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[2023] EWCA Crim 542

IN THE COURT OF APPEAL

CRIMINAL DIVISION

CASE NO 202201564/B3



Royal Courts of Justice

Strand

London

WC2A 2LL

Friday 5 May 2023

Before:

LADY JUSTICE CARR DBE  
MRS JUSTICE MCGOWAN DBE  
THE RECORDER OF SOUTHWARK  
HER HONOUR JUDGE KARU  
(Sitting as a Judge of the CACD)

REX  
V  
GOL AHMED ZAZAI

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NON-COUNSEL APPLICATION

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**J U D G M E N T**

LADY JUSTICE CARR:

Introduction

1. We have before us a renewed application by the applicant for leave to appeal his conviction for murder following trial in the Crown Court at Leeds before Stacey J and a jury, together with an associated application for an extension of time of 127 days. The applicant, then aged 30, was sentenced on 4 April 2022 to imprisonment for life with a minimum term of 20 years, less time spent on remand.
2. The deceased is Najeebullah Nakzad, known as Najeeb, who died on 28 August 2019 at the age of 19. The case against the applicant was that he was party to a joint enterprise murder involving strangling, together with Najeeb's brother, Nasrullah Nakzad. All three men had travelled to an isolated area of moorland in the early hours of that morning in two cars. The applicant and Nasrullah returned home in one of the cars later that morning, leaving Najeeb dead in the front passenger seat of the remaining car in a layby where he was discovered two days later.
3. The facts are conveniently summarised in the Criminal Appeal Office Summary which the applicant has seen and the contents of which we do not need to repeat for present purposes.

Grounds of appeal

4. The applicant seeks to mount a number of challenges, which we group for convenience as follows:
  - i) A general assertion of inadequate representation. He suggests that he could not communicate properly with his solicitor as the interpreter did not speak the correct language and his solicitors failed to rectify this. He says that he did not understand the evidence against him and did not receive case papers from his solicitors, only procedural letters informing him of court dates, for example. He says that he did not get the chance to prepare a defence statement and his solicitors did not listen to his instructions in relation to Nasrullah being responsible for the murder.
  - ii) The applicant says that in interview he was told to answer no comment and did not understand any of the questions asked. He did not understand what his barrister was saying in court, he says, nor did he understand the interpreter. He was not given a chance to speak.

- iii) The applicant says he did not see any DNA or forensic evidence. He was told by his legal team, he says, that the prosecution had relied on his DNA being found on a T-shirt covering the deceased, but was only told of this after trial. His telephone downloads would have helped to prove his innocence.
  - iv) The applicant says that he suffered from depression as a result of being tortured by the Taliban. He was interviewed for a psychiatric report given his mental health problems but was not made aware of the outcome of that exercise.
  - v) The applicant says that the deceased's family expressed a wish to give evidence on his behalf to the effect that he was innocent and Nasrullah was responsible but that evidence was never called.
  - vi) He suggests that inadequate disclosure was given to the defence.
5. In the normal way, a waiver of privilege was given. Junior trial counsel has responded with her recollection of events, which we have read, and to which the applicant has responded.

### Discussion

6. We observe at the outset that the applicant makes no allegation of any irregularities in the trial process itself. The very experienced judge dealt with the case fairly and there is no complaint of her legal directions or summing-up. The applicant was represented throughout by experienced leading counsel and a solicitor advocate, and had the services of an interpreter. There was no application at any time to change either solicitor or counsel. It is clear that at no point during the trial was it apparent to the judge or prosecution that there was any problem of either interpretation or representation.
7. We agree with the reasons of the single judge as to why there is no merit in any appeal. In summary only and taking the grounds raised in turn:
- i) Grounds 1 and 2. At no point during his five interviews with the police was there any complaint that the applicant was unable to understand the language or communicate. Further, as his junior counsel has stated, the applicant and the interpreter were both asked in terms whether or not they understood one another throughout the trial and both responded positively. The applicant was made aware of the evidence against him in his police interviews by way of extensive CCTV footage showing his movements, telephone records and records of internet use. A defence statement was served on 30 September 2021 in which a coherent account

of the applicant's defence was given and no complaint in relation to legal representation, or understanding, or disclosure was identified.

- ii) Ground 3. As for DNA and scientific evidence, the case against the applicant did not depend on this. The DNA on the jersey found over the deceased's body matching the applicant was not relied upon. Telephone records and data were disclosed and used in the trial. Had the applicant wished to use further data he could have done so.
  - iii) Ground 4. As for a psychological report, one was obtained for sentence indicating that the applicant suffered from PTSD as a result of treatment in Afghanistan. It is entirely unclear how that information could have assisted the applicant's substantive defence. We also note that the unused material contained the applicant's custody record in which the applicant's mental health record is shown as being considered at various stages, with no significant concerns being raised either by the applicant or any professional.
  - iv) Ground 5. As for evidence from the deceased's family, they were in Afghanistan at the time of their son's death. There is no identified evidence which could have assisted the applicant. Any confession by Nasrullah to the murder would in any event not have exculpated the applicant; rather it would have added weight to the prosecution case that Nasrullah and the applicant were party to a joint enterprise murder.
  - v) Ground 6. The complaint of inadequate disclosure is wholly unparticularised. There is no reason that we can identify to believe that there was any failure of disclosure.
8. There is then the additional hurdle of the delay, significant as it is, of 127 days before this application was lodged. The applicant was advised immediately following conviction of his right to appeal. He says that he was very unwell with severe mental health issues which meant he was not fit to advance any appeal. There is no medical evidence to support such an inability whilst in custody. In any event, in circumstances where we find there to be no merit in an appeal, it is not in the interests of justice to grant the necessary extension of time.

### Conclusion

9. For these reasons, like the single judge, we do not consider that an appeal would have a real prospect of success. The renewed application will be refused, as is 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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