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IN HIS MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

THE KING

v

ERIC DIAZ

Mr Henry KC with Mr Fitzsimons (instructed by Harte Coyle Collins Solicitors) for the Appellant
Ms McGookin (instructed by the Public Prosecution Service) for the Crown

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Before: Keegan LCJ, Kinney J and McLaughlin J

McLAUGHLIN J

Introduction

[1] This is an application for leave to appeal against a three-year determinate custodial sentence imposed by His Honour Judge Devlin sitting in Antrim Crown Court on 16 May 2024, of which 18 months is to be spent in custody and 18 months on licence. The appellant pleaded guilty to two counts of facilitating a breach of immigration law by a non-national, contrary to section 25(1) of the Immigration Act 1971. The counts consisted of facilitating the unlawful entry into the UK, of a number of Bolivian nationals, by means of travel from Dublin, via Northern Ireland and onwards to England. The learned judge determined a starting point of four and a half years for a determinate custodial sentence and gave a reduction of one third for the guilty plea, resulting in a DCS of three years.

[2] The appellant was sentenced along with two other Bolivian nationals, namely Michael Arias and Samuel Heredia Arias, who are brothers. They were charged on the same complaint, pleaded guilty on the same date to a number of counts of the same offence. All three individuals received identical determinate custodial sentences.

[3] Applications for leave to appeal against sentence were made by all three individuals and were all refused by Rooney J on 19 February 2025. Neither Michael Arias nor Samuel Arias renewed their applications for leave to appeal following the decision of Rooney J.

[4] The appellant was born in Bolivia in 1981 and moved to Spain after he attained his majority, where he worked for approximately 12 years and ultimately acquired Spanish citizenship. He moved permanently to the United Kingdom in approximately 2013 and has lived lawfully in London since that time, working primarily in the construction industry. The appellant's conduct leading to the charges to which he has pleaded guilty occurred on 29 September 2022 and 22 November 2022. This appears to have coincided with a period when he was experiencing financial pressure after suffering a serious ankle injury in May 2022 which impacted his ability to work.

Appellant's offending

[5] The charges to which the appellant pleaded guilty were:

(i) On 29 September 2022, he facilitated a breach of immigration law by two named Bolivian nationals by booking flights for them to travel from Belfast International Airport to London Gatwick and by accompanying both of them to and within Belfast International Airport in order to assist their safe passage to London. [Count 4]

(ii) On 22 November 2022 he facilitated a breach of immigration law by booking a flight from Belfast International Airport to London Gatwick for a different named Bolivian national and by providing advice to him as to his conduct while at the airport. [Count 7]

[6] The first offence (Count 4), was charged jointly with Michael Arias. The second offence (Count 7) was charged against the appellant alone. A further offence under section 25(1) of the 1971 Act relating to conduct on 30 November 2022 was also charged against the appellant alone but was not proceeded with and "left on the books."

[7] In order to understand fully the role of the appellant in these offences, it is necessary to understand his connection with and the conduct of his two co-accused. These are set out in detail in the sentencing remarks of HHJ Devlin. In contrast to his co-accused, the appellant was not charged with, nor did he plead guilty to a conspiracy offence. However, a central feature of the offending was that the three worked together to carry out their offending. This is reflected in the fact that Michael and Samual Arias were charged jointly on two counts and individually on others. Michael Arias was also charged jointly with the appellant on Count 4.

[8] The events leading to the arrest of the three defendants commenced on 29 September 2022 when uniformed immigration enforcement officers on duty at Belfast International Airport detected Samuel Arias in the presence of eight Bolivian nationals who did not have permission to enter or remain in the United Kingdom. They were apprehended at the embarkation security gate waiting to board an Easyjet flight to London Gatwick. In the course of conducting status checks in relation to the eight Bolivian nationals, Samuel Arias was identified as a possible facilitator. He was arrested and taken into police custody. The role of Samuel Arias in facilitating the passage of these individuals was uncovered by police through a series of further investigative measures including interviews with the Bolivian nationals while held in immigration detention, examination of a mobile phone seized from Samual Arias and CCTV footage of him in the company of the individuals at the Europa Bus Station, Belfast, boarding a bus to Belfast International Airport.

[9] Further investigations revealed that the flights had been booked online from an IP address located in London at a property occupied by Michael Arias and his wife. Michael Arias' wife's credit card had also been used to book and pay for flights of two other Bolivian nationals who had travelled from Belfast to London Gatwick earlier that same day and the flights of two other Bolivian nationals who were due to travel later that day. A photograph of that credit card was later found on the phone of Michael Arias.

[10] The role of the appellant in these activities was uncovered after further investigations arising from the examination of the phone of Samuel Arias. It contained retained digital boarding cards for a flight earlier in the evening of 29 September 2022, which suggested that there may have been a further facilitation of four Bolivian nationals travelling to London which had been undetected. The appellant was identified following examination of CCTV from the airport, which showed him in the presence of four suspected illegal immigrants arriving at Belfast International Airport and passing through the airport to the departure gates alongside them. Further inquiries revealed that the passengers were Bolivian nationals. Their flights had been booked from the IP address associated with Michael Arias. Two of the flights for the migrants were paid for by using the credit card of Michael Arias's wife and two were paid for by the appellant. These events supported Count 4, in which Michael Arias and the appellant were charged jointly.

[11] Further connections between the appellant and Samuel Arias were identified following examination of other data and messages on the phone of Samuel Arias. This included a boarding card in the name of Senor Eric Diaz for a flight from Belfast International Airport to London Gatwick on 21 August 2022, together with a WhatsApp exchanges. However, these materials did not form the basis of any charge.

[12] On 22 November 2022, two months after the arrest of Samuel Arias, a further Bolivian national was apprehended by immigration enforcement officers at Belfast

International Airport, attempting to board a flight to London Gatwick. Examination of a phone seized from this individual revealed a WhatsApp exchange with the appellant in which the appellant provided advice on how to get through security at the airport. Further inquiries revealed that his flight had been paid for by the appellant. The migrant also informed immigration officials that he had met a facilitator in Dublin named Eric and had paid this individual a cash sum to facilitate his onward travel to the UK. These events supported Count 7 for which the appellant was charged individually.

[13] The appellant and Michael Arias were both arrested in London on 6 December 2023 and conveyed to Belfast. During interview, the appellant admitted that he was aware that Samuel Arias was helping people travel from Belfast to London and that he had been asked to translate for some of them. He admitted booking flights but claimed that he had only been reimbursed for his outlay, rather than receiving a financial gain. He also admitted having flown to Dublin on 22 November 2022 to meet an individual known as Freddie Klaros for breakfast at the request of his wife and that he had booked a flight from Belfast to London for this person as they had no credit card of their own. Further examination of the appellant's phone uncovered communications with Michael Arias and other individuals which involved discussion of Gatwick Airport; the transmission of an Easyjet boarding pass for non-nationals who had recently arrived in Dublin; discussions involving payments including a comment by the appellant that he was "*losing money with this passenger*"; transmissions of flight itineraries from La Paz to Dublin and photographs of UK work permits for individuals who could be connected to Samuel Arias. The appellant's phone also contained expired Boarding passes for a total of five flights from Belfast to London Gatwick; Gatwick to Dublin and Dublin to London all during the period September 2022 – November 2022.

[14] The materials gathered from the appellant's phone did not directly relate to the two charges to which he ultimately pleaded guilty, however the materials were clearly relevant to the existence of and nature of the connections between the three defendants and the activities which did form part of those charges, namely an organised enterprise to facilitate the entry of non-national strangers into the United Kingdom for financial gain. All of this information formed part of the prosecution case and the basis on which the appellant entered his plea of guilty.

Relevant sentencing authorities and principles

[15] During his sentencing remarks, the learned judge referred to a number of decisions of the Court of Appeal in England & Wales relating to sentencing for offences under section 25(1) Immigration Act 1971, which we consider to be both relevant and applicable in this appeal.

[16] At the outset, it is important to record the changes to the maximum sentence for this offence. When first introduced, the maximum sentence was seven years. This has been increased on three subsequent occasions by means of the statutory

amendments set out below. The chronology of change provides a useful context for analysing the relevant sentencing authorities.

(i) Increase from 7 to 10 years [section 29 Immigration and Asylum Act 1992]

(ii) Increase from 10 to 14 years [section 143 Nationality, Immigration and Asylum Act 2002]

(iii) Increase from 14 years to Life Imprisonment [section 41(2) Nationality and Borders Act 2022].

[17] In *R v Le and Stark* [1999] 1 Cr App R 422, the Court of Appeal made clear that for all but the most minor case, the appropriate penalty for an offence under section 25(1) will ordinarily be one of immediate custody. The court also identified a range of aggravating factors for the offence, and which have been applied consistently ever since. Lord Bingham stated:

> "It is plain from the authorities to which we have been referred and to which we shall return that in the ordinary way the appropriate penalty for all but the most minor offences against section 25(1)(a) is one of immediate custody. The offence is one which calls very often for deterrent sentences and as the statistics make plain, the problem of illegal entry is on the increase. Plainly the seven year maximum sentence must accommodate offences with the most aggravating features. There are indeed a number of features which may aggravate the commission of this offence. One aggravating feature plainly is where the offence has been repeated, and the defendant comes before the court with a record of violations of this provision. It is also an aggravating feature where the offence has been committed for financial gain, and it is an aggravating feature where the illegal entry has been facilitated for strangers as opposed to a spouse or a close member of the family. In cases of conspiracy, it is an aggravating feature where the offence has been committed over a period and whether or not there is a conspiracy the offence is aggravated by a high degree of planning, organisation and sophistication. Plainly, the more prominent the role of the defendant the greater the aggravation of the offence. It is further aggravated if it is committed in relation to a large number of illegal entrants as opposed to one or a very small number. Lastly, of course, the maximum must cater for the case in which the defendant has contested the charge and so failed to earn the discount which a plea of guilty

> would have earned. The more of those aggravating features that are present, the higher the sentence will be and conversely the absence of those features will militate in favour of a defendant, and he will ordinarily be entitled as in any other case to some discount for a plea of guilty."

[18] The principles set out in the *Le and Stark*, were considered and again expressly approved by the Court of Appeal in *AG's Reference (Nos. 37, 38 & 65 of 2010)* [2010] EWCA Crim 2880, which was also considered by the trial judge. The appeal had been conducted by the Solicitor General, and the court made the following observation:

> "16. We accept the Solicitor General's submission that offences under section 25 of the 1971 Act will after trial routinely attract sentences in the range 3–8 years. Where an individual sentence will stand within this range will depend upon features of aggravation such as those identified by Lord Bingham…"

[19] At that time, the maximum sentence for an offence under section 25 had been increased by Parliament to 14 years imprisonment which was expressly recognised by the Court of Appeal when accepting the Solicitor General's submission (at [15]).

[20] The Court of Appeal considered the section 25 offence in two further cases which were referred to by the trial judge.

[21] In *R v Oliveira* [2012] EWCA Crim 2279, the court considered sentencing for the offence in the context of sham marriages. The court again expressly approved the summary of aggravating factors identified in *R v Le & Stark* (at [20]). It also identified a further aggravating factor, if present on the facts, namely the recruitment of others to assist in the crime (at [21]). The court also made the following important observation about statutory increases in the maximum sentence for the section 25 offence:

> "[25] Lastly, by way of general observations, it is necessary to note that at the time of the decision of Le and Stark the statutory maximum for s 25 offences was seven years. However, that maximum has twice since then been increased by Parliamentary action. It went up as a result of the Immigration and Asylum Act 1999 to ten years, as from 14 February 2000. Under the Nationality, Immigration and Asylum Act 2002, it went up again as from 10 February 2003 to 14 years. When reading earlier cases including Le and Stark it is therefore necessary to bear in mind what was the operative maximum at the time of the reported decision. As we have said, in Le and

> Stark it was seven years and now it is double that. The increases are a clear indication of the significance which Parliament attaches to these offences. It does not of course follow that all sentences should be increased by the factor by which the maximum has been raised. In part we have no doubt the lifting of the maximum is designed to provide scope for dealing with ever more extensive or serious forms of the offence. But, those cases apart, it remains true that the Parliamentary signal is of significance to sentencing."

[22] In *R v Rotsias* [2013] EWCA Crim 2470, the Court of Appeal upheld a sentence of 30 months imprisonment for a single offence under section 25 in which the appellant had travelled with an Albanian woman to the UK and attempted to facilitate her entry into the country by pretending that she was his wife and using his wife's identity document. The court proceeded on the basis that the judge had identified a starting point of 45 months. Some of the aggravating factors identified in *R v Le & Stark* were not present. This was a one-off offence, without sophistication or planning. The appellant was not an "organiser", and his financial gain was indirect in the form of the elimination of debts owed by the appellant to others. There was also personal mitigation in the form of impact the appellants caring responsibilities towards a child with special needs. The court upheld the sentence stating:

> "10. …In the overall scale of offending in this context, we accept that it is towards the lower end of the bracket of seriousness. However, a starting point of 3 years and 9 months is towards the lower end of the wide bracket of 3 to 8 years mentioned in the Attorney General's Reference case to which we have referred. In our judgment, the judge took that into account, as well as the personal mitigation relating to the appellant, in arriving at the starting point for the sentence he imposed for which he gave him full credit for his early plea of guilty. In our judgment, the sentence cannot be said to be manifestly excessive. Accordingly, the appeal must be dismissed."

[23] The principles were again considered by the Court of Appeal in *AG's Reference No 28 of 2014* [2014] EWCA Crim 1723, which involved a scheme to employ illegal migrants as construction security guards and to exploit them by paying wages below permitted minimums. The case was not before the learned judge but is consistent with other authorities. Treacy LJ identified the following factors to be relevant to sentencing:

> "The following considerations appear to us to arise. The offence will often call for a deterrent sentence since the

> problem with immigration control is a substantial one, causing considerable public concern. The court will have to consider (a) whether the offence is isolated or repeated, (b) the duration of offending, (c) whether the offender had previous similar convictions, (d) whether the offender's motivation was commercial or humanitarian, (e) the number of individuals involved in the breach of immigration law, (f) whether they were strangers or family, (g) the degree of organisation involved, (h) whether the offender recruited others, (i) the offender's role, and (j) whether the offender's conduct involved exploitation of or pressure put upon others. That list is not intended to be exhaustive as cases are necessarily fact-specific."

[24] These principles were considered again and approved by the Court of Appeal in *AG's Reference 49 of 2015* [2015] EWCA Crim 1402, which was also not before the judge. The case concerned a fraudulent and commercially motivated scheme by a part time university lecturer to facilitate graduate students remaining in the UK following the completion of studies. Rafferty LJ made the following comment about the relevance of the extent of financial gain:

> "29. …These are offences designed to circumvent the immigration rules, as the courts have previously said a matter of grave public concern. That is the gravamen of the case, not the profit margin to the individuals and not the fact that to effect their purpose they behaved fraudulently. Central to sentencing was the entirely cynical and callous disregard for immigration law in the UK and the determination over a period of months to circumvent it. Add to that the acute human misery visited upon a number of young who were dedicated to educational advancement and prepared to work to achieve it, and the sentencing route is clear. The authorities provide a helpful guide for the appropriate range."

[25] We have also been referred to the more recent case of *R v Roman* [2017] 1 Cr App R (S) 43, which was not before the trial judge. The defendant was involved in the commercial facilitation of illegal entry into the UK and convicted on a single count. Along with a co-accused, she had travelled by car from Manchester and crossed the channel to France. An illegal migrant was collected and provided with false identity documents. They were apprehended by UK immigration officials in France. The Court of Appeal stated that the proper sentence, after a trial, would have been 42 months' custody.

[26] In the recent case of *R v Ahmed* [2024] 1 WLR 1271, the appellant was one of a number of migrants crossing the channel in a small boat. He was the pilot of the boat for the purposes of securing his own entry into the UK, rather than as part of a gang or for his own commercial gain. The Court of Appeal held that where a small boat was used for the section 25 offence, but the culpability was low, a starting point of three years would normally be appropriate. On the facts of *Ahmed*, the court reduced a sentence of two years imprisonment to 18 months. The court recognised the change to the maximum sentence for the section 25 offence. Echoing similar comments made following previous statutory amendments, the court stated that the most recent increase was not limited to the most serious cases, but that:

> "[21] …any significant increase in sentencing for this offence should be reserved for those organising the use of small boats. For those such as the appellant who whose role was to pilot the boat and whose primary interest was in achieving his own entry into the UK, an increase in the custodial term to reflect the increase in maximum was not appropriate."

[27] It is important to record that none of these principles or authorities have been disputed by the prosecution or defence, either before this court or below.

[28] In light of the absence of prior authority in Northern Ireland on sentencing for the section 25 offence, we consider that it is important to make clear a number of general principles.

[29] Firstly, immigration is an Excepted Matter and beyond devolved competence (Northern Ireland Act 1998, Sch 2, para 8). The offence under section 25 applies throughout the UK and is aimed at deterring and punishing those who facilitate infringements of lawful immigration controls. It is, therefore, right in principle that similar approaches to sentencing for that offence should be taken throughout the United Kingdom.

[30] Secondly, having considered the relevant authorities and sentencing principles described above, we consider them to be appropriate and there is no reason in principle why they should not be followed by courts in Northern Ireland. In particular, we consider that the aggravating factors which were first identified in *R v Le & Stark* and developed in subsequent authorities should guide courts when assessing an appropriate starting point for a sentence.

[31] Thirdly, insofar as they are not expressly identified in the existing authorities, serious aggravating features likely to result in higher sentences than the present case include the physical or emotional mistreatment, degradation, exploitation or enforced servitude of migrants. However, in all cases, relevant aggravating features will include repeated conduct over a period of time; commercial motivation; planning and organisation and the involvement of multiple strangers.

[32] Fourthly, of particular relevance to Northern Ireland, we consider that the abuse of the common travel area should be regarded as an aggravating feature of the offence and that the judge was right to do so in this case. It is of note that all three defendants in this case were apprehended as part of Operation Gull which was a joint operation between the UK and Irish immigration authorities, specifically targeting abuse of the Common Travel Area to facilitate unlawful immigration. This reflects the significance of this ongoing problem both in Northern Ireland andfor the UK as a whole.

[33] Fifth, it is clear that the spectrum of offending under section 25 has become more diverse with time and may now include increasingly serious patterns of organised criminality and exploitation, for which the possibility of higher sentences has clearly been considered by Parliament to be necessary. We agree with the comments in *R v Le & Stack* that an immediate custodial sentence remains appropriate in all but the most minor cases and that the sentencing range of between three to eight years custody is likely to remain appropriate in many cases. The maximum sentences should be reserved for the most serious cases, with the most serious aggravating features and repeat offenders. That is an intensely fact sensitive exercise, which will be determined by sentencing judges on a case by case basis.

Sentencing decision of the trial judge

[34] We have considered the extremely detailed and comprehensive sentencing remarks of the learned judge. It is clear that he was referred to and applied the principles set out in all of the key authorities outlined above. He also recognised the fact and importance of the statutory amendments which have increased the maximum sentence for this offence.

[35] The learned judge's remarks were directed at the conduct of all three defendants, however, he made clear distinctions between them and set out in detail the individual involvement of each one and the factual basis upon which they had pleaded guilty.

[36] The learned judge also identified the key aggravating factors which were present in each case. We consider that his analysis was correct. First, he recognised the fact that the defendants had clearly acted in conjunction with one another to commit the offences. He described their activity as that of an "*organised gang*" but recognised that they may or may not have been acting in conjunction with others within or outside the jurisdiction who were not before the court. Second, he recognised that the offences were carried out for commercial gain, describing it as "*not insubstantial*" and obtained through the exploitation of vulnerable individuals who sought to enter the UK. Third, he recognised that there were multiple offences. In the case of the appellant, there were two separate counts of facilitation on different dates, separated by approximately two months. It was therefore not a case of "one-off" facilitation, such as occurred in *R v Roman*. Fourth, the facilitation was

provided to multiple individuals who were all strangers, rather than friends or family members. The judge also recognised the fact that the offending involved the abuse of the common travel area between the United Kingdom and Ireland, by means of the open border between Northern Ireland and the Republic of Ireland. As set out above, we agree that it was open to him to consider this as an aggravating feature.

[37] Ultimately, the judge found that all of the defendants, including the appellant had been involved in an enterprise to facilitate the unlawful migration of non-nationals into the UK, with a commercial motivation, through making payments, booking transport, receiving direct payments and escorting migrants through Northern Ireland and ultimately to Belfast International Airport. He concluded that none of their roles could realistically be described as minor.

[38] The learned judge considered the personal mitigation put forward by the appellant including his clear criminal record. Many of the factors put forward were recognised by the judge to be the absence of aggravating factors rather than personal mitigation. These included the absence of physical mistreatment or risk of physical harm on account of the safe methods of transport which were used and the relatively small sums which appear to have been paid by the migrants.

[39] The learned judge also had the benefit of a pre-sentence report for the appellant in which he was the only one of the three defendants who had co-operated with the probation officer. He ultimately concluded that the case involved offences of at the very least moderate culpability and moderate harm to those persons who had been exploited to gain entry into the country. He also concluded that all defendants were likely to pose a moderate risk of re-offending.

[40] He imposed a determinate custodial sentence of four and a half years and gave a reduction of one third on account of the plea of guilty resulting in a determinate custodial sentence of three years (36 months), to be served 18 months in custody and 18 months under supervision on licence.

[41] Since this sentence exceeds 12 months in custody, the appellant has now been informed by the Home Office that he is to be deported upon completion of his sentence. It is, therefore, likely that he will be held in immigration detention for a further period following his release from custody, pending deportation.

Grounds of appeal

[42] The appellant advances four separate grounds of appeal, which overlap.

(i) Overstating aggravating features.

(ii) Assessment of culpability of harm.

(iii) Wrong starting point.

(iv) Disparity between defendants.

Aggravating features and starting point

[43] The appellant accepts the sentencing principles set out in the authorities and also accepts that the learned judge correctly identified the aggravating features of his offending. The nub of the appellant's argument is that the judge applied excessive weight to them or overstated some of the features of the offending, thus arriving at a manifestly excessive starting point.

[44] In particular, the appellant challenged the description of the defendant's conduct as involving in a "gang" rather than simply co-operation and co-ordination between three individuals who were known to each other and did not have wider criminal associations. The appellant also highlighted the relatively unsophisticated nature of the offending, insofar as it was readily detected by the authorities and included the personal involvement of the defendants in making payments and escorting the migrants. Similarly, the appellant contended that the judge has overstated the level of financial gain and exploitation, highlighting the low level of profits which were actually obtained, after accounting for the costs of bus and air travel. There was also a low number of offences – two in the case of the appellant, with no physical or emotional mistreatment of the migrants in question. Travel was organised using commercial means without coercion or danger. Contrast was also made with the conditions and circumstances which face migrants attempting to cross the English Channel in small boats.

[45] We acknowledge that the circumstances of this case and the appellants' conduct may not include many of the most serious aggravating features. However, it is clear that the appellant was part of an organised and concerted course of conduct involving the other defendants to facilitate the illegal entry of migrants into the United Kingdom for commercial gain. These were strangers who were exploited in the sense of being required to make payments to the defendants to secure assistance. In the case of the appellant, it was not an isolated incident, as there was more than one count and the conduct continued over a period of time, even after Samuel Arias was apprehended in October 2022. While it might have been open to the learned judge to reach a slightly lower starting point, we consider that the starting point of four and a half years was within the sentencing range available to him and that it was not manifestly excessive in the circumstances of this case. For a case involving more than one count, the starting point still lies towards the lower end of the typical range of sentence which was approved by the Court of Appeal in the *AG's Refence of 2010*, prior to the most recent increase in the maximum sentence.

[46] While other sentencing decisions can provide only a certain level of assistance, it is of note that the sentence in this case is broadly comparable with the starting points which were approved by the Court of Appeal in *R v Roman* and

R v Rotsias. Both of those cases involved single incidents of facilitation and fewer aggravating features than were present in this case.

[47] The learned judge also allowed the maximum reduction of one third for the appellant's guilty plea. We consider that the judge was potentially generous in doing so, in light of the strength of the evidence gathered against the appellant and his co-accused. It could be argued that this was close to being a case in which the appellant was caught red-handed and for which it may have been open to him to apply a lower reduction.

[48] Overall, we consider that the judge correctly identified the number and nature of aggravating features of the appellant's offending. We consider that the judge was correct in his description of many of the mitigating and distinguishing features advanced by the appellant as amounting to an absence of more serious aggravation, rather than mitigation. Although the judge did not expressly mention the appellant's injury and financial pressures as mitigation, these factors were relied upon in sentencing submissions and were referenced in the pre-sentence report. We are therefore satisfied that he was clearly aware of them. Accordingly, in light of the number and significance of the aggravating features which are present in this case and bearing in mind the seriousness which Parliament has attributed to offences of this nature, we do not consider that the starting point and overall sentence can be regarded as wrong in principle or manifestly excessive. We reject the submission that the judge has overstated the extent of aggravation, and we dismiss Grounds 1 and 3 of the appeal.

Assessment of culpability and risk of re-offending

[49] In light of the facts of the case, the learned judge concluded that the culpability of each defendant was at the very least moderate. The appellant contends that the judge erred in this assessment in relation to the appellant on the basis that he should have been assessed as lower culpability than Samual Arias. We deal with the issue of disparity below. However, considering the position of the appellant alone, we consider that the judge's assessment of culpability was entirely appropriate. The appellant was involved in a deliberate scheme to facilitate the illegal migration of multiple individuals, over a period of time, for financial gain. Even if the role played by others was different, we are satisfied that the judge's assessment of culpability in relation to the appellant was appropriate. It is of note that, two months after Samuel Arias had been apprehended, the appellant pleaded guilty to having travelled alone to Dublin to meet another migrant, provided advice to him and collected a cash payment. Samuel Arias can have played no role in that offence.

[50] The appellant also contends that the judge erred in his conclusion that all of the defendants, including the appellant, posed at least a moderate risk of reoffending. The appellant points to the content of the pre-sentence report prepared by the Probation Service in England & Wales in which the probation officer assessed

the appellant as presenting a low risk of committing a further serious offence. We accept that, in light of this conclusion, the judge may have gone further. However, he was not obliged to follow exactly the contents of a pre-Sentence report, and this divergence is not material to the overall sentence.

Disparity

[51] The appellant contends that there was a disparity between the level of involvement of each of the three defendants and that the judge erred by identifying the same starting point for each defendant and the same reduction for a plea. The appellant also contends that erred in his assessment of his culpability, particularly when compared with that of his co-accused.

[52] We accept the appellant's submission that it was necessary for the trial judge to make individual assessments of culpability, based upon an individual consideration of the role played by each party and an individual assessment of their personal mitigation. The appellant places particular emphasis upon the more significant role played by Samuel Arias, who he contends, introduced him to this scheme. However, we consider that the learned judge correctly identified the role of each defendant.

[53] In his extremely detailed analysis of the facts and the basis of plea, the trial judge set out very clearly the facts which supported each charge against each individual. He expressly acknowledged that at times the role played by each was different and at other times it was similar but that they had worked together to carry their criminal scheme into effect. He also concluded that they were overwhelmingly likely knowingly to have been involved to a broadly similar extent, which was reflected in their pleas. We consider that this was an approach which the trial judge was entitled to take on the available materials. It is clear that the facts underlying the offences for which all three pleaded guilty reflected a commercial criminal enterprise in which each was involved to a sufficiently comparable level, even if the precise role played by each differed. As set out above, it is also clear that the appellant continued to offend after Samual Arias had been apprehended. Reliance upon his allegedly more serious role is therefore of limited assistance to the appellant.

[54] Of significance is the fact that that in the sentencing submissions advanced to the trial judge on behalf of the appellant, it does not appear to have been contended that either of the other defendants played a more significant role or that the appellant had not played an organising role. It is obviously difficult in such circumstances for an appellant to succeed on a revised argument on appeal. We also reiterate that the mere fact that one defendant may have received a lenient sentence in light of their role is not a sufficient reason to reduce an otherwise appropriate sentence for another defendant. In this case, we consider that the appellant's sentence was appropriate.

[55] Finally, the appellant has referred to the recent decision of the Court of Appeal in *R v Estabrook* [2023] EWCA Crim 405, which also involved a number of defendants who travelled to France and transported a number of illegal migrants into the UK concealed in the rear of their car. The Court of Appeal reduced a sentence of three years imprisonment to one of 27 months. The court emphasised the need for an individual assessment of culpability and personal mitigation. On the facts of the case, while the court recognised the appellant's lesser role in the enterprise, the key error identified in that case was a failure to take account of the substantial personal mitigation of that appellant, namely her caring responsibilities for a young child and the fact that she was pregnant, expecting another child, for which she was entitled to a separate 25% reduction. It is also of note that the court identified four years as the appropriate starting point for this single incident offence, prior to reduction for mitigation and for her plea of guilty. That decision, therefore, reflected the individual facts and, if anything reinforces our view that the overall sentence in this case was appropriate.

[56] For all of the reasons outlined above, we refuse leave to appeal and dismiss this application.