence but got 'cold feet' and so did not do so.
18. Having had the benefit of Mr Bell's submissions and access to the transcript and sentencing remarks, I have no doubt that the hearing that took place between 19 and 23 December can be properly categorised as a Newton hearing. The judge's comments from the transcript show that he was expecting to resolve factual issues in order to hand down the appropriate sentence. As things transpired, the prosecution evidence was largely unchallenged and so the basis of plea – which I have also seen – was unlikely to be preferred to the prosecution's version. Nevertheless, Hoda put his case forward to the judge via Mr Bell and risked losing the sentencing credit that he would otherwise have expected. The judge considered reducing that credit but decided ultimately not to do so.
19. I have a good deal of sympathy for the Determining Officer here given that she did not have access to many of the documents that I have seen. Based on the court log, the Determining Officer's view was entirely understandable. But it is clear to me that the transcript and the judge's own sentencing remarks are to be preferred to the court log in determining what happened in this case.
20. Accordingly this appeal succeeds and I direct that the graduated fee be recalculated accordingly. Mr Bell is entitled to his costs of the appeal in the sum of £350 plus vat and the appeal fee.

TO: DOMINIC BELL
ARTESIAN LAW LLP
DX 275 LDE

COPIES TO: LEGAL AID AGENCY
DX 10035 NOTTINGHAM

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.