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NCN: [2023] EWCA Crim 577

IN THE COURT OF APPEAL

CRIMINAL DIVISION

CASE NO 202103117/B3

Royal Courts of Justice
Strand
London
WC2A 2LL

Thursday 23 February 2023

Before:

LADY JUSTICE MACUR DBE

MR JUSTICE FRASER

MR JUSTICE BUTCHER

REX

V

LOIS CHRISTINE ASHA BHAGWAN

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NON-COUNSEL APPLICATION

APPROVED JUDGMENT

1. MR JUSTICE BUTCHER: This is a renewed application for leave to appeal against conviction. The applicant was found guilty on 29 July 2021 of six counts of fraud by false representation and one count of obtaining a money transfer by deception. Applications for leave to appeal against conviction and for an extension of time of 23 days to bring such an appeal were refused by the single judge.
2. The first issue to consider is whether this renewed application should be considered now. On 26 June 2022 the applicant submitted a letter to the Criminal Appeal Office seeking further time to submit material in support of her application for permission to appeal against her convictions. This application was based on the fact that the applicant had been diagnosed with cancer and was due to undergo a course of treatment. At that stage the Registrar granted her until 30 October 2022 to submit further documentation.
3. No further material was received from the applicant in support of her application for permission to appeal her convictions. However, on 18 October 2022 the Criminal Appeal Office received an email requesting a further extension of time on the basis that the applicant was undergoing therapy which was likely to last at least into the first quarter of 2023. The renewed application was listed for hearing on 15 December 2022 but before then, namely on 8 December 2022, it was adjourned by order of Dingemans LJ. He gave directions that the hearing should be re-listed on a date not before 1 February 2023. Since that time the Criminal Appeal Office has taken steps to contact the applicant for an update. This has involved, on 13 December 2022, the Criminal Appeal Office case handler speaking to the applicant who said that she was unwell. The case handler said that if she sought further time she should submit a further application with any medical evidence.
4. On 1 February 2023 the applicant was sent an email saying that if she wished to make a

further application to adjourn she should do so by 8 February. On 7 February 2023 the applicant said that she would be submitting further material. No such material was received. On 9 February 2023 the case handler telephoned the applicant's number. There was no reply and a message was left saying that the matter would be listed in accordance with the directions of Dingemans LJ. There has been nothing further heard or received from the applicant since then.

5. We have decided that given that the applicant has already been given two substantial adjournments, given the absence of any updating medical evidence or further material justifying another adjournment, and given also that the applicant is aware that her application is due to be dealt with today, the renewed application should be considered now.
6. The nature of the case against the applicant had been that she was a confidence fraudster and that over a period of many years she had exploited a number of people for her own financial gain by soliciting what were said to be investments in something she referred to as the "Lionheart Project". The charges related to investments made by nine complainants totalling a loss of £233,000. Of these it was said that only three investors had received any money back totalling £10,360 in all. The prosecution contended that a pattern had emerged that when investors wanted to recover some or all of their funds the applicant would make various excuses and thereafter become uncontactable. Banking records and documentation were recovered by police in the UK from a storage unit and from the applicant's rented address. The prosecution case was that these documents demonstrated that the investors' money was either withdrawn or used to fund the applicant's living expenses and that there was no evidence that any of it had been invested in the Lionheart Project or any other such scheme. It is also relevant to record that the

applicant was arrested in France under a European Arrest Warrant and extradited to the United Kingdom where she stood trial.

7. The defence case was that the applicant had not acted dishonestly. She gave evidence that she had never intended to mislead and had only ever had good intentions for everyone involved in the Lionheart Project. She denied that she had lived a luxurious lifestyle at the expense of investors and said that the funds had never been used illegally, dishonestly, or inconsistently with the aims of the project. As we have said, the applicant was convicted by the jury of seven counts.
8. In her revised grounds of appeal, the applicant advances three grounds, each of which involves a number of sub-issues. The first ground is that there was an abuse of process and a deprivation of the applicant's right to a fair trial. The focus of this ground is that by reason of the way in which the applicant was extradited from France and then incarcerated, this meant that she did not have access to the relevant documents and evidence to carry out her defence. As to these allegations, and as the applicant knows, her own lawyers provided detailed responses, which we accept. These include the fact that it was unsurprising, given the lapse of time in which the applicant had been uncontactable by investors, that she was arrested and extradited. Further, in relation to a lack of documentation, the following points were made. First, that there was no banking documentation to support where the money went. Secondly, that the extradition process had been reviewed, including by reference to French law advice, and not found to be flawed. Thirdly, that the documents that the applicant said were in France were not found. Specifically, enquiries had been made of the applicant's ex-landlord but no papers had been identified. Fourthly, that the documents at another address in France had been handed over to the police and were used during the trial. That the applicant was in

custody did not prevent her from giving very detailed instructions to her lawyers, who had made a wide range of investigations in the course of preparing for the trial.

Furthermore, the judge directed the jury that it should consider the effect that the passage of time had had on the applicant's ability to meet the allegations and to defend herself.

9. The second ground makes a number of complaints as to the way in which the judge conducted the trial. As to these there is no basis for considering that any prejudicial comments made by the judge before the trial or during the trial had any adverse effect on the conduct of the applicant's defence or on the verdicts. There is also nothing to support the assertion that the jury was put under any pressure of time. The judge correctly directed the jury concerning the way in which they should approach statements which were read but not agreed between the parties where the witness had died or was not fit to attend trial.
10. The judge gave an appropriate direction as to possible effects of delay and as to the absence of documentation potentially meaning that the applicant could not recall details. The judge correctly directed the jury as to the burden of proof and the judge gave a proper summing-up of the evidence.
11. The third ground relates to issues with the defence which the applicant contends was hamstrung. These in part duplicate the complaints made under ground 1 with which we have already dealt. Again, these matters are the subject of a very detailed response from the applicant's lawyers. The following particular points are made. First, it is pointed out that despite being promised many witnesses, many documents and assistance from others in tracking items down these did not materialise. The French enquiries were entirely fruitless, and the other documentation seized from various addresses here and abroad were, in large part, not supportive of the applicant's case. Secondly, whilst in prison she

was seen in virtual conference, whether by telephone or via video link, on at least 26 occasions, estimated to be at least 24 hours of attendance. Thirdly, no psychiatric report was prepared. As the lawyers say, the applicant was a highly educated woman who was very clear about her instructions. Fourthly, the applicant's commitment to the Lionheart Project was indeed brought out both in cross-examination of the victims and in the applicant's own evidence-in-chief. Fifthly, as to the evidence from the applicant's brother, the applicant was advised as to the pros and cons of calling him as opposed to relying on the favourable statement which had been agreed with the prosecution. The applicant had agreed that it was far better to have in all the good material without the risk of damaging material coming out in cross-examination. Sixthly, there was no basis for the instruction of a foreign affairs expert. Seventhly, the applicant had been very satisfied with the way in which cross-examinations of the prosecution witnesses were performed.

12. In our view, none of those grounds is arguable and thus we agree with the single judge that the applicant's convictions are not arguably unsafe. For those reasons we refuse the renewed applications.

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

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