[2022] EWCA Crim 1549
IN THE COURT OF APPEAL
CRIMINAL DIVISION

Case No: 2021/03550/B2

Royal Courts of Justice
The Strand
London
WC2A 2LL

Friday 11th November 2022

B e f o r e:

LADY JUSTICE CARR DBE

MRS JUSTICE MAY DBE

THE RECORDER OF THE ROYAL BOROUGH OF KENSINGTON & CHELSEA
(His Honour Judge Edmunds KC)
(Sitting as a Judge of the Court of Appeal Criminal Division)

R E X

- v -

CHARLES SION DAVISON

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Non-Counsel Application

J U D G M E N T

Friday 11th November 2022

LADY JUSTICE CARR:

1. This is a renewed application for leave to appeal against conviction, following refusal by the single judge. It is significantly out of time, requiring an extension of no less than 2,179 days.

2. In October 2015, in the Crown Court at Exeter, the applicant, who is now 46 years old, was convicted upon his plea of guilty to murder. He was sentenced to life imprisonment, with a minimum term of 19 years. His attempt to appeal against sentence was unsuccessful.

3. The basis of his application relates to the question of whether or not he was fit to plead at the time. To this end he seeks leave to rely on fresh evidence in the form of a report from Dr Olotu, dated 14th February 2022. Dr Olotu has been the applicant's responsible clinician since July 2020.

4. The facts are set out in the Criminal Appeal Office Summary. We do not need to repeat them in any detail for present purposes. In short, the applicant stood trial accused of the murder of his mother, Valerie Davison. On day seven of the trial, 20th October 2015, the applicant pleaded guilty to her murder. This was so despite an indication by the prosecution that a guilty plea to the lesser offence of manslaughter by reason of diminished responsibility would be acceptable.

5. There were clearly concerns over the applicant's mental health at the time. However, by the time that the applicant pleaded guilty, no fewer than three psychiatrists had concluded that he was fit to plead by reference to the relevant *Pritchard* criteria:

   i) Dr Sandford, who assessed the applicant on 15th January 2015, concluded in a report dated 23rd January 2015 that the applicant probably suffered from a number of psychiatric problems, but at the time of examination was fit to attend court and fit to plead;

   ii) Dr Rosseau assessed the applicant on 25th August 2015. In a report dated 20th September 2015, he also found the applicant to be fit to plead and to attend court, albeit that he suffered from paranoid schizophrenia and ongoing psychotic symptoms;

   iii) Dr Sanikop assessed the applicant on 21st September 2015. He too found that the applicant had a diagnosis of paranoid schizophrenia, with clear evidence of psychotic symptoms. Again, the applicant was considered fit to plead.

Fresh Evidence

6. Dr Olotu assessed the applicant on 30th January 2022. Dr Olotu's opinion on the guilty plea was that:

> "It is likely on the balance of probability that the plea he entered at the court proceeding was very likely linked to his mental illness … complicated by the psychosocial stress of being in a hospital

> environment he did not like. This would also have been further compounded by the stress of the court proceedings as well. It is my opinion that under these circumstances he would thus not have fully understood the distinction between the various pleas – his decision to plead not guilty which he then changed to a plea of guilty to murder, and then his rejection of the offer to plead guilty to manslaughter on the grounds of diminished responsibility. It would appear that while he was under the influences of symptoms of his mental disorder it was likely that he would not have understood the range and nature of verdicts the judge within law could arrive at and what these would mean for him whilst being mentally unwell, experiencing psychotic symptoms …"

His conclusion on the issue of fitness to plead was:

> "I am thus of the opinion that [the applicant] was on the balance of probability not fit to plea at the time of the court hearing."

Grounds of Appeal

7. It is submitted that, in accordance with Dr Olotu's fresh evidence, at the time that the applicant pleaded guilty to the offence of murder, it is likely he was in fact unfit to plead or to endure the trial process; his case should have been dealt with by way of a trial of the facts, or delayed in order to allow him to recover sufficiently to be arraigned and plead guilty to manslaughter.

Waiver of Privilege Procedure

8. Leading and junior counsel who represented the applicant at trial state that the defence was bound by the three medical reports referred to above, although it was clear that the applicant was very unwell. The alternative of pleading guilty to manslaughter on the ground of diminished responsibility was explained to him and his instructions remained that he wished to plead guilty to murder. The applicant's solicitor confirms that, although the applicant suffered from a mental disorder, he was fit to plead. Despite many months of trying to persuade the applicant to engage with psychiatrists for the purpose of running a defence of diminished responsibility, the applicant chose not to do so. This was very frustrating.

9. The suggestion is that the applicant's guilty plea is vitiated under the first category of cases identified in *R v Tredget* [2022] EWCA Crim 108 at [154]. We remind ourselves of the guidance of this court in *R v Erskine* [2009] EWCA Crim 1425, [2009] 2 Cr App R 29, at [89]:

> "Assuming that the defendant is legally represented (and in cases like these, he will normally be represented by leading and junior counsel, as well as solicitors) his legal representatives are the persons best placed to decide whether to raise the issue of fitness to plead, and indeed to seek medical assistance to resolve the problem. There is a separate and distinct judicial responsibility to oversee the process so that if there is any question of the defendant's fitness to plead, the judge can raise it directly with his legal advisers. Unless there is contemporaneous evidence to suggest that notwithstanding his plea and the apparent satisfaction of his legal advisers and the judge that he was fit to tender it, and participate in the trial, it will be very rare indeed for

> a later reconstruction, even by distinguished psychiatrists who did not examine the appellant at the time of trial, to persuade the court that notwithstanding the earlier trial process and the safeguards built into it that the appellant was unfit to plead, or close to being unfit or that his decision to deny the offence and not advance diminished responsibility can properly be explained on this basis. The situation is, of course, different if, as in Erskine, serious questions about his fitness to plead were raised in writing or expressly before the judge at the trial."

10. When refusing leave, the single judge said this:

> "The applicant's fitness to plead, according to the correct legal criteria, was established at the time of his trial in 2015 to the satisfaction of his experienced and senior defence team on the basis of three psychiatrists' reports. Those reports themselves appear to have been carefully considered; they are clear and explicit about the applicant's mental ill-health but assess him as fit to plead notwithstanding his problems. Fitness to plead was not therefore seriously in question before the court. There is no contemporary evidence that the applicant's change of plea during the course of his trial was defective or should not properly have been accepted.
>
> The opinion now expressed by Dr Olotu in a report dated in February 2022 does not arguably make a case that this is one of those 'very rare indeed' instances. The report is inevitably by way of review and retrospective hypothesis many years after the event, does not expressly address the legal criteria, and cannot arguably provide a potentially determinative counterweight to the clear professional consensus arrived at [at] the time."

11. We have considered the materials and arguments advanced on behalf of the applicant independently and afresh. We find ourselves in complete agreement with the reasons given by the single judge. The applicant's fitness to plead was explored fully and contemporaneously by three psychiatrists. In order to make a finding that the applicant was unfit to stand trial the judge would have required the written or oral evidence of at least two psychiatrists supporting such a conclusion. There was not one. With due respect to Dr Olotu, there is no real prospect of this court concluding that the applicant's conviction is unsafe by reference to fresh expert opinion prepared more than six years after the events in question by someone who did not examine the applicant at the time. Further, it is significant that Dr Olotu does not expressly address the stringent *Pritchard* criteria. It is important to understand, as Dr Sandford did, for example, that the fact that the applicant may have been holding delusional beliefs, which he wished to withhold from the court, would not undermine his ability to undergo trial by reference to those criteria. He was aware of the charge against him, aware of the evidence against him and of the significance of a guilty plea. He clearly understood the difference between a plea of guilty and one of not guilty. He understood the workings of a court and had the necessary basic cognitive skills to instruct his defence and follow the course of a trial. This included an awareness that there were several defences to murder, including the defence of manslaughter. He was aware that manslaughter was a less serious charge that did not carry a mandatory life sentence. He understood that there was a specific defence of manslaughter on the grounds of diminished responsibility.

Conclusion

12. For these reasons we refuse leave to appeal. There is no real prospect of a successful appeal against conviction. In the absence in any merit in an appeal, and given the extreme length of the delay in question, we decline to grant the necessary extension of time.

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

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