

**MR JUSTICE WALL**

IN THE CENTRAL CRIMINAL COURT

R -V- DAVID SMITH (T20220290)

SENTENCING REMARKS

1. David Smith. You can remain seated. I am to sentence you for eight offences of Committing an Act Prejudicial to the Safety or Interests of the State, contrary to s1(1)(c) Official Secrets Act 1911. You pleaded guilty to those offences on 4 November 2022 but did so on a basis which was unacceptable to the prosecution and which, had I accepted it, would have made a significant difference to your sentence. Therefore I held a hearing earlier this week to determine the proper basis on which to sentence you. You gave evidence at that hearing. I rejected your basis of plea and determined that you should be sentenced in line with the prosecution case. I have already given a full judgment outlining my reasons for reaching that conclusion. I will not repeat my reasons now but will briefly set out the facts of the offences as I have found them to be.
2. You, as a British citizen, were employed in the British Embassy in Berlin as a security guard from 2016 until the time of your arrest in 2021. In that time, if not before, you developed decidedly anti-British and anti-western feelings. The people with whom you worked would hear you criticising this country and your then country of residence, Germany. They formed the impression that you were more sympathetic to Russia in general and President Putin in particular. You yourself accepted in evidence that at one stage during your employment at the Embassy you were a supporter of the Russian backed rebels in the Donbas region of the Ukraine who wanted to return to Russian rule. I have already found that these feelings were the direct cause of your offending.

3. Against that background, in 2018, you started to collect information from the British Embassy to which you were not entitled. You continued to do this until your arrest in 2021. You did it by stealth – using the opportunities provided to you by your employment to visit various offices in the Embassy at night when others had gone home and take photographs of classified documents on your telephone or camera. A number of these documents were clearly marked as secret; others were of a lower classification but were still obviously not for dissemination beyond the Embassy. Of the clearly secret documents, one was a sensitive report addressed to the then Prime Minister of this country, Boris Johnson, sent to him by members of his cabinet. Some of the documents of a lower classification revealed the names, photographs and personal details of Embassy staff. You found some of these documents on desks or displayed in areas of the Embassy not open to the public; others, you removed from private drawers in desks in order that you might copy them. You were fully aware that you should not have copied any of those documents and were equally aware that, were those documents to get into the wrong hands, they might harm British interests or pose a threat to the safety of people working at the Embassy.
4. These activities are reflected in counts 3 and 4 on the indictment.
5. I am mindful that the indictment period only runs from April 2020 but I am sure that you collected material in 2018 and 2019 with a view to damaging British interests. I can only sentence you for your activities within the indictment period but when I assess your culpability for events in 2020 and 2021, I do so against the background that your subversive activities had begun two years before the indictment period commenced.
6. Having taken copies of these documents, you then downloaded them from your phone or camera onto your personal computer or other electronic storage devices. You took care to store some documents in a way which made it less likely that they would be found by someone who casually examined your belongings. For example, you put some of the photographed documents containing personal details of Embassy workers into a file, the name of which suggested that it contained nothing but your holiday photographs.
7. You copied a significant amount of material over the years. The material has been outlined in the prosecution opening and put into a useful table by the defence which was presented to me in the course of their mitigation. I do not need to rehearse again in detail the nature

of that material. I need only record that it was voluminous and obviously gathered on a number of dates and not at one time.

8. In 2020, you also took a number of videos of those areas of the Embassy into which the public have no right of access. These videos were carefully and methodically filmed. They contained a considerable amount of information which would be, and you knew would be, useful to a hostile foreign power. I am sure that you took them with that in mind and that this was video footage always designed to be provided to Russia. You filmed the nameplates on the doors of the offices, personal information about the offices' occupants which was on display in the rooms, and any potentially useful documents left on a surface in the room or which you found put away in a desk. You would often include footage of the view from the window of the office. This can only have been so that anyone who viewed the footage could have pinpointed where in the Embassy building any particular room could be located. This activity is reflected in count 2.
9. You started to pass on this information to the Russians in May 2020. In that month you wrote anonymously to General Sirov, a military attaché at the Russian Embassy. You enclosed with your letter a booklet you had obtained from the British Embassy which set out the names of people working there along with some contact details for them and a description of the roles they performed within the Embassy. In that letter you promised that more information would be forthcoming.
10. The other specific example of you passing on information was a letter you wrote to General Major Chukhrov, another military attaché at the Russian Embassy, in November 2020. In that letter, you provided an update on people newly arrived to work in the organisation. You also passed to him photographs of Embassy staff which you had deliberately annotated with personal details of the people depicted in them. You put those people at maximum risk by so doing.
11. It is not possible for me to determine how many more times you made contact with someone in the Russian Embassy and passed material on to them. There is no direct evidence of what other contact took place. But, for the reasons I have given previously, I am sure that at some stage in 2020 you established regular contact with someone at the Russian Embassy and this contact was a conduit through which material improperly obtained by you was passed on.

12. The sole count concerning the onward provision of material to the Russians is count 1 which relates to your correspondence with General Major Chukhrov. There is no count on the indictment relating to your other contacts. However, when I pass sentence on count 1, I will take into account that it was not a one-off action but an offence committed against the background that you had previously contacted General Sirov and provided him with information and that, at about the time of the contact in count 1, you established a contact at the Russian Embassy and passed more information to Russia by that means.
13. You were paid by the Russian authorities for your treachery. There is unsurprisingly no documentation which records the amounts. I accept that there is no evidence that your payments amounted to life-changing sums of money but it was enough to enable you to save up 800 Euros by the time of your arrest and to exist without making significant withdrawals on your bank account which had previously been necessary for you to meet your living expenses. I regard these payments as a significant factor in increasing your culpability for your actions.
14. Your duplicity went on until the time of your arrest. By August 2021, unbeknown to you, the British authorities suspected you of being involved in the provision of information to the Russians. This resulted in what might be termed a sting operation being carried out. A British agent, who was not known to you and you were told was called Dmitry. met one of the Embassy staff in your presence in circumstances suggesting that they were a Russian seeking to pass classified documents to the British. You took the opportunity presented to you by this situation to collect more information which would have assisted Russia and damaged British interests. When you were asked by Dmitry to photocopy a document in Russian which you took to be classified you took an extra copy for yourself which you kept. This is count 5. When the employee of the Embassy gave Dmitry a SIM card ostensibly for him to use to make contact with the British when he had more information to give, you kept the packaging from that SIM card rather than throw it away as you were asked to do. This is count 6. Finally, over two days, using your mobile phone, you filmed the Embassy's CCTV footage of Dmitry's visit. In doing so you focussed in on Dmitry's face so that it could be clearly seen. This conduct is represented by counts 7 and 8 on the indictment.
15. You were led into believing that Dmitry was a traitor to Russia who was offering information to the United Kingdom. I am sure that you collected together the document, the SIM card packaging and the images from the CCTV with a view to passing them on to the Russian

authorities. Had Dmitry been a genuine visitor to the British Embassy, and therefore a Russian genuinely trying to pass secrets to the British, it is impossible to know what would have been the consequences for him of having his treachery to Russia exposed in this way.

16. It is self-evident that this case demands an immediate prison sentence. In those circumstances no pre-sentence report could help me and none has been obtained.
17. There is no specific offence guideline to assist me with fixing the appropriate length of sentence. I therefore use the Sentencing Council's General Guideline. Pursuant to that guideline, I must fix sentence by weighing up both your culpability and the harm done by your behaviour. In making those judgements I must have regard to any guidance given by the Court of Appeal Criminal Division. I have been referred to a selection of relevant authorities. Of course, each case turns on its facts. But I glean a number of guiding principles from those authorities which I intend to employ in your case. In particular, it is clear that there is a strong public interest in protecting secret information. Sentences must reflect the public lack of tolerance towards those who do not respect this. The sentence ought to contain an element of deterrence to others who might be tempted to act in this way in the future. And when assessing harm, I should consider harm actually caused, that intended and that which was a foreseeable consequence of your actions.
18. I must, of course, also have regard to the statutory aims of sentencing, of which, in my judgement, punishment is the most important in a case such as this.
19. I assess your culpability as high. You were a security guard at the Embassy. It is not a senior position but it is one which imposed on you a high level of trust and responsibility. It was your job to ensure that the Embassy was secure and its staff safe. You had access to the restricted areas of the building at times when nobody else was likely to be there. When you did what you did, it was the most obvious breach of the trust placed in you.
20. In addition, I am sure that you committed these crimes intending to assist Russia, a state which at that time, as now, was regarded as unfriendly to the United Kingdom. Your motive in assisting them was to damage British interests. Although you did not start to pass material to the Russians until 2020, I am sure that you gathered all of this material with a view to harming British interests in some way.

21. Your unlawful behaviour was persistent and to an extent sophisticated. You copied documents of many types and carefully stored them. You took videos of the Embassy in a way which would have been of maximum assistance to the Russians. You did as much as you could to ensure that Dmitry's identity would be revealed.
22. As I have already noted, your level of culpability is increased further by the fact that you were receiving money for your criminal conduct.
23. It is hard to say what harm was caused by your actions. Actual harm could only accurately be measured if one knew for certain how much information you actually passed on (which is unascertainable), how much was novel to the Russians and how much known to them already, and how far they were able and willing to use it. The Russians are hardly likely to assist this court in answering those questions.
24. However, I have been provided with a number of statements from British officials which address the level of harm you caused. In taking out of the Embassy personal details relating to its staff, you put all of those staff at increased risk of harm. They had to be told that their security had been compromised in this way and the level of danger caused by your actions had to be managed. It has caused some of them and their families understandable anxiety and distress. The Embassy has had to undertake an overhaul of its processes and procedures to ensure that it does not remain compromised. In purely financial terms this has cost the taxpayers of this country £820,000 so far. The extraction of documents relating to trade and international relations had in this case, as in every case of this type, the potential to reduce the effectiveness of future British negotiations or reduce the level of trust put in this country by our allies.
25. I assess the level of harm to be high but not of the highest. It is high because of the volume of material you took from the Embassy, the personal details it contained and the period over which you did it. The material you obtained was deliberately passed onto to an unfriendly foreign power. There has been tangible and ascertainable harm caused by your activities and there exists the foreseeable possibility that the damage done could extend beyond that which is obvious to date. It is not of the highest because you did not, for example, obtain or reveal top level military secrets or details of British armaments which would have lifted this case into the highest category.

26. I have decided that it would be appropriate to pass on you concurrent terms for each offence relating to the obtaining of the documentation and images from the Embassy. These all formed part of the same course of conduct. I include in that, the sentences relating to counts 5 to 8 – the counts relating to Dmitry. Although these counts arose from a sting operation, they were, as far as you were concerned, a continuation of your activities of gathering information which might be of use to Russia and detrimental to the United Kingdom. The sentence on each of those counts will reflect your overall culpability for this aspect of your behaviour. On all of the counts save count 1 I adopt a starting point for sentence after trial of 9 years.
27. Count 1 (which concerns supplying documents to the Russian authorities) represents a further and separate (if related) course of conduct which ought properly to attract a consecutive sentence. The sentencing authorities make clear that consecutive sentences are merited in cases such as this where a single course of conduct is protracted or the behaviour of a defendant is rightly to be regarded as more than one single course of conduct. The proper starting point for sentence on this count after trial had it stood alone would in my judgement have been one of 10 years. However, I must reflect in my sentence that this count relates to some of the documentation already covered by counts 2 to 8. To that end I reduce my starting point after trial for count 1 to 7 years.
28. The factors which in other circumstances I would have found aggravated the offending – your financial benefit from doing what you did, the abuse of trust, and the fact that people were put at risk of harm by your actions – have all been taken into account in fixing the starting point for your sentence and I do not count them again.
29. Your mitigation lies solely in your previous good character. The credit for that must be limited as the offending here was so extensive and so serious.
30. I reject any suggestion that you are remorseful for your actions. Your regrets are no more than self-pity. When any expression of remorse was tested during the Newton Hearing you concentrated on the effects that your offending had on yourself, your wife and your parents. When asked about the potentially catastrophic consequences for others, you repeatedly suggested that these were non-existent or negligible as you only provided to the Russians information which they already had available to them. Had you been truly remorseful, you would not have lied on oath to me in that hearing as you did.

31. Neither do I intend to reduce your sentence significantly for any mental health difficulties you may have. There is no medical evidence before me on which to judge how serious they were at the time of your offending or are now. I have already recorded my view that I see no logical causal link between depression and a decision to betray your country. I cannot reduce a sentence significantly based simply on your self-reporting symptoms and anecdotal observations of others without expert evidence to guide me as to their true effect on you.
32. I was further asked in mitigation to temper your sentence by reference to the fact that you were under suspicion of passing secrets to the Russians from late 2020 or early 2021 and committed some of this offending while under that suspicion. I decline to do so. I have rightly not been told of the way in which any investigation into your conduct was pursued save insofar as directly relevant to the issues in this case. Whatever the reasons for the authorities to act as they did and keep you in post, it was you who made the decision to continue to offend and you who must accept full blame for that.
33. Overall your mitigation allows me to reduce your sentence by a year. The total figure so far therefore is one of 15 years.
34. You will next get credit for your guilty plea. I would have afforded you 25% had you not had pleaded guilty on a false basis which necessitated a Newton Hearing. I arrive at the figure of 25% because you pleaded guilty when first arraigned but did so having served a defence statement suggesting that you were not guilty. Your arraignment was delayed a number of times to give you an opportunity to consider your position. In those circumstances a full reduction of 1/3 is not appropriate. However, the Sentencing Council Guideline on Credit for a Guilty Plea suggests that a reduction of 50% in the level of credit is appropriate where a defendant contests and loses a Newton Hearing. Therefore I will afford you approximately 12 ½ % credit for your pleas. This reduces your overall sentence to one of 13 years 2 months. That will be made up of a sentence of 6 years 2 months on count 1 and a consecutive term of 7 years on all other counts.
35. Finally I apply the Sentencing Council Guideline on Totality and consider whether this total sentence is just and proportionate for your overall criminality. In my judgment it is. It reflects culpability and harm and is a proportionate reflection of your serious conduct bearing in mind the need for deterrence and punishment in cases such as this. In reaching that conclusion I have had regard to sentences passed in other cases of this type in the past. Significantly longer sentences than this have been reserved for offenders such as George



Blake (1961) 45 Cr App R 292 whose treachery was in my judgement of a much greater magnitude than yours. Significantly shorter sentences have been reserved for people whose activity was, in my judgement, more limited such as James [2010] 1 Cr App R (S) 57 and Finch [2021] 4 WLR 64.

36. Mr Smith, stand up. On count 1 of this indictment I sentence you to a term of 6 years 2 months imprisonment. On counts 2 to 8, I sentence you to concurrent terms of 7 years but those terms will be served consecutively to your sentence on count 1 making a total term of 13 years 2 months. The time you have served in custody referable to these offences will count towards your sentence. That should include both the time spent on remand in this country and the 10 days I certify you spent in custody in Germany awaiting extradition. If you serve your sentence in the United Kingdom you will be released after you have served half of that sentence. You will then be on licence until the expiry of the total term. If you breach the terms of your license you can be returned to serve the remainder of your sentence in custody. If you serve your sentence in Germany their rules on early release will apply. It is not for me to determine where your sentence will be served. The surcharge will apply in this case in the usual amount. I make no orders for confiscation or destruction of your computer and other equipment used in this offending as it is in Germany. If you do not voluntarily relinquish your rights in it, it will be for the German courts to consider any further applications. Please take him down.