



SENIOR COURTS
COSTS OFFICE

SCCO Ref: SC-2020-CRI-000142

Dated: 12th January 2021

ON APPEAL FROM REDETERMINATION

REGINA v BRAME

CROWN COURT AT PRESTON

APPEAL PURSUANT TO REGULATION 29 OF THE CRIMINAL LEGAL AID
(REMUNERATION) REGULATIONS 2013

CASE NO: T20197323

LEGAL AID AGENCY CASE

DATE OF REASONS: 8th June 2020

DATE OF NOTICE OF APPEAL: 29th July 2020

APPLICANT: Mr Jonathan Turner, Counsel

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

The appropriate additional payment, to which should be added the sum of £ 200.00 (exclusive of VAT) for costs and the £100 paid on appeal, should accordingly be made to the Applicant.

**MARK WHALAN
COSTS JUDGE**

REASONS FOR DECISION

Introduction

1. Mr Jonathan Turner, Counsel ('the Appellant') appeals against the decision of the Determining Officer at the Legal Aid Agency ('the Respondent') in a claim submitted under the Advocates Graduated Fees Scheme ('AGFS') claim. The issue concerns payment for attendance on 27th September 2019 and whether that hearing should attract "a Main Fee or just the Sentence Fee".

Background

2. The Appellant represented Jordan Brame ('the Defendant') who appeared at Preston Crown Court on an indictment alleging eight counts of aggravated burglary, possession of an offensive weapon, causing grievous bodily harm with intent, unlawful wounding, theft and fraud (x3).
3. The Defendant was sent from the magistrate's court to Preston Crown Court on 3rd July 2019.
4. On 6th August 2019, he appeared and was arraigned. He pleaded guilty to counts 1 (aggravated burglary), 5, 6 and 7 (fraud) and not guilty to counts 2, 3, 4 and 8. The prosecution then sought more time to consider whether it was in the public interest for the Defendant to face trial on his four not guilty pleas. The case was adjourned to 27th September 2019 for Further Mention.
5. On 7th August 2019, the Defendant submitted an application for legal aid. Legal aid was granted and the Representation Order is dated 7th August 2019.
6. Shortly thereafter, the prosecution indicated to the defence that it would accept the Defendant's guilty pleas and not seek a trial of the disputed counts on the indictment. Accordingly the listing on 27th September 2019 was changed to a Sentencing Hearing. On 27th September 2019 the Defendant re-appeared for sentencing. In fact, the prosecution had identified an error in the drafting on count 1, so the indictment was amended and the Defendant was re-arraigned on count 1 and he again pleading guilty. The prosecution then indicated formally that the pleas were acceptable and the court ordered that counts 2, 3,

4 and 8 to be left to lie on the file. The Defendant was sentenced to 12 years' imprisonment.

The Regulations

7. The applicable regulation is The Criminal Legal Aid (Remuneration) Regulations 2013 ('the 2013 Regulations'). No specific citation is made of the Regulations, save that the Respondent refers to 4(1), "Claims for fees by an instructed advocate in proceedings in the Crown Court must be made and determined in accordance with the provisions of Schedule 4 to these Regulations".

The submissions

8. The Respondent's case is set out in Written Reasons dated 8th June 2020. No appearance was made at the hearing on 4th December 2020. The Appellant's case is set out in Grounds of Appeal lodged on or about 29th July 2020 and in Written Submissions dated 29th May 2020. The Appellant attended and made submissions at the hearing on 4th December 2020.
9. It is common ground that as the legal aid application was not submitted until 7th August 2019, no fee is payable for the Appellant's attendance on 6th August 2019. The issue is whether his attendance on 27th September 2019 should attract "a Main Fee" or just the "Sentence fee".
10. The Respondent, in summary, submits that the Appellant should not be paid a main fee, as this was determined by the Defendant's guilty pleas entered on 6th August 2019. As the Defendant, in other words, had been arraigned and entered acceptable guilty pleas on 6th August 2019, it should be designated the "main hearing", with the adjournment on 27th September attracting the sentence fee.
11. The Appellant, in summary, submits that the main hearing was 27th September 2019, as it was only on that date that the Defendant's pleas to the indictment were entered satisfactorily and the case concluded. The fact that he was sentenced on the same date does not in any way detract from the conclusion

that this was the “main hearing”. First, given that an amendment was required to count 1, the aggravated burglary and the principal allegation on the indictment, the Defendant had not pleaded effectively to this count until the hearing on 27th September. Second, it was not until 27th September that the prosecution indicated formally that the Defendant’s pleas were acceptable whereupon no evidence was offered on the outstanding counts. Crucially the court did not order counts 2, 3, 4 and 8 to remain on the file until 27th September 2019.

My analysis and conclusions

12. I find, on the particular facts of this case, that the hearing on 27th September 2019 was the one that attracted the ‘main fee’. This appeal should be allowed. If a fee had been payable for the 6th August, it would have been a standard appearance fee. Some importance, in my view, attaches to the point when the prosecution indicates formally whether or not a trial will be required on the indictment. If I am wrong on that interpretation, however, it is important that in this case the Defendant was not formally arraigned on count 1, the aggravated burglary and the main offence for which he received a sentence of 12 years’ imprisonment, until the hearing on 27th September. Really the main business of both the prosecution and the defence was conducted on that date. In this case, therefore, that appearance should attract the main fee.

Costs

13. I have allowed the Appellant’s appeal in its entirety and order additionally that he be paid £200 for costs, plus the £100 paid on lodging the appeal, as well as the necessary adjustment from the sentence fee paid (£165) to the main fee payable (£991.20). It seems from the Appellant’s submissions that VAT is payable and should accordingly be added to the sums payable.

TO:

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