IN THE COURT OF APPEAL
CRIMINAL DIVISION

Case No: 2021/00246/B2
NCN[2022] EWCA Crim 1813

Royal Courts of Justice
The Strand
London
WC2A 2LL

Wednesday 16th November 2022

B e f o r e:

THE VICE-PRESIDENT OF THE COURT OF APPEAL, CRIMINAL DIVISION
(Lord Justice Holroyde)

MRS JUSTICE FOSTER DBE

THE RECORDER OF LIVERPOOL
(His Honour Judge Menary KC)
(Sitting as a Judge of the Court of Appeal Criminal Division)

R E X

- v -

NIGEL WRIGHT

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Non-Counsel Application

J U D G M E N T
(Approved)

Wednesday 16th November 2022

LORD JUSTICE HOLROYDE:

1. Following a trial in the Central Criminal Court before Warby J and a jury, the applicant was convicted of four offences of blackmail, contrary to section 21 of the Theft Act 1968 (counts 1, 2, 3 and 6), and two offences of contaminating goods, contrary to section 38(1) of the Public Order Act 1986 (counts 4 and 5). He was subsequently sentenced to a total of 14 years' imprisonment. He applied for an extension of time of 102 days in which to apply for leave to appeal against conviction. That application was refused by the single judge. It was renewed to the full court, which refused it in a judgment given at a non-counsel hearing on 20th May 2022.

2. Thereafter, the applicant applied successfully for the determination of the full court to be re-opened because the court had wrongly understood that the applicant, whose grounds of appeal included criticisms of his legal representatives, had not waived his legal professional privilege. He had, in fact, waived legal professional privilege before the hearing on 20th May 2022.

3. The renewed application for an extension of time and for leave to appeal therefore comes today before this different constitution of the court, which has considered it afresh.

4. This is again a non-counsel hearing. The applicant has no right to attend or to make submissions. Renewed applications in such circumstances are almost always dealt with on the papers. The applicant requested leave to attend and to address the court, but put forward no sufficient reason why the court should make an exception to its usual practice, or why it was necessary for him to make oral submissions in addition to the very lengthy written submissions which he has provided. His request was therefore refused.

5. It is unnecessary to recite in detail the facts of the case, which are set out at length in the Criminal Appeal Office Summary. In bare outline, counts 1 to 3 charged the applicant with blackmail of Tesco Plc between spring 2018 and February 2020. The allegation was that he had demanded payments in Bitcoin, claiming that he had placed contaminated baby food in Tesco stores and would continue to do so until paid.

6. Count 4 alleged contamination by placing two jars of baby food, into which sharp pieces of metal had been introduced, in a Tesco store at Rochdale.

7. Count 5 alleged contamination by introducing metal into a jar of baby food which was subsequently placed into a Tesco store in Lockerbie.

8. Count 6 alleged the blackmail of a man whom the applicant claimed to be one of a group who had placed the applicant under duress to commit the offences against Tesco.

9. The applicant was represented at trial by very experienced leading and junior counsel. His defence to counts 1 to 3 was that he had acted under duress. His defence to count 4 was that he had not placed any contaminated jar in the store at Rochdale. His defence to count 5 was that he had not contaminated the jar which he admitted having placed in the store in Lockerbie. In relation to both of those counts, the jury also had to consider whether, if the applicant had done what was alleged, he had been acting under duress. His defence to count 6 was that he had written the relevant letter, but had not sent it. The applicant gave evidence, and the jury were able to assess his testimony.

10. At the start of his summing up, the judge clearly and accurately summarised the issues which the jury would have to decide. The jury convicted the applicant of all six charges.

11. The applicant applies for the necessary extension of time on the basis that, through no fault of his own, he encountered delay in obtaining the necessary forms which he had to complete.

12. We recognise the practical difficulties and delays which may be faced by persons in custody acting alone in appeal proceedings, and we accept that the applicant was unable to lodge his Notice of Appeal within 28 days after his convictions. We do not accept that the explanation which he has put forward accounts for all of the period which elapsed thereafter before the Notice of Appeal was lodged. In fairness to him, however, we have nonetheless considered the merits of his proposed grounds of appeal.

13. Those grounds have been set out at length in a number of documents. Initially, the applicant put forward 27 grounds of appeal, which he lodged with his Appeal Notice. He later added further grounds on 24th February 2021, and again on 30th March 2021. He also lodged additional documents in which he made complaints against his former legal representatives and responded to their replies to those criticisms.

14. Following the refusal of his application by the single judge, the applicant lodged a further document entitled "Renewed Appeal" in which he supplemented his original grounds.

15. Finally, after the decision permitting him to re-open his renewed application, he lodged a bundle entitled "Re-opened Grounds of Appeal" containing 14 grounds which re-state, and in some respects narrow, his earlier grounds.

16. Each member of this constitution has read and considered all of those grounds. We do not regard any of them as raising any arguable basis for doubting the safety of the

convictions. We are satisfied that there was a case to answer on all counts, and that no criticism can be made of the legal directions given by the judge which were rightly tailored to the issues in the trial. We are also satisfied that no valid criticism can be made of the applicant's legal representatives.

17. It is unnecessary for us to address each of the many individual grounds. We only refer briefly to three points which the applicant makes repeatedly throughout his written submissions. First, counts 1 to 3 allege that he made unwarranted demands of money. The applicant asserts that Bitcoin is not money and that therefore he could not be convicted on any of those counts.

18. This point is misconceived. However it may be viewed in other contexts, Bitcoin can amount to money for the purposes of an allegation of blackmail. In any event, there was an agreed fact that, for the purposes of the trial, Bitcoin was a form of money. That fact was properly agreed, and caused the applicant no prejudice. If it had not been agreed, the prosecution would have been able to make an appropriate amendment to the indictment, and the applicant would have been in no better position.

19. Secondly, in relation to count 4, the applicant repeatedly refers to an early case summary in which it was said that contaminated jars of baby food were purchased from the Rochdale store on 3rd November 2019, whereas the prosecution case was that the applicant placed contaminated jars into that store on 8th November.

20. This argument overlooks the fact that the relevant witness gave evidence at trial that she was uncertain as to when precisely she purchased the contaminated jars. It could have been before 8th November, or it could have been later in November, or in the first half of December. The case summary had been disclosed in advance of the trial, and counsel has

explained the understandable reasons for the approach which was taken to the cross-examination of that witness. The jury were entitled to find, on the evidence as a whole, that the witness purchased jars which the applicant had placed into the store. We see no basis for the applicant's complaints of non-disclosure of material evidence, and we see no basis for his very recent request that this court should order the Crown Prosecution Service to disclose "all the evidence and all the communications they hold which are related to this case".

21. Thirdly, the applicant says that he had insufficient facilities to enable him to prepare properly for his trial – in particular in relation to count 4, of which he says he knew nothing until the date of the trial.

22. We accept that a combination of Covid-related restrictions, and injunctions which had been issued against the applicant, meant that he had only limited opportunity to give instructions to his legal representatives before the trial. However, no application was made for the start of trial to be delayed, and we can see no basis for the submission that the applicant was deprived of a fair trial.

23. It follows that, even if the applicant could persuade us that the necessary extension of time should be granted, there is no ground of appeal which could properly be argued. There would therefore be no purpose in our granting an extension of time, because an appeal would be bound to fail.

24. We accordingly refuse the renewed application for an extension of time, with the result that the renewed application for leave to appeal against conviction also fails.

25. We add, finally, that the applicant has lodged an application for leave to appeal to the Supreme Court. An appeal from this court to the Supreme Court can only be brought if (a)

the appellant has previously been granted leave to appeal to this court, and (b) this court has certified that its decision involves a point of law of general public importance. The applicant cannot satisfy either of those conditions. As we have just indicated, he has not been granted leave to appeal against conviction. In any event, his grounds of appeal are highly fact-specific and raise no point of law of general public importance.
