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IN THE COURT OF APPEAL

CRIMINAL DIVISION

NEUTRAL CITATION NUMBER: [2021] EWCA Crim 653

CASE NO 202002126/B5

Royal Courts of Justice
Strand
London
WC2A 2LL

Thursday 18 February 2021

Before:

LORD JUSTICE HOLROYDE
MR JUSTICE LAVENDER
MR JUSTICE CAVANAGH

REGINA
V
MOHAMMED ALI

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NON-COUNSEL APPLICATION

J U D G M E N T

MR JUSTICE LAVENDER: This is a renewed application for leave to appeal out of time against the applicant's conviction on 19 December 2007 on one count of rape and one count of assault occasioning actual bodily harm. Further details are set out in this court's judgment of 18 December 2013, [2013] EWCA Crim 2523, refusing leave to appeal against sentence, save in so far as was necessary to correct a technical error made by the judge.

The provisions of the Sexual Offences (Amendment) Act 1992 apply in this case. No matter relating to the victim of the rape, whom we will call V, shall during her lifetime be included in any publication if it is likely to lead members of the public to identify her as the victim of that offence.

In relation to the charge of assault occasioning actual bodily harm, we note that the applicant admitted in his defence statement that he pushed V with his hand to her face, that she fell and that her nose started to bleed. Moreover, in one of his letters to the court he has acknowledged that in the witness box at trial he admitted punching V.

In relation to the charge of rape, the applicant in his defence statement admitted sexual intercourse with V, but contended that it was consensual and that he reasonably believed that she was consenting.

Trial counsel, Robert Egbuna, produced a written advice dated 4 March 2008. His opinion was that there were no grounds of appeal against conviction or sentence. The applicant's solicitors, Stephen Burdon Solicitors, considered this with the applicant on 7 March 2008 and sent a confirmatory letter dated 18 March 2008.

The applicant alleges *inter alia* that there were defects in the judge's summing-up, that the judge was biased, that the trial should have been adjourned and that evidence was wrongly admitted. We note, however, that Mr Egbuna said as follows in his advice:

> "The learned judge cannot be criticised in relation to any direction of law. There were no material irregularities during the course of the trial."

It is not credible for the applicant now to assert, for example, that the judge failed to direct the jury on the issue of reasonable belief in consent and directed the jury that, if they found him guilty of assault occasioning actual bodily harm, then they should find him guilty of rape.

The applicant criticises his counsel and solicitors for various aspects of their preparation for and conduct of the trial, but there is no evidence of his having complained at the time. Stephen Burdon Solicitors were unaware of any such complaint until September 2020.

The applicant criticises Stephen Burdon Solicitors for not providing him with the papers in the case. There is no evidence that he requested any of those papers before 2012. In 2008 he asked for a transcript of the trial. Stephen Burdon Solicitors wrote to him on 4 November 2008, explaining how he could contact the transcribers, but he did not do so.

The applicant instructed another firm of solicitors, Swain & Co., who wrote to Stephen Burdon Solicitors on 8 November 2012 requesting paperwork. They were sent the witness statements. On 22 January 2013 the applicant asked for the paperwork to be sent directly to him in prison. Stephen Burdon Solicitors offered to send it instead to Swain & Co. The applicant did not take any further action, such as instructing Swain & Co. to request more documents or complaining to the Legal Ombudsman. At some point thereafter Stephen Burdon Solicitors destroyed their file in accordance with usual practice. The complaint about this, made by the applicant to the Legal Ombudsman in 2018, was dismissed.

It appears that Swain & Co. assisted the applicant with the application for leave to appeal against sentence, which was dismissed in 2013. The applicant has stated that he asked Swain &

Co. to assist with an appeal against conviction, but claims that they said they could not get legal aid. There is no evidence that Swain & Co. considered that an appeal would have any merit.

It appears nevertheless that the applicant wanted to appeal against conviction in 2012 or 2013. No good reason has been shown for the delay since then. The applicant was detained under the Mental Health Act between 2016 and 2018, but that does not explain over two years of inactivity between his indicating in 2012 or 2013 that he wanted to appeal against conviction and his detention in 2016. Moreover, the merits of the proposed appeal are not so compelling as to justify the exceptional step of granting such a long extension of time. Indeed, there does not appear to be any merit in the proposed appeal.

The applicant learnt from the Respondent's Notice that the Crown Prosecution Service had mistakenly destroyed their file in 2011, when the normal policy in cases such as this is to retain the file for 25 years. He seeks to rely on that as a ground of appeal. However, in our judgment it merely illustrates the reason why appeals should be brought in time. Had the applicant brought his appeal in time, his solicitors could have produced their documents, the CPS could have produced their documents (in so far as relevant) and the court would have been fully informed of all relevant matters. The passage of time inevitably increases the risk that, for one reason or another, this court will not be fully informed of what happened at trial if the application is granted and the matter proceeds to appeal.

Accordingly, we refuse the extension of time and refuse the application for leave to appeal.

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

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