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IN THE COURT OF APPEAL
CRIMINAL DIVISION



CASE NO 202200532/B2 & 202201196/B2

Neutral citation number: [2022] EWCA Crim 1838

Royal Courts of Justice
Strand
London
WC2A 2LL

Thursday 24 November 2022

Before:

LORD JUSTICE BEAN
MRS JUSTICE FARBEY DBE
HIS HONOUR JUDGE FORSTER KC
(Sitting as a Judge of the CACD)

REX
V
JAMES DEVINE

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NON-COUNSEL APPLICATION

J U D G M E N T

MRS JUSTICE FARBEY:

1. On 3 December 2021 in the Crown Court at Aylesbury, before HHJ Tulk, the applicant, then aged 48, pleaded guilty to one count of stalking involving serious alarm or distress, contrary to section 4A(1)(a)(b)(ii) and (5) of the Protection from Harassment Act 1997. He had by then been committed to the Crown Court for two other stalking offences.
2. On 25 January 2022 he was sentenced by the judge as follows. For the indicted offence, 36 months' imprisonment; for the first of the charges committed to the Crown Court, six months' imprisonment consecutive; and for the second of those charges six months concurrent. The total sentence was therefore 42 months' imprisonment.
3. The applicant was unrepresented at his sentencing hearing after counsel withdrew due to professional embarrassment. He has renewed his applications for an extension of time of 47 days in respect of conviction and 55 days in respect of sentence and for leave to appeal against conviction and sentence following refusal by the single judge.
4. In a letter to the court received yesterday, the applicant purported to withdraw his applications on the grounds that he does not expect to succeed today without legal representation. In the interests of finality we do not permit the applications to be withdrawn. It is in the interests of justice that this case reaches a clear and well-defined resolution today. We turn to the facts.
5. The applicant was convicted by Aylesbury Magistrates' Court on 12 April 2021 of two charges of stalking involving serious alarm and distress. The first charge related to a complainant, Ms Swan, whom the applicant had met while working with her on a construction site in October 2020. Ms Swan was assistant site manager. Following their first meeting the applicant asked her to come back home with him, which she declined. The applicant began to wait by her car and speak to her, becoming obsessed. His contact became so significant that she reported that she had to move to a different site.
6. The second charge related to a different complainant, Ms Dent, who worked for the same company as Ms Swan. The applicant began to contact Ms Dent, misidentifying her for Ms Swan. He attended her home address in January 2021. The police issued a warning to the applicant but 10 days later he sent flowers, champagne and chocolates to Ms Dent and a note to her parents. Contact continued and he sent flowers and chocolates to her home address in February 2021.
7. The applicant was arrested for both of the above offences and convicted by the Magistrates'

Court after trial on 12 April 2021. Following his conviction and bail pending sentence he was alleged to have continued to stalk Ms Swan, making contact over social media. He obtained Ms Swan's telephone number and email address and he tried to induce her into dropping the charges. He claimed that he would commit suicide and that she would be to blame. Contact continued throughout May 2021, Ms Swan receiving numerous calls from the applicant threatening to commit suicide. The applicant made contact with her previous employers.

8. On 16 May 2021 Ms Swan answered a telephone call from the applicant and told him to leave her alone but she received a further 11 calls that night from withheld numbers. This conduct represented count 1 in the Crown Court.
9. The applicant has supplied this court with a great deal of written material. We have read and considered all of it. Lengthy submissions have been lodged by the applicant after the decision of the single judge. We are of the view that much of what the applicant says in his written submissions is repetitive or irrelevant. We will concentrate on the principal points.
10. The principal points made by the applicant in relation to his convictions are, first, that at the time that the police charged the applicant with the last charge in May 2021 none of the Ms Swan's sworn statements were signed. The new charge is entrapment; a trap was set for the applicant to commit an offence that he would not otherwise have committed. The applicant also makes considerable criticisms of all those judges who have been involved with his case, whether they have sat in the Crown Court or in the Magistrates' Court. He asserts that Judge Tulk treated him unfairly by revoking his legal aid, by allowing his barrister to make comments which were biased towards him and by tolerating a situation where the applicant was bullied into changing his plea by his barrister. Finally, he makes very significant criticisms of his barrister saying that he arrived late at court, was aggressive and bullied him into pleading guilty to the conduct represented by count 1.
11. In relation to the applicant's convictions the Registrar has already informed the applicant that this court has no jurisdiction to consider appeals in relation to convictions from the Magistrates' Court. As we have no jurisdiction, any appeal against the two convictions in the Magistrates' Court would be bound to fail.
12. The court does have jurisdiction to deal with count 1 on the indictment in the Crown Court. However, the applicant pleaded guilty to that offence. In a document dated 3 December 2021 he confirmed in writing that that was his choice. Neither his unfounded complaints against his lawyers nor anything relating to the inadequate psychological evidence persuades us that it is even arguable that he should be permitted to evade the consequences of his plea now.
13. The applicant maintains that a trap was set for him to commit an offence that he would not otherwise have committed. There is nothing in this ground of appeal which can have no effect on his guilty plea. Nor are the applicant's criticisms of his treatment at the hands of the criminal justice system in the slightest well-founded. The application for leave to appeal conviction has no merit. We would refuse to extend time as no purpose would be served by

doing so. We would also refuse leave to appeal.

14. As for sentence, the applicant submits that the judge did not properly take into account his mitigation, including his health in custody and the fact that he returned from Ireland to attend court proceedings. He submits that the judge should have ordered a psychologist's or psychiatric report in light of his potential autism.
15. In her sentencing remarks the judge set out the history of the matter in detail. She observed that at every stage in the proceedings the applicant had tried to make it as difficult as possible to conclude the case. He had refused to attend court on at least two occasions. She said that at all times he had tried to put off being sentenced. He had given contradictory accounts to the probation service in relation to whether or not he had mental health difficulties.
16. In these circumstances, the judge was entitled to sentence the applicant without any further adjournment or delay. The judge carefully applied the relevant sentencing guideline in relation to all three offences. She kept in mind the principle of totality. She gave weight to the applicant's previous good character. That the applicant had returned from Ireland to attend court was irrelevant to sentence.
17. It is not even arguable that the sentence which the judge imposed was excessive or wrong in principle. Accordingly, we would likewise refuse to extend time for the appeal against sentence as no purpose would be served and we would refuse 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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