



Neutral Citation Number: [2018] EWCA Crim 1384

Case No. 2017/01346/C1

IN THE COURT MARTIAL APPEAL
COURT CRIMINAL DIVISION

Royal Courts of Justice
The Strand
London
WC2A 2LL

Tuesday 12th June 2018

B e f o r e:

THE VICE PRESIDENT OF THE COURT OF APPEAL CRIMINAL DIVIISON
(Lady Justice Hallett DBE)

MR JUSTICE GOSS

and

MRS JUSTICE MOULDER DBE

REGINA

- v -

NEIL CHRISTOPHER GUNN

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(Official Shorthand Writers to the Court)

Non-Counsel Application
Mr D Edwards appeared on behalf of the Crown

J U D G M E N T (Approved)

LADY JUSTICE HALLETT:

1. This is a renewal of Mr Gunn's application for leave to appeal against his conviction for battery by a Court Martial Board. The first ground advanced relates to the constitution of the Board. Mr Gunn serves in the RAF yet he was tried by an Army Board. We are troubled by the interplay between the Queen's Regulations for the RAF as to the constitution of the Board and the provisions of the Armed Forces Act. The Regulations suggest that the Board that tried Mr Gunn should have been differently constituted, including at least one representative from his service. We appreciate that the Regulations do not have the force of primary legislation but it is not clear to us from what we have heard this morning what force they do have. We should say that we have seen the transcript of the hearing at which the trial date was fixed and note that the defence agreed to an Army Board. However, Mr Gunn's then lawyer does not seem to have addressed the issue of the effect of the Queen's Regulations during the hearing and we could not establish satisfactorily this morning what he advised Mr Gunn as to their effect.

2. As far as the other grounds are concerned, we are not as yet persuaded that they are arguable but it may be that a fresh representative could put them in better order and so we shall not adjudicate upon them. One matter that caused us concern was Mr Gunn's reference this morning to being told by the Judge Advocate and by his lawyer that no reference could be made to the Bastion incident (about which he wishes to call fresh evidence) and which he suggests could have established a motive for the complainant to lie. Accordingly, the other grounds may be advanced if, and only if, Mr Gunn's fresh representative considers they are properly arguable.

3. We will give leave on the ground relating to the constitution of the Board. We will give Mr Gunn a representation order for a fresh advocate.