CRIMINAL LAW UPDATE

DEVON CHAMBERS

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CASE REPORT:
Ladbrook [2022] EWCA Crim 113

Timely Pleas and Lesser Offences

'My client should be entitled to full credit because he pleaded guilty as soon as the count was added to the indictment.'

A line of mitigation that we have heard repeated in the Crown Court over many years. But not one that is likely to find much favour in light of the recent decision of the Court of Appeal (Criminal Division) in the case of *Ladbrook* [2022] EWCA Crim 113.

In *Ladbrook*, the Appellant was sent for trial on charges of controlling and coercive behaviour in a family relationship and assault by beating. He pleaded 'not guilty' to both counts at a Plea and Trial Preparation Hearing ('PTPH') on 13 January 2021. The case was adjourned for a trial on 23 August 2021. There was a hearing three days before the trial at which the Appellant gave an 'unequivocal indication' that he would plead guilty to alternative counts of assault by beating and two offences of sending malicious communications. Prosecution Counsel was unable to speak to the reviewing lawyer from the CPS at that hearing. On the day of the trial, the Prosecution applied to add the 3 new counts. The Appellant pleaded guilty to them and the Prosecution offered no evidence on the original two counts. The Appellant was sent to prison for 16 months.

The Judge had given the Appellant full credit for his guilty pleas. Before the Court of Appeal, Defence Counsel acknowledged that the sentencing Judge had been

‘generous’ in so doing. Counsel contended that the Appellant was entitled to 20–25% credit.

The Court of Appeal provided what they described as ‘general observations for the assistance of sentencers’ regarding the level of discount for the plea.

The Court referred to the Sentencing Council’s definitive guideline on *Reduction in sentence for a guilty plea*. Of particular relevance is section F3 which deals with situations in which the offender is convicted of a lesser or different offence. The guideline states:

> *If an offender is convicted of a lesser or different offence from that originally charged, and has earlier made an unequivocal indication of a guilty plea to this lesser or different offence to the prosecution and the court, the court should give the level of reduction that is appropriate to the stage in the proceedings at which the indication of plea (to the lesser or different offence) was made taking into account any other of these exceptions that apply. In the Crown Court, where the offered plea is a permissible alternative on the indictment as charged, the offender will not be treated as having made an unequivocal indication unless the offender has entered that plea.*

Paragraph 28 of the judgement is worth setting out in full:

> *The effect of the statute [section 73 of the Sentencing Code] and the guideline is that it cannot be assumed that the defendant will inevitably be entitled to full credit for his guilty plea whenever a lesser or different offence is charged in the course of proceedings and he immediately pleads guilty to it. The sentencer should consider, on a fact-specific basis, at what stage the lesser or different offence was clearly identified as an allegation forming part of the prosecution case. If the eventual guilty plea is to an offence which was a permissible alternative verdict on the indictment as charged, then the lesser offence will have been identified as part of*

> *the prosecution case from the outset. In other circumstances, the allegation of the lesser or different offence may only clearly emerge as evidence is served or details of the prosecution case are provided. A defendant is of course entitled to put the prosecution to proof of its case as initially charged; but if the prosecution case clearly includes an allegation of a different or lesser offence, a defendant who delays his admission of that other offence cannot expect full credit for his guilty plea.*

The Court went on to emphasise the opportunities contained in the Better Case Management form and the PTPH form to indicate alternative pleas.

On the face of it, *Ladbrook* increases the onus upon the Defence to explore all possible alternative or lesser pleas and to indicate guilty pleas to such alternatives if credit is to be preserved. Some may think that, in order for this to be fully effective, the principles set out in *Goodyear* [2005] EWCA Crim 888, should be re-visited – will effective case management be enhanced by an indication of the maximum sentence that would be imposed were the defendant to plead guilty to an alternative or lesser offence? Refreshingly, *Ladbrook* does, however, maintain some old-fashioned principles. In offering guidance on the fact-specific examination which the sentencer should explore, the suggestion that the 'allegation of the lesser or different offence may only clearly emerge as evidence is served or details of the prosecution case are provided' may prove to be of great help.

'Your client knew all along that he/she was guilty of the lesser or alternative offence' may be a judicial intervention with which the advocate in mitigation will have to address – paragraph 28 of *Ladbrook* may provide the answer.

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