

Neutral Citation Number: [2019] EWCA Crim 233

No: 201704924 C5

IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
Strand
London, WC2A 2LL

Tuesday, 12 February 2019

B e f o r e:

LORD JUSTICE IRWIN

MR JUSTICE HOLGATE

MR JUSTICE MARTIN SPENCER

R E G I N A

v

DENZIL DAVIES

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Non-Counsel Application

J U D G M E N T

(Approved)

MR JUSTICE MARTIN SPENCER:

1. By this application, the applicant renews his application to appeal against conviction in relation to three offences to which he pleaded guilty on 9 October 2009 and for which on 13 November 2009 he was sentenced to a term of imprisonment for public protection, pursuant to section 225 of the Criminal Justice Act 2003, with a minimum term of 30 months to be served less 95 days on remand.
2. The brief background is as follows. In the few years leading up to the events in question the applicant had been consuming large amounts of alcohol and had also been treated for head and neck cancer, for which he had undergone radical neck dissection surgery.
3. For whatever reason, this had led to obsessive and possessive behaviour towards his wife, which in turn led to an appearance at the Crown Court in February 2009 for assault. This had been committed to the Crown Court for sentence because the conviction placed the defendant in breach of an existing suspended sentence of imprisonment for an earlier offence of dangerous driving. The court imposed a further suspended sentence of imprisonment.
4. Thereafter, between February 2009 and August 2009, there was a renewed disturbing pattern of threatening and obsessive behaviour directed by the applicant towards his wife. On 5 August, he attended her house, severed the telephone line and thereby cut off the panic alarm with which his wife had been issued to communicate with the police should he appear and present her with danger. Then, on 10 August, having been bailed for that criminal damage to the telephone line, he returned to the house armed with a hammer, forced his way in and attacked his wife in her bedroom, having earlier told someone that he intended to kill her. She was subjected to a prolonged terrifying assault in which there was a violent struggle as the applicant's wife fought to defend herself.
5. On 9 October 2009, the applicant pleaded guilty to attempting to commit grievous bodily harm, contrary to section 18 of the Offences Against the Person Act 1861, representing the attack on his wife on 10 August; criminal damage, representing severing the telephone line on 5 August 2009; and putting a person in fear of harassment; all these offences having been committed in breach of the suspended sentence imposed on 4 February 2009.
6. On 13 November 2009, the applicant was sentenced by His Honour Judge Curran to imprisonment for protection of the public, as stated.
7. In relation to the proceedings in October/November 2009, the applicant was represented by Mr Jeremy Jenkins of counsel. On 18 March 2014, newly instructed counsel, Mr James Dixon, advised positively in relation to an appeal against sentence out of time, but on 31 July 2014, the full Court of Appeal Criminal Division refused the applicant's renewed application for permission to appeal against sentence, permission having been initially refused by the single judge. However, the court did take the opportunity to amend the number of days credit on remand to the 95 days which I have stated from 63 days originally stated, although this was somewhat academic as the minimum term had expired in any event over 2 years

previously.

8. The applicant now seeks an extension of time to appeal against his conviction, although this was almost nine and a half years ago. He now claims that he was in fact unfit to stand trial by reason of his medical problems, including speech and swallowing problems, deafness and disorientation. He says that he had been assaulted and injured by the police when arrested. He states:

"I was distraught, medicated and traumatised by the assaults and injuries inflicted by the police whilst still in the aftermath of the cancer treatment and very early stages of recovery, hence the subsequent section by the Secretary of State, prior to court. It is my contention that I was therefore, equally incapable of understanding the implications of Mr Jenkins' advice. I could not rationalise matters, and was therefore in no fit state to consent to any plea."

9. The applicant also appears to be suggesting that there was some form of plea bargain whereby it was agreed that he would receive a hospital order and that "the CPS [that is the Crown Prosecution Service] reneged on the hospital agreement and I was committed to prison with an IPP".

10. In refusing permission to appeal, Sir Alistair MacDuff, on 17 April 2018, stated:

"I have considered the papers in your case and your grounds of appeal. It is clear that you are mainly concerned about the impact of your sentence; but your appeal against sentence was dismissed. You were properly represented and you pleaded guilty. You advance no arguable ground of appeal against conviction. I note that your learning difficulties and other information were known at the time. Your application is without merit."

11. In a letter to Sir Alistair MacDuff dated 30 June 2018, the applicant asks that the reference to learning difficulties be struck from the record as he says it is incorrect and he does not and never has had learning difficulties. We have no doubt that the single judge intended to refer to the applicant's medical difficulties as referred to above and we are happy to record that the applicant does not have learning difficulties and there has been no suggestion thereof in the past. However, subject to this correction, we agree with the observations of Sir Alistair MacDuff.

12. We have seen an email from Mr Jenkins, who represented the applicant, written in response to a waiver of privilege by the applicant, where Mr Jenkins says:

" ... I would have made an assessment of his mental capacity at the time, and his fitness to plead. If at any time I thought he was unfit, I would have made representations to the trial Judge in that regard. It seems the defendant agrees I did and this would accord with my practice generally, at the time. I do not remember arranging or indeed, carrying out any form of communication with the defendant whilst he was in the dock ...

I would have advised him of the nature of his plea; the evidence against him and the strength of it: I would have shown him the Guidelines applicable, (as was my practice at

the time), and I would have advised on the question of 'dangerousness' and explained the consequences to him. I would have satisfied myself that he understood my advice before allowing him to enter any plea of guilty. If I suspected that he was under a disability, or did not fully understand, then I would have brought it to the attention of the trial Judge."

13. We have no doubt that Mr Jenkins would have acted as described in accordance with his duty as counsel and had there been any merit in this appeal the matters now raised by the applicant would have been raised many years ago and in particular when the applicant sought permission to appeal against his sentence in 2014.
14. In the circumstances, the application for an extension of time is refused and the application for permission to appeal is without merit.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

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