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IN THE COURT OF APPEAL
CRIMINAL DIVISION

Case No: 2022/00557/B3



[2023] EWCA Crim 231
Royal Courts of Justice
The Strand
London
WC2A 2LL

Wednesday 8th February 2023

B e f o r e:

LADY JUSTICE WHIPPLE

MRS JUSTICE CUTTS DBE

THE RECORDER OF NORWICH
(Her Honour Judge Alice Robinson)

(Sitting as a Judge of the Court of Appeal Criminal Division)

R E X

- v -

RUBEN THOMAS PATRICK HOATHER

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Non Counsel Application

J U D G M E N T

Wednesday 8th February 2023

LADY JUSTICE WHIPPLE:

Introduction

1. On 6th February 2015, in the Crown Court at Liverpool before Kerr J, the applicant pleaded guilty to murder. On the same day he was sentenced to life imprisonment with a minimum term of 19 years (less time spent on remand).

2. At the time he entered his guilty plea and at the time of sentence, the applicant was represented by solicitors and counsel (Mr Charles Lander).

3. The applicant now renews his application for an extension of time and for leave to appeal against his conviction following refusal on the papers by the single judge. The extension of time sought is very substantial (2,543 days – almost seven years).

Extension of Time

4. In his notice of grounds, dated 15th February 2022, the applicant acknowledges that his application is late, but he says that he tried to appeal in 2016 when the law changed in relation to joint enterprise. In a letter to the court, dated 11th March 2022, the applicant enclosed a letter from his solicitors Wells Burcome, dated 21st March 2017. In that letter Wells Burcome advised him that they saw no grounds for an appeal at that time. That letter attached an advice from a barrister, Mr Jason Elliott. The advice was dated 17th March 2017. Mr Elliott concluded that there were no realistic prospects of an appeal against either sentence or conviction.

5. We understand that the applicant has sent these documents to the court to demonstrate that he did try closer to the time of his conviction to bring an appeal. In his letter of 11th March

2022, the applicant says that he is attempting to bring this appeal now because he finally feels sufficiently mentally stable to be able to do so.

6. The Respondent's Notice points out that the application is out of time by a very long time. It draws attention to the general rule that an extension will only be granted where there is good reason to do so and where the applicant will otherwise suffer injustice. The single judge considered that there were no good reasons.

7. We have considered very carefully whether the applicant has put forward any good reason or reasons to justify such an extensive delay in making this application. We are not persuaded that he has. The fact that he did investigate an appeal in 2017 shows, if nothing else, that he was well aware of the possibility of an appeal and actively tried to bring one at that time. When he was advised by his lawyers that the merits were poor, it appears that he took no further action for a further five years. He suggests that mental health problems have held him back, but no evidence is put before this court to explain why he was unable to issue this application earlier than he has done.

8. Before coming to a conclusion on whether to extend time, we will consider the wider circumstances of this appeal. If there was merit in the appeal, that might be relevant to whether we should grant an extension. Further, in this case we note that some of the reasons for the delay overlap with the grounds for seeking an appeal.

The Facts

9. Jordan Campbell was the applicant's half-brother. He was stabbed to death on the morning of 1st January 2015. The applicant had been released from a custodial sentence on the previous day, 31st December 2014. The applicant and friends celebrated his release from prison with a party in which alcohol, cannabis and cocaine were consumed.

10. Mr Campbell arrived at the party later than anybody else, and he stayed overnight. On the morning of 1st January 2015, it was only the applicant and his two co-accused, Wiltshire and Wood, who were left at the place where the party had been held, along with Mr Campbell. The group (the applicant, Wiltshire and Wood) launched an attack on Mr Campbell. The details of the attack are set out in the judge's sentencing remarks. They make for distressing reading. From about 9.20 in the morning, the group started to call Mr Campbell a "nonce" and to attack him physically. They punched him in the face, kicked him and stamped on him. The sentencing judge said that they tortured and terrorised him. Wiltshire fetched a knife from the kitchen and stabbed Mr Campbell multiple times. One stab wound to the back caused death within minutes. The group of men, including the applicant, then dragged Mr Campbell's body into the next bedroom, dumped it on the floor, and set fire to his body and his head, using torn clothing. They then tried to burn down the flat to destroy evidence of the crime, before they fled from the scene.

11. The judge sentenced Wiltshire on the basis that he (Wiltshire) had intended to kill Mr Campbell. The judge said that he could not be sure that the applicant had intended Mr Campbell to die, but that he had accepted by his guilty plea that he had taken part in the attack on Mr Campbell and had intended that he would suffer, or realised that he may suffer, really serious injury. The judge also said in the context of mitigation that he did not accept that there was any convincing evidence of psychiatric history before the court.

The Proposed Grounds of Appeal

12. By his first and third grounds of appeal, the applicant says that he was advised to plead guilty. We are unable to accept that assertion. We have the back sheet of counsel's instructions noting the applicant's instructions on plea; we have an email from the applicant's counsel at the time he entered his plea, and a note from his solicitors at that time. It is clear

that the applicant entered his guilty plea of his own free will and not because he was advised to do so.

13. By his first, third, fourth, fifth and sixth grounds of appeal, the applicant says that he was not guilty of murder but only of manslaughter on the basis of the law as it is now explained in *Jogee*, which was decided a few months after he was convicted. His argument is that he did not inflict the fatal wound; that was someone else. We know, of course, that it was his co-defendant Wiltshire who inflicted the fatal wound.

14. The applicant's arguments are based on a misunderstanding of joint enterprise and of *Jogee*. Where a person participates in a group attack, it has always been the case that that person can be found guilty of murder on a joint enterprise basis, even though they do not themselves inflict the wound that leads to death. The issue in that sort of case – and the issue with which *Jogee* was concerned – is the intention of that person, who participates in the group conduct without themselves inflicting the fatal wound. If that person intends to cause death or really serious injury – in other words, if that person has the requisite intention for murder – then that person can be guilty of murder on the basis of the joint enterprise.

15. The applicant was advised by Mr Elliott and by his solicitors, Wells Burcome, that *Jogee* did not change anything so far as the applicant was concerned, because there was strong evidence that he did have an intention at least to cause really serious harm to Mr Campbell. The sentencing judge had found that in terms, and recorded that as part of his sentencing remarks. That legal team advised that the evidence was consistent with the applicant having an intention at least to cause really serious harm.

16. In his comments for this Court, Mr Lander agrees with that advice and maintains that *Jogee* changes nothing. The single judge agreed and thought that the guilty plea to murder

was plainly justified.

17. We have considered very carefully whether there could be any cogent argument on the facts of this case that the applicant lacked the intention necessary for murder, following the change of the law in *Jogee*. We do not think there could be any such argument. The applicant participated in this group violence, which involved taunting, abusing and torturing Mr Campbell over a period of time. Further, he stayed with the group during and after the knife was produced and used. He helped to move Mr Campbell's body to the next bedroom; he participated in setting fire to it, and in trying to set fire to the flat after Mr Campbell had died. These actions show that he was acting together with the other two for the whole enterprise and that he possessed an intention at least to cause Mr Campbell really serious harm. We conclude that the murder conviction is amply justified. The contrary is not realistically arguable.

18. By his second and third grounds of appeal, the applicant raises the issue of his own mental health. The sentencing judge said that there was no convincing evidence of any relevant psychiatric history before the court. The applicant has sent the court a report, dated 10th June 2016, which is an independent investigation into his care and treatment, commissioned by NHS England, to investigate whether the murder of Mr Campbell was preventable, given that it occurred within hours of the applicant having been released from prison after serving a custodial sentence, and given that he had a long history of mental health complaints and treatment by local mental health services. The conclusion of the report is that the murder was not preventable, although certain recommendations were made: see paragraphs 1.8 and 1.9. There is no suggestion in the report that the applicant might have been unfit to plead at the time of these events, or that a partial defence might have been open to him. Mr Lander does not consider that to have been the case. He says that the applicant gave clear instructions of his own free will.

19. The Respondent's Notice makes a number of points in support of the proposition that the applicant was at all times fit to plead and to take responsibility for his actions, as a matter of law.

20. We are satisfied from the papers we have seen that the applicant was fit at all times to participate in the court process and that he entered his guilty plea of his own free will. There is no evidence before us to give rise to doubts about his mental health in the context of his plea.

21. The judge was invited to take account of the applicant's mental health when it came to sentence, but declined to give any reduction in relation to mental health. The judge said that there was no evidence to support that invitation.

22. We see no basis for an argument, if one is advanced, that the applicant's minimum term should have been shorter on account of any mental health difficulties. The fact that the applicant has a long history of poor mental health, including a tendency to violence, which is noted in the 2016 report, does not give rise to any arguable ground of appeal in this case.

Conclusion

23. In agreement with the single judge, we find no arguable merit in the applicant's proposed grounds of appeal. If the application for leave to appeal was within time, we would refuse it. In the event, we simply refuse the application for an 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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