



IN THE CENTRAL CRIMINAL COURT

**Sentencing remarks of
The Honourable Mr Justice Sweeney**

The Queen

-v-

**GHEORGHE NICA
RONAN HUGHES
EAMONN HARRISON
CHRISTOPHER KENNEDY
MAURICE ROBINSON
ALEXANDRU HANGA
VALENTIN CALOTA**

The Defendants have variously pleaded guilty, or been found guilty, of participation in a conspiracy to facilitate unlawful immigration in the overall period between 1 May 2018 and 24 October 2019 (Counts 40 & 40A). That offence, like the related offence of acquiring criminal property (Count 42) to which Robinson has also pleaded guilty, carries a maximum sentence of 14 years' imprisonment.

I have no doubt that, as asserted by the Prosecution, the conspiracy was a sophisticated, long-running, and profitable one to smuggle (mainly) Vietnamese migrants across the channel. The conspirators were of various nationalities, in particular Vietnamese, Irish and Romanian, and the conspiracy amounted to professional, organised crime (largely using unregistered phones) committed for a profit motive, which significantly undermined the United Kingdom's attempts to regulate and control immigration.

The control of immigration, which affects the social fabric of our country, our economy, and our security, is an area of considerable public concern.

For more than 20 years, the Court of Appeal has underlined that offences of facilitating illegal immigration call for deterrent sentences.

Today, the prevalence of offences of facilitating illegal immigration across the channel, by one means or another, is such that all defence counsel agree that it is not necessary for me to receive evidence on that issue.

In addition, Hughes and Robinson have pleaded guilty to, and Nica and Harrison have been found guilty of, 39 offences of dangerous unlawful act manslaughter on 22 October 2019 - when 39 Vietnamese migrants, aged between 15 to 44, died excruciating deaths from asphyxia, carbon dioxide poisoning and hyperthermia whilst, in furtherance of the conspiracy, they were being transported by freighter across the channel inside an airtight trailer from which they had no means of escape. Each offence of manslaughter carries a maximum sentence of life imprisonment.

The way in which the conspiracy, which offered a VIP service, typically operated was that:

- (1) Vietnamese migrants would get in touch, via word of mouth, with a Vietnamese man called “Fong” who was based in London.
- (2) Arrangements would then be made to assemble the migrants at a safe house or houses on the continent.
- (3) They would then be taken by taxis to one of a number of remote locations inland from the channel.
- (4) There they would board a trailer hauled by a lorry, and would be given instructions as to what to do to minimise the risk of detection.
- (5) The lorry would then either haul the container to the UK via the Eurotunnel terminal at Coquelles, or haul the trailer to the port of Zeebrugge in Belgium where it would be left and thereafter loaded onto a freighter and transported across to the port at Purfleet in Essex, where it would be collected by another lorry.
- (6) After arrival in this country, the migrants would be transferred from the trailer to smaller vehicles and driven to a safe house or houses in London, where they would be detained until a fee of around £10-13,000 was paid (often by relatives in Vietnam).

I have no doubt, whether because it is admitted, or because (in the case of those who stood trial) the evidence compels that conclusion, that the conspiracy began in 2018 and that there were more events than those fortuitously detected. The evidence shows that in just the fortnight between 10 and 23 October 2019 there were four episodes of transportation involving, in total, over 80 migrants – 30 of whom arrived in this country, around 20 of whom were stopped at Coquelles, and 39 of whom were unlawfully killed whilst in transit. Had they all arrived safely their value to the overall conspiracy would have been in the order of £800,000.

Nevertheless, I underline that the conspiracy involved people smuggling rather than people trafficking - the maximum penalty for which is considerably higher.

Equally the fact that, between them, the defendants fall to be sentenced under different statutory regimes makes no difference of substance to the outcome.

There is no Sentencing Guideline in relation to the offence of assisting unlawful immigration, but (in addition to the need for deterrence) the following aggravating factors, which have been identified by the Court of Appeal, are present in this case – it was a conspiracy which took place over a period of time; there was a high degree of planning, organisation and sophistication: the offending involved a large number of illegal immigrants; the offending involved strangers rather than a spouse or family member; and the involvement of the conspirators was largely for financial gain (whether by being paid in cash and/or by the reduction of a debt owed).

It is also necessary to consider the role in the conspiracy of each Defendant, and other matters of specific relevance to them.

Of those in the dock, two played leading roles, namely (in order of their importance) Hughes and Nica.

Hughes (who is now aged 41) admits that he played a leading role, which he asserts was the result of an invitation from Nica. Albeit that Hughes was not (I accept) at the very top of the conspiracy, his role was clearly a pivotal one, in that he ran a haulage business and supplied the trailers and drivers used to transport the migrants – whether from the pick-up point on the continent to the UK, or (when required) to Zeebrugge and then from Purfleet to the drop off point. He also made the necessary transport bookings. He admits that the conspiracy began in 2008 and that he received £3,000 per migrant successfully transported, which he was paid in cash, and from which he paid the relevant driver.

It is accepted that Hughes's participation in the conspiracy is aggravated by his conviction (in 2009) for smuggling six million cigarettes in 2008 – to which he pleaded guilty and was sentenced to 30 months' imprisonment. In mitigation it is asserted that (as illustrated by his plea) Hughes is remorseful, and it is noted that the prosecution accept (as I do) that his plea attracts full discount.

I have no doubt that Nica (who is now aged 43) lied about his role during the trial. Whilst ignoring Hughes' assertion that it was Nica who invited him to join (which is not evidence against Nica) I have no doubt that he was also in a leading organising and managerial role, albeit also not at the very top, and in a somewhat less pivotal role than Hughes; that (notwithstanding Draghici's criminal record) he was the principal Romanian conspirator; and that (notwithstanding his family's planned emigration to Romania) he was involved long before 10 October 2019. However, I am not sure that his involvement necessarily went all the way back to 2018. Whilst involved, he recruited and paid the drivers whose job it was to collect the migrants when they reached the drop-off site in this country and to drive them to the safe house(s) where they were to be held until payment, and also worked with the other Romanian conspirators. Equally, he liaised with "Fong" (who was at the very top of the conspiracy) and Hughes, and was entrusted by Fong to deliver large sums in cash to Hughes. It was him who (with Draghici) showed Robinson the drop-off location at Collingwood Farm on 22 October 2019, and (as well as Hughes) was in touch with Robinson before and after the bodies were found. I am sure that he was well rewarded for his overall role.

Whilst it is rightly acknowledged on Nica's behalf that personal mitigating factors are of limited value in relation to offences of this type, I am asked to take account of Nica's lack of convictions, and the circumstances surrounding his youngest child.

Taking the drivers in the broad order of their involvement.

Harrison was aged 21/22 at the time of the offences. He was employed by Hughes, and was involved in all five episodes of transportation that were proved at the trial. He too lied during the trial. I have no doubt that he was involved from the outset, and clearly specialised in picking up migrants on the continent, which was an important role. Indeed, in the fortnight between 10 – 23 October 2019 he did little other work. Equally, and notwithstanding the absence of a positive identification by witness X, I am sure that he was also involved in the loading (particularly on 22 October 2019), and also gave instructions to the migrants as to how to minimise the risk of detection. He was paid by way of a reduction in the large debt he owed to Hughes arising out of an accident when he was drink driving, and a flat fee of 500 Euros.

On Harrison's behalf it is underlined that he is the youngest defendant, and that he has no relevant convictions. Indeed, that he was immature with ADHD, depression and with clear signs of alcoholism, who lived a solitary and lonely life on the road, sleeping in his cab. It is further submitted that there is a significant distinction between working to pay off a debt and seeking simply to profit, and that a full financial review had shown a lifestyle consistent with a young man, living on the road, with little money, working cash-in-hand. He was naïve, not rewarded to the same extent as the others, did not have an unregistered phone, and was not part of the inner circle. He acted under direction throughout. Reliance is also placed on a letter prepared by Dr Baird, the fact that there were concerns in 2016 about Harrison being exploited by others, and he struggled at school and to obtain employment.

Robinson (who is now aged 26) was a driver who was employed by Hughes. He admits that in 2018/2019, at Hughes' invitation, he became involved in the conspiracy. He was involved in a pick-up in Belgium and delivery into this country for which he was paid £25,000 (via a rate of £1,500 per migrant); an attempted pick-up in Holland which was aborted because the location was too busy; the meeting at the Ibis hotel on 18 /19 October 2019; taking illegitimate money which Hughes had given him to Ireland: being shown the drop off location at Collingwood Farm on 22 October; collecting the trailer from Purfleet in the early hours of 23 October 2019 (for which he was to be paid £500) and thereafter discovering the bodies and trying to cover up the real background to what had happened. The prosecution accept, and so do I, that that was the full extent of his involvement.

In mitigation it is emphasised that Robinson has no relevant previous convictions; that a number of references demonstrate that, up to these events, he was well-regarded in his community by friends and neighbours; that he has been in a stable relationship for some years and is now the father of twins, and that in addition to his pleas and notwithstanding the lies that he told in interview, he has genuine regret and remorse as reflected in his letter to the court. It is underlined that he is entitled to full credit for his pleas.

Although Kennedy (who was aged 23 at the time and recently employed by Caolan Gormley) lied during the trial, I have no doubt that he was involved in the episodes of transportation on 11, 14 and 18 October which involved two pick-ups from Purfleet (involving a total of at least 30 migrants) and an attempt to take 20 migrants through the terminal at Coquelles. He used first one and then another unregistered phone during the process. In addition, on 18 October (after his successful pick-up) he helped Hughes to try to disguise the fact that migrants had been in with the load in the trailer and lied to the representative of the consignee when he delivered it. I am equally sure that that was the full extent of his involvement.

On Kennedy's behalf the extent of the legitimate work that he undertook during the relevant period is underlined, along with his lack of relevant previous convictions; the undisciplined use of the unregistered phones; the fact that he was excluded from the meeting at the Ibis hotel on 18/19 October 2019; and the lack of evidence as to financial gain or criminal lifestyle. It is submitted that he was extremely young and inexperienced, and that he had hitherto lived a sheltered life, and was newly embarked on foreign trips. Reliance is also placed on two cases decided on their own facts. In any event, it is submitted that he is the eldest of four and the breadwinner; that he acted under direction; that he has tried to better himself; and that he is very conscious of the opprobrium that he has brought to his family.

Reliance is also placed, by Kennedy and others, on the conditions in which they have been kept in custody because of the Covid pandemic.

Hanga is now aged 28 and has pleaded guilty on the basis, which is not disputed, that on 11 October 2019, at the request of Nica, he drove a number of migrants from the drop off point at Collingwood Farm to Fong's safe house in the Dulwich area. That was his sole involvement.

It is submitted on his behalf, and I agree, that his plea attracts a discount of 25%. It is underlined that he has no previous convictions, and is of positive good character; that he performed a limited function under direction; that he was not motivated by money, but felt beholden to Nica (who was not the sort of person to say no to); that he had involved himself shortly after getting married and starting a new job; and that (as demonstrated in a letter to the court) he has genuine remorse.

Calota is now aged 38. He too was recruited by Nica. I have no doubt that, contrary to his and Nica's claims in evidence at trial, he knew throughout his dealings on 17 & 18 October 2018 that he was transporting unlawful migrants. He did so for £700 in cash plus expenses. It was his sole involvement, which lasted for about an hour.

On his behalf it is emphasised that he has no previous convictions and no relevant cautions; that, notwithstanding his lies in evidence, he showed a level of genuine remorse; and that his first experience of custody had been salutary. In all the circumstances, it was submitted, his involvement should be categorised towards the lower end of involvement in the conspiracy.

The manslaughter of the 39 victims (males and females aged, as I have said, from 15 to 44) took place on 22 October 2019 and brought the conspiracy to an end. From early that morning, the victims who had variously been at safe houses in Paris, Brussels and Dunkirk made their way by taxi to a rural location close to an industrial estate in Bierne, in Northern France, where (later in the morning) they were picked up by Harrison using an otherwise empty and airtight refrigerated container. The refrigerator was, and remained, switched off. The container could only be opened from the outside. After a short stop at Lissewege in Belgium, Harrison delivered the trailer to Zeebrugge at around 2pm. By 3pm it had been loaded on to a freighter which sailed at around 4pm. From the pick up the temperature inside the trailer began to rise and continued to rise, whilst at the same time the amount of oxygen in the air began to decrease and the carbon dioxide in it began to increase. The temperature eventually rose to around 40 degrees whilst they were at sea – forcing the removal by the victims of their outer clothing in an attempt to cope. There were desperate attempts to contact the outside world by phone (reflected in the recordings that were played in court) and to break through the roof of the container to get fresh air. All were to no avail and before the ship reached Purfleet they had all died what must have been an excruciating slow death. After Robinson had collected the container in the early hours of 23 October, and following a message to him from Hughes, he stopped to open the doors of the container, which was caught on CCTV. The cloud of steam that emerged spoke volumes of the heat that was still inside the trailer. Having communicated with both Hughes and Nica, and having tried to destroy and to hide the remains of his unregistered mobile phone, Robinson contacted the police.

The willingness of the victims to try to enter this country illegally provides no excuse for what happened to them. Equally, I am conscious that there is nothing that I can either do or say that can either reflect the value of their lives, or reflect the extent of the loss to their families whose moving statements I have considered with care. I do, nevertheless, express sincere condolences and sympathy to each family for their loss.

What I must do in relation to Hughes, Nica, Robinson, and Harrison, who are to be sentenced for manslaughter, is to apply the relevant Sentencing Guidelines, and to avoid double

counting by imposing the principal sentence, concurrently, on the Counts of manslaughter, and also imposing concurrent sentences for the underlying conspiracy.

As with the conspiracy, the aggravating factors to which the prosecution draw attention are that Hughes and Nica had leading roles in the underlying conspiracy; that the underlying conspiracy was committed for financial gain; that death occurred in the context of an offence that was planned or premediated; that significant mental or physical suffering was caused to the deceased; that, after the event, all four defendants disposed of your unregistered phones; that Nica left the country; and that Hughes has a relevant previous conviction.

The pleas of Hughes and Robinson again attract full discount.

In addition to the mitigation advanced in relation to the conspiracy, all four defendants underline that they did not intend any harm to the victims – indeed that they had a financial interest in bringing them into the country in good health.

On behalf of Hughes, it is submitted that the extent to which the offence of manslaughter is aggravated by his previous conviction should be limited; that (whilst he destroyed his phone) he has never sought to conceal his involvement before the court; that he is remorseful, and that he attempted to help the victims by asking Robinson to call the emergency services.

On behalf of Nica, reliance is again placed on his personal mitigation.

On behalf of Robinson, his personal mitigation is stressed, along with the fact that he rang the emergency services.

On behalf of Harrison, it is asserted that if there had been a single death the correct starting point would have been in the overlap between Category B and Category C of the manslaughter Guideline; that if his involvement had been in a drugs it would have been categorised as being “lesser”, that there is a need to avoid the application of the relevant Guidelines in a mechanistic way; and that all aspects of Harrison’s personal mitigation apply.

I have no doubt, in relation to each of you that, as asserted by the prosecution, each of the manslaughter offences falls into Category B of the relevant Guideline because, in each instance, death was caused in the course of committing a serious offence in which each of you played a more than minor role.

However, and avoiding the use of hindsight, I am not persuaded by the prosecution, in any of your cases, that the offences also meet another of the criteria for Category B – namely that death was caused in the course of an unlawful act which carried a high risk of death or grievous bodily and that that was or ought to have been obvious to the offender.

On the other hand, against the background of the other Category B and C criteria, nor am I persuaded by the defence that absence of an intent to cause harm is a significant limiting or mitigating feature.

Equally, I have no doubt that, even if it had been 15 people their transport on 22 October 2019 involved an obvious risk of some harm to them.

In the overall result, each offence of manslaughter carries a starting point of 12 years.

What is then required is to balance the aggravating and mitigating features that I have variously identified in a non-mechanistic way, which I will do when passing sentence on each of you.

In the meanwhile, I agree with the submissions on all sides that none of those facing sentence for manslaughter meet the statutory definition of being dangerous offenders.

Nor, in my view, and very serious though they are, do the manslaughter offences, whether alone or in combination, meet the relevant criteria for the imposition of life sentences.

Having identified the notional sentence after trial for an individual offence of manslaughter, I must then go on to consider the wider impact of all 39 offences and to impose concurrent sentences on each which reflect the combination of them all. Again, it is incumbent on me to avoid a mechanistic approach, and also to apply the principles of totality (including bearing in mind the minimum terms imposed in murder cases). Equally, in relation to Hughes and Nica, I must leave some headroom for the person(s) at the very top of the conspiracy.

I have been referred to the case of *Wacker*, decided in 2002, in which the defendant, a lorry driver, was found guilty of 58 offences of gross negligence manslaughter, and his sentence for those offences was increased to 14 years, imprisonment. Whilst the principles in relation to concurrent sentences which were dealt with by the court still apply, I have no doubt that, for the reasons advanced by the prosecution, the sentence imposed has been overtaken by subsequent and significant changes in relation to offences of manslaughter, not least by the coming into force of the Sentencing Guideline, which (as I have said) indicates the starting point for a single Category B offence as being 12 years' custody.

In this case there can be no doubt that 39 offences represents a quantum leap from one, albeit that it must not result in a distorted sentencing exercise. However that does not require that the ultimate sentence be within the Guideline (whether for Category A or B) given that the Guideline is concerned with a single offence.

I should also make clear that, in the case of each defendant, whether sentenced for both manslaughter and the conspiracy, or just the conspiracy, I do not think it appropriate, given the length of sentences to be imposed, to make a deduction in relation to the pandemic.

Equally, given that the prosecution seeks to initiate confiscation proceedings against all these defendants, there can be no forfeiture, deprivation, costs or Victim Surcharge Orders at this stage.

In the case of each of those sentenced for manslaughter, they will serve two-thirds of the term imposed. Those sentenced only for the conspiracy will serve half of the term imposed.

In relation to Ronan Hughes and manslaughter, from the starting point of 12 years, a balancing of the aggravating and mitigating factors, leads to a notional sentence after trial for a single offence of 15 years' imprisonment. The combination of all 39 offences results in an ultimate notional sentence after trial of 30 years' imprisonment which, after full discount for plea, gives a final sentence of 20 years' imprisonment concurrent on each of Counts 1-39. On Count 40 the notional sentence after trial would have been 13 years which, again reduced by full discount for plea, gives a final sentence on that Count of 8 years and 8 months imprisonment concurrent. The total sentence is therefore one of 20 years' imprisonment. He spent 63 days abroad awaiting extradition.
(Impose sentence)

In relation to manslaughter and Gheorghe Nica, from the starting point of 12 years, a balancing of the aggravating and mitigating factors, leads to an increase to 14 years for a single offence. The combination of all 39 offences results in a final sentence of 27 years' imprisonment concurrent on each of Counts 1-39. On Counts 40 and 40A the sentence is one of 11 and a half years' imprisonment concurrent on each Count. The total sentence is therefore one of 27 years' imprisonment. He spent 6 days abroad awaiting extradition.
(Impose sentence)

In relation to Maurice Robinson and manslaughter, from the starting point of 12 years, a balancing of the aggravating and mitigating factors leads to a notional sentence after trial for a single offence of 11 years' imprisonment. The combination of all 39 offences results in an ultimate notional sentence after trial of 20 years' imprisonment which, after full discount for plea, gives a final sentence of 13 years and 4 months' imprisonment concurrent on each of Counts 1-39. On Counts 40 and 42 the notional sentence after trial would have been 9 years and 3 years respectively which, again reduced by full discount for plea, gives a final sentence on those Counts of 6 years' and 2 years' imprisonment concurrent. The total sentence is therefore one of 13 years and four months' imprisonment.
(Impose sentence)

In relation to Eamonn Harrison and manslaughter, from the starting point of 12 years a balancing of the aggravating and mitigating factors (and in particular his background and young age) leads to a sentence of 10 years' imprisonment for a single offence. The combination of all 39 offences results in a final sentence of 18 years' imprisonment concurrent on Counts 1-39. The sentence on Count 40 is one of 9 years' imprisonment concurrent. The total sentence is therefore one of 18 years' imprisonment. He spent 270 days abroad awaiting extradition.
(Impose sentence)

In relation to Kennedy on Count 40, after balancing his role and the aggravating and mitigating factors, including his age, the sentence is one of 7 years' imprisonment.
(Impose sentence)

In relation to Hanga on Count 40, after balancing his role and the aggravating and mitigating features, the notional sentence after trial would have been one of 4 years' imprisonment, which after discount of 25%, gives a final sentence of 3 years' imprisonment.
(Impose sentence)

In relation to Calota on Count 40, after balancing his role and the aggravating and mitigating features, the sentence is one of 4 and a half years' imprisonment.
(Impose sentence)

Sweeney J
22 January 2021