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No: 201805288/C3

**IN THE COURT OF APPEAL**  
**CRIMINAL DIVISION**

Royal Courts of Justice  
Strand  
London, WC2A 2LL

Thursday, 2 July 2020

**LORD JUSTICE HOLROYDE**

**MR JUSTICE SPENCER**

**HIS HONOUR JUDGE MICHAEL CHAMBERS QC**

(Sitting as a Judge of the CACD)

**R E G I N A**

v

**JAMILA FAYE WALTERS**

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**Mr T Qureshi** appeared on behalf of the **Applicant**

**Mr M Rowcliffe** appeared on behalf of the **Crown**

**J U D G M E N T**

1. LORD JUSTICE HOLROYDE: The London Borough of Waltham Forest prosecuted the applicant for 12 offences involving fraud and dishonesty in relation to benefits claims. On 20 July 2018, at the conclusion of a trial in the Crown Court at Snaresbrook, the jury found her guilty on all counts. The trial judge, Mr Recorder Payne, subsequently sentenced her to concurrent terms of 18 months' imprisonment suspended for 2 years, with a requirement to perform 140 hours of unpaid work. An application for leave to appeal against conviction was refused by the single judge. The applicant now applies, through counsel Mr Qureshi, for leave to vary her grounds of appeal and renews her application for leave to appeal.
2. We summarise the circumstances of the offending. For convenience we shall refer to the London Borough of Waltham Forest as "the local authority" and to the Department of Work and Pension as "the DWP".
3. In November 2005 the applicant declared herself homeless. On that basis, she and her children were provided with accommodation by the local authority. In November 2010 the local authority granted her the tenancy of a house in Beechwood Drive, Woodford Green. They did so on the basis of the applicant's declaration that the contents of her original homelessness housing application had been accurate and her circumstances had not changed.
4. In February 2016 the applicant applied to purchase the house in Beechwood Drive. The local authority then discovered that the applicant had, since June 2006, been the registered owner of a house in Billet Road, London E17, which she had rented out to private tenants. At the same time she had been claiming housing benefit and council tax benefit in respect of the Beechwood Drive house, receiving in total nearly £76,000 over a period of more than a decade. She had signed a series of forms in which she should have declared (but did not declare) her ownership of the Billet Road house. If she had told the truth, she would not have been entitled to any of the benefit payments.
5. In the light of these discoveries the local authority, in July 2016, issued a notice to quit. The applicant responded by saying that although she was the legal owner of the Billet Road house, it was held on trust for her children and she had no beneficial interest in it. She produced a copy of what purported to be a trust document, dated 21 October 2010.
6. On 6 October 2016 the applicant was interviewed under caution by officers of the local authority. She was accompanied by a solicitor. She said then, as she was later to say at trial, that she held the Billet Road house on trust for her children, that she did not think it relevant to mention that fact in any of the forms and declarations which she had signed, and that she had not acted dishonestly. It was further her case that she had, at some stage in the past, told one or more officials of the local authority about the fact she was the legal owner of the Billet Road house.
7. To support her case in that regard the applicant has, very belatedly, provided a copy of a review decision dated 30 March 2009 which she contends shows that the local authority was aware of her interest in the Billet Road house. She seeks to adduce this as fresh evidence in support of a different ground of appeal.

8. The prosecution case at trial was that the applicant had acted dishonestly throughout, concealing her ownership of the Billet Road house because she knew it would affect her entitlement to housing and to benefits, and that the trust document was a sham. All the charges in the indictment reflected that overall allegation. Counts 1 and 2, charges of fraud, contrary to section 1 of the Fraud Act 2006, related to the applicant's failure to reveal her true circumstances in the periods before and after her acquiring the tenancy of the Beechwood Drive house. Count 3, a charge of dishonestly failing to notify a change in circumstances affecting benefit entitlement, contrary to section 111A(1A) of the Social Security Administration Act 1992, related to her failure to reveal her true circumstances between her purchase of the Billet Road house and her signing of the next benefit renewal form. Counts 4 to 12, charges of dishonestly making a false statement with a view to obtaining benefit contrary to section 111A of the 1992 Act, related to her false declarations, in a series of renewal forms, that she did not own any property.
9. We turn now to summarise matters which have given rise to submissions that it was an abuse of the process of the court to prosecute the applicant.
10. The officer of the local authority who first noticed that the applicant was the owner of another property referred the matter to the benefits team within the authority, with a view to establishing whether there had been an overpayment of benefit. For that purpose, a form was sent to the applicant in early February 2016 seeking information from her. The applicant requested further time to reply and then provided only limited information. It was not until late April 2016 that she returned a partially completed form asserting that the Billet Road house was held on trust.
11. Whilst that enquiry was being made of the applicant, the local authority was discussing joint working with the DWP in relation to a number of investigations. As part of that arrangement, the local authority referred this applicant's case to the DWP. The local authority had suggested to the DWP that a joint interview of the applicant should be carried out, but had received no reply. It seems that the DWP, without reference to the local authority, arranged to interview the applicant on 28 September 2016. However, she postponed that interview in order to have an opportunity to take legal advice. As we have indicated, the local authority interviewed the applicant on 6 October 2016. In late October the DWP, again without reference to the local authority, sought to interview the applicant. She declined on the ground that she had already been interviewed by the local authority.
12. On 13 February 2017, and again without reference to the local authority, the DWP wrote to the applicant. The letter was headed "About your claim for housing benefit and income support". It began by saying that:
  - i. "On 27/10/16 we interviewed you about your claim(s) for HB and IS. We told you that it is an offence for the purposes of claiming benefit to: knowingly make a false statement, give any untrue information or fail to promptly notify us of a change in your circumstances. Criminal proceedings can be considered in cases where the Department has reasons to believe that a person has committed a benefit offence.
  - ii. Having considered all the facts of your case, a decision has been

taken not to institute criminal proceedings against you and the investigation is now closed."

13. The letter went on to say that the DWP might nonetheless recover any overpayment.
14. The local authority first learned of this letter in late July 2017, when they contacted the DWP and were informed that the investigation had been closed because no reply had been received from the local authority to enquiries made by the DWP. The local authority's position was that there had been a contravention of their joint working arrangement and that they had been waiting to hear from the DWP. They offered to provide any necessary documentation so that the DWP could reconsider its decision. The DWP replied that they would not re-open the matter because they might be open to criticism "as the Council are already prosecuting the defendant with the same evidence".
15. The local authority continued their investigations and in October 2017 began the prosecution by issuing summonses.
16. It was submitted to the recorder that the prosecution should be stayed on the ground that it was an abuse of the process of the court. The recorder heard evidence from an officer of the local authority, Ms James, about the sequence of events which we have summarised. He considered the tests set out by this court in R v Abu Hamza [2007] QB 659 at paragraphs 50-54. He accepted that the letter which the applicant received from the DWP would have appeared to her to be an unequivocal statement that there would be no prosecution, though he noted that the DWP's decision was erroneous, made without consultation with the lead investigating agency and based upon almost no investigation by the DWP. Moreover, said the recorder, the letter was poorly expressed, because the decision was not on any view made "having considered all the facts of your case". There had been no decision by the local authority to cease its investigation.
17. The recorder went on to say that there was nothing to suggest that the applicant had in any way acted to her detriment as a result of or in reliance upon the DWP's letter. He therefore declined to stay the indictment as an abuse of the process. He added that even if there had been any identifiable detriment, the case might fall within the category mentioned in Abu Hamza at paragraph 54.
18. The grounds of appeal challenge that ruling. Mr Qureshi applies for leave to advance two fresh grounds in substitution for the grounds initially advanced, though he points out that the arguments which he wishes to put forward were substantially apparent from the original grounds. His proposed new grounds are as follows. First, in relation to counts 3 to 12, it is submitted that the convictions are unsafe because the prosecution informed the applicant she would not be prosecuted. That was an unequivocal representation not to prosecute. The mere fact of that representation does not amount to an abuse but, taking into account all the circumstances of the case, it was an affront to justice to allow the prosecution to proceed. Secondly, in relation to counts 1 and 2, if the court accepts that there was an abuse of the process in relation to counts 3 to 12, then it is submitted the inclusion of those allegations tainted the jury's deliberations in relation to counts 1 and 2.
19. Mr Qureshi submits that the local authority and the DWP conducted a joint investigation into the applicant. The local authority dealt with the issue of whether the applicant had obtained her tenancy by fraud and delegated the benefits aspect of the investigation to the DWP. In those circumstances, submits Mr Qureshi, the conduct of the DWP was binding on the local authority, and an unequivocal representation was made to the

applicant that she would not be prosecuted for any benefits offences. There was no evidential basis for the recorder's finding that the decision of the DWP not to prosecute was erroneous. In any event, submits Mr Qureshi, the court should consider the matter from the point of view of the applicant. Thus viewed, it was wholly unfair for a promise to be given not to prosecute and for a prosecution subsequently to be commenced, whatever breakdown of communication between the respective bodies may have led to that position. In those circumstances, it is submitted that the prosecution of the benefits offences by the local authority was an affront to justice.

20. Mr Qureshi accepts that the mere fact that an unequivocal representation was made will not necessarily support a finding of abuse of the process. The court in Abu Hamza stated that a court must generally show that he has acted to his detriment. He submits however that, even in the absence of any detrimental reliance upon the representation, it will be an abuse of the process to proceed with a prosecution when, in all the circumstances, it would be an affront to justice to do so. He refers to the cases of R v Gripton [2010] EWCA Crim 2260 and R v Scott [2020] 4 WLR 2 in support of this submission.
21. Mr Qureshi had submitted in his written argument that an inference could be drawn that the local authority's decision to prosecute had been wholly or partly based on financial considerations, in that successful confiscation proceedings against the applicant would result in a financial benefit to the local authority under the ARIS system. He again relied in support of that submission on Scott. In his oral submissions today, Mr Qureshi has frankly acknowledged that that was a submission which could have been better expressed. He now submits that the fact that confiscation proceedings were being discussed was a further indication of the joint arrangements between the two bodies, on which Mr Qureshi relies for his proposition that the DWP had authority to put an end to any investigation either by itself or by the local authority.
22. Thirdly, Mr Qureshi points to what he says was significant delay between the DWP's letter of February 2017 and the commencement of the prosecution by the local authority 8 months later. He submits that such a state of affairs simply should not arise and that it is no answer to his submissions to point to an explanation based on confusion or error by the two bodies concerned.
23. Overall, Mr Qureshi submits that when all those features of the case are considered cumulatively the prosecution of counts 3 to 12 was an abuse of the process. The fact that the jury heard the evidence about those offences renders the convictions on counts 1 and 2 also unsafe.
24. In relation to the matter which has belatedly arisen, Mr Qureshi relies on a statement prepared by the applicant's solicitor, producing a document which is a review decision by the local authority dated 3 March 2009. The decision actually relates to the reasonableness or otherwise of a particular property which was then being offered to the applicant but which she did not wish to accept. In the course of the decision reference is made to the size of the property concerned and the document contains this sentence:
  - i. "I advised her that any offer was likely to be smaller than that at Billet Road."
25. Mr Qureshi tells us that the reference to a property in Billet Road was a reference to the

one which is concerned in these proceedings, and he relies on the document as supporting the applicant's assertion that the local authority did know that she had at least some interest in that property.

26. The solicitor's statement helpfully sets out the chronology of relevant events, seeking to explain why it has come about that this document has been brought to the attention of the court and of the prosecution only on the very eve of this hearing.
27. For the respondent, Mr Rowcliffe submits that the recorder was entitled to make his findings of fact based upon the evidence he heard from Ms James, and that he applied the correct legal test. He submits that there is no ground on which the recorder's ruling can be challenged. In a case such as this, proof that a defendant has relied to his detriment on the relevant representation is a very important factor, even if not an absolute prerequisite. The local authority was itself investigating the benefit aspect of the case as well as the tenancy aspect, as is apparent from the initial reference to the benefits department, to which we have referred, and from the later collection by the local authority of the series of renewal forms which form the subject matter of counts 3 to 12.
28. Further, Mr Rowcliffe submits that it is apparent from the internal correspondence, which was considered by the recorder, that the DWP itself did not believe that it was binding the local authority when it wrote to the applicant in February 2017. He argues that the recorder was correct to find that that letter had been written after very little investigation by the DWP and when their plan to interview her had been declined. He submits that the DWP's decision was not based on any assessment of the evidence, but rather on a belief that the local authority had failed to respond to its request to provide further information.
29. Mr Rowcliffe further submits that there is no basis for any suggestion of the decision to prosecute being influenced by financial considerations, and that there was no significant delay on the part of the local authority once it learned of the actions of the DWP. His overall submission is that even if the DWP letter was understood by the applicant to be an unequivocal representation that she would not be prosecuted, it was a letter sent without the knowledge or consent of the local authority which itself made no such representation. In all the circumstances, he submits that it cannot be said that the prosecution was an affront to justice.
30. We are very grateful to both counsel for their submissions.
31. We address first, the additional point which has very belatedly been raised. The relevant sequence of events in this regard is that the single judge gave her decision refusing leave on 21 February 2019. The applicant, as she was of course entitled to do, gave notice of renewal to the full court, and that application came on for hearing before the full court on 19 November 2019. On that occasion the applicant addressed the court in person about the efforts she had been making to obtain legal representation. She indicated that she had recently found lawyers who could and would act for her, but she needed a little more time to complete her raising of the necessary funding. When asked how long she was asking for, she said that she thought that she needed about a month. The court in fact gave her a longer period than that, adjourning the hearing of the renewal application and giving directions which required all necessary steps to be taken by 17 January 2020. Later, at the request of the newly instructed solicitors, that deadline was extended by a few days to 20 January 2019.
32. As is frankly acknowledged in Mr Qureshi's submissions, by late January 2020 the applicant had been given advice to the effect that such further information as she had

provided to her new representatives did not give rise to any arguable fresh ground of appeal. As we have indicated, Mr Qureshi settled fresh grounds of appeal and made the application to vary the grounds. The next step seems to have come at the very end of June 2020, when the applicant gave further instructions. But the position, as we understand it, remains that the document on which it is now sought to rely had been in her possession certainly in January 2020, before the present application was made to the court.

33. As is obvious, the document on which reliance is now sought to be placed does not bear at all upon the grounds of appeal which Mr Qureshi seeks to pursue. If it is to have any role to play, it could only be in support of a different ground of appeal, not yet fully formulated and based upon fresh evidence. Where this court is asked to receive fresh evidence in support of an appeal against conviction, section 23 of the Criminal Appeal Act 1968 requires the Court to consider all relevant circumstances including, in particular, whether it appears to the Court that the evidence may afford any ground for allowing the appeal and whether there is a reasonable explanation for the failure to adduce the evidence in the proceedings below.
34. In our view, no satisfactory explanation at all has been put before the court as to why this document was not available to the applicant in the court below. We have set out the chronology of the investigation and of the proceedings. The applicant knew, by late summer or autumn of 2016, that these matters were under investigation. Her trial took place 2 years later.
35. It seems to us that this document, if she wished to rely upon it, could and should have been put before the court at trial. Moreover, in considering whether the document may provide any ground for allowing the appeal, we take the view that it raises more questions than it answers. It certainly does not contain anything to indicate explicitly a knowledge of the true nature of the applicant's interest in a property in Billet Road and it raises the obvious question of why, if that factual position had been disclosed at the time, the applicant would have been treated as homeless despite owning a property.
36. For those reasons, we conclude that it is not arguable that this document is admissible as fresh evidence, or that any adjournment of proceedings should be granted to allow any further or different ground of appeal to be formulated.
37. We return to the grounds which have been ably presented before us by Mr Qureshi. We begin by quoting from what was said by Lord Phillips CJ in R v Abu Hamza:
  - i. "50. As the judge held, circumstances can exist where it will be an abuse of process to prosecute a man for conduct in respect of which he has been given an assurance that no prosecution will be brought. It is by no means easy to define a test for those circumstances, other than to say that they must be such as to render the proposed prosecution an affront to justice. The judge expressed reservations as to the extent to which one can apply the common law principle of 'legitimate expectation' in this field, and we share those reservations. That principle usually applies to the expectation generated in respect of the exercise of an administrative discretion by or on behalf of the person whose duty it is to exercise that discretion. The duty to prosecute offenders cannot be treated as an

administrative discretion, for it is usually in the public interest that those who are reasonably suspected of criminal conduct should be brought to trial. Only in rare circumstances will it be offensive to justice to give effect to this public interest.

- ii. 51. Such circumstances can arise if police, who are carrying out a criminal investigation, give an unequivocal assurance that a suspect will not be prosecuted and the suspect, in reliance upon that undertaking, acts to his detriment...
- iii. 52. In *R v Townsend, Dearsley and Bretscher* [1997] 2 Cr App R 540 the Vice-President, Rose LJ, giving the judgment of this court approved the propositions: where a defendant has been induced to believe that he will not be prosecuted this is capable of founding a stay for abuse; where he then co-operates with the prosecution in a manner which results in manifest prejudice to him, it will become inherently unfair to proceed against him." He added that breach of a promise not to prosecute does not inevitably give rise to abuse but may do so if it has led to a change of circumstances: pages 549, 551.

38. The Lord Chief Justice went on to refer to a number of other cases, and then continued at paragraph 54:

- i. "These authorities suggest that that it is not likely to constitute an abuse of process to proceed with a prosecution unless (i) there has been an unequivocal representation by those with the conduct of the investigation or prosecution of a case that the defendant will not be prosecuted and (ii) that the defendant has acted on that representation to his detriment. Even then, if facts come to light which were not known when the representation was made, these may justify proceeding with the prosecution despite the representation."

39. The circumstances of the present case certainly reveal an unhappy breakdown of communication between the local authority and the DWP, and we can well understand that the applicant feels aggrieved that she was prosecuted by the local authority after the DWP had told her that its investigation was closed. We have very much in mind Mr Qureshi's submissions as to the unfairness of the situation which arose, which was not of the applicant's making, and we bear in mind also that it may be in the nature of a prosecution such as this that the subject of the prosecution may be a disadvantaged member of society. The issue on this appeal however is whether the recorder was wrong to conclude that it was not an affront to justice for the local authority to prosecute the applicant for benefit offences.

40. The key considerations, in our view, are as follows. First, the investigation of the applicant by the local authority began because she was found to have been granted local authority accommodation as a homeless person when it appeared that she in fact owned a



house. Inevitably that gave rise to an investigation not only into possible fraud in connection with the tenancy but also into possible dishonesty in connection with her claims for benefits. As we have already observed, all the charges in the indictment arose from the alleged failure of the applicant to tell the truth about her property ownership. Moreover, her defence to all of those charges was the same: a denial of any beneficial interest in the Billet Road house; an assertion that she had made the local authority aware of her limited interests in it; and a denial of any dishonesty.

41. Secondly, there was clear public interest in prosecuting the applicant in relation to all those offences. There was evidence of fraudulent and dishonest conduct on her part, which had resulted in a very substantial amount of public money being paid to her.
42. Thirdly, whilst we hesitate to criticise when we have not heard from the DWP, we are bound to say that the letter of 13 February 2017 was a most unsatisfactory document. It plainly was not correct to say that all the facts of the case had been considered. We find it very surprising that the applicant was told that "the investigation was now closed" when the DWP had no reason to think that the local authority had completed its investigation and had decided against prosecution.
43. Fourthly, whatever the merits of the DWP's decision that *they* would not prosecute, we are unable to accept Mr Qureshi's submission that the DWP could and did bind the local authority by sending a letter which they had not been authorised to send on behalf of the local authority and of which the local authority had no knowledge. The applicant may have thought that the letter was written on behalf of both the DWP and the local authority, but it was not.
44. Fifthly, and in any event, the recorder was clearly correct to find that the applicant did not, in any way, act to her detriment in reliance on that letter. As the Lord Chief Justice said in Abu Hamza, it is usually in the public interest that those who are reasonably suspected of criminal conduct should be brought to trial. Even where there has been an unequivocal representation that a defendant will not be prosecuted, it is not likely that a prosecution will be an abuse of the process if he cannot show that he acted to his detriment as a result. There is, in our view, no feature of this case which makes an exception to that general rule. Moreover, we are inclined to agree with Mr Rowcliffe's submission that even if there were evidence of detriment, this would be a case of the kind contemplated in the final sentence which we have quoted from paragraph 54 of R v Abu Hamza. It is not however necessary for us to say more about that.
45. Sixthly, the issue raised in relation to confiscation proceedings does not seem to us to assist the applicant.
46. Lastly, given that the local authority did not know until July 2017 about the letter which the DWP had sent in February, we do not find any substance in the complaint of delay.
47. In those circumstances, we can see no arguable basis on which it could be said that the recorder was not entitled to refuse the application for a stay. It cannot be said that it was an affront to justice for the local authority to prosecute the applicant for the benefits offences. The second ground of appeal is, of course, contingent on the success of the first. Accordingly, it too is bound to fail.
48. It follows that no purpose would be served by our granting the applicant permission to vary her grounds of appeal. That application and the renewed application for leave to appeal against conviction accordingly fail and are refused.

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

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