IN THE COURT OF APPEAL

CRIMINAL DIVISION

[2023] EWCA Crim 600

CASE NO 202200726/A4

Royal Courts of Justice
Strand
London
WC2A 2LL

Friday 12 May 2023

Before:

LADY JUSTICE WHIPPLE DBE
MR JUSTICE GRIFFITHS
HIS HONOUR JUDGE FLEWITT KC
(Sitting as a Judge of the CACD)

REX
V
MUSELIN OMATAYO KASUMU

Computer Aided Transcript of Epiq Europe Ltd,
Lower Ground, 18-22 Furnival Street, London EC4A 1JS
Tel No: 020 7404 1400; Email: rcj@epiqglobal.co.uk (Official Shorthand Writers to the Court)

NON-COUNSEL APPLICATION

J U D G M E N T

LADY JUSTICE WHIPPLE:

1. This renewed application for leave to appeal has a lengthy background. The applicant has a son with significant disabilities who has been in the care of the local authority and subject to a variety of orders over time. There have been proceedings in the Family Court.
2. As part of those family proceedings, the Family Court made a non-molestation order (the "order") preventing the applicant from doing various things, including:
   (1) intimidating, harassing or pestering any employee of the Local Authority's Children's Services Department,
   (2) contacting employees of the Local Authority Children's Services Department, and
   (3) posting flyers about the local authority, his son or any placement attended by his son.
3. That order was originally made by the Family Court on 2 October 2019. It was extended on 24 February 2020 and then further extended on 17 July 2020 for a period of one year. Whether it has been extended since then is unknown to this court.
4. The applicant was brought before the Crown Court for breach of that order. The indictment alleged that between 9 July 2020 and 19 August 2020 the applicant breached the order by putting up posters in public places around Woolwich Town Centre, which posters revealed the identity of his son and the identity of the social service's staff whose care he was in, contrary to the terms of the order.
5. The breach hearing was on 13 December 2021 before His Honour Judge Mann KC at Woolwich Crown Court. The prosecution case was summarised in a document called an MG5. There were witness statements available from the individual staff members who worked for the Local Authority's Children's Department who had been named in the

posters. Those witness statements exhibited certain emails that the applicant was alleged to have sent to them. The witnesses also spoke of seeing posters placed in public areas in Woolwich during the period specified in the indictment and photographs of those posters were exhibited. This material was all uploaded to the Digital Case System and was available to the judge.

6. The applicant was represented by counsel at the hearing on 13 December 2021, but otherwise represented himself. He had drafted his own defence case statements and various updates and amendments to it. Before the judge the applicant asserted that he had not been served with the extended order and was not aware at the time that he was subject to any such order. In his prepared statement to police he had denied putting posters up during the relevant period, saying that posters found at his address were old.

7. It appears from the transcript of that hearing, read with the transcript of his subsequent hearing which took place on 28 January 2022, that there were discussions inside and outside court on 13 December 2021. The consequence of those discussions was that the prosecution agreed to offer no evidence on the breach, on the basis that a restraining order would be made under section 5A of the Protection Against Harassment Act 1997 in broadly the same terms as the original non-molestation order. The applicant did not oppose a restraining order in those terms and appears to have offered the court assurances that he would abide by such an order and that he understood the consequences of breach.

8. In his disposal of the case on 13 December 2021, the judge reminded himself of the statutory criteria to be satisfied:

> "So the first thing I have to decide is is there anything before me – you can sit down sir or stand up as you please – is whether or not I consider it necessary to make this order to protect the witnesses in this case from harassment. Having seen the evidence in the case

> which is, I suspect, not very different from the sort of evidence that was placed before the Family Court in 2020, I can certainly, on the balance of probabilities, so conclude."

9. The judge noted that the applicant had confirmed he would abide by a restraining order and understood the consequences of breach. He concluded:

> "I am entirely satisfied that this is a reasonable and proportionate way to proceed in this case. The case has history, the defendant is representing himself, I am sure he finds that uncomfortable, the witnesses in this case, of course, do their public duty but I sure they do not wish to go through the process of being cross-examined. It seems to me that given the defendant has already said, very openly in court, that he would never not abide by an order but he did not know about it and that he will abide by my order because, of course, he clearly knows about it as I am telling him about it, and he will abide by it. So it seems to me a very sensible way forward."

10. The judge made a restraining order for five years on terms which reflected the original non-molestation order (the "restraining order") and directed a not guilty verdict on the breach.
11. On 19 December 2021 the applicant made an urgent application to the Crown Court assisted at that time, so it appears, by a McKenzie friend.
12. A further hearing took place before Judge Mann on 28 January 2022. The applicant was unrepresented at that hearing: no barrister, no McKenzie friend. He told the judge that he believed the grounds for the original non-molestation order were fraudulent. He complained about the length of the restraining order and said he was having difficulties with contact with his son. Having listened to the applicant's submissions the judge said this:

> "JUDGE MANN: Yes, exactly right. So thank you very much for coming today. I am not going to vary any order that I previously

made. There is no need to do so, it seems to me.

THE DEFENDANT: I understand.

JUDGE MANN: The defendant who has appeared before me today, no suggestion he is not complying with any requirements or directions or orders, and I have advised him to go back to the Family Court."

13. The applicant now seeks leave to appeal against the restraining order. He has drafted his own grounds of appeal. His main points of challenge to the order are that: he should have been acquitted without any condition, that he only noticed when he got home that he had been made subject to a non-molestation order for five years, that there was not a "single scintilla of proof" and no evidence from the other party, that the jury had not decided his guilt and that the other party had committed "crimes against humanity" against a special needs child. We are satisfied that the reference in the grounds to the non-molestation order is in fact to the restraining order imposed by the judge on 13 December 2021.
14. His grounds were submitted to this court on 8 March 2022. They were lodged 56 days out of time. He offers no explanation for the lateness of the application beyond repeating that he had been made the subject of a five-year order. The single judge refused to extend time and refused leave to appeal.
15. We have considered carefully whether there is any arguable error of law in the restraining order imposed by the court on 13 December 2021. We are satisfied that there is not. The terms of the restraining order, including its five-year length, were explained very clearly to the applicant by Judge Mann. Judge Mann considered the terms, including the length, to be just and proportionate in the circumstances, an assessment with which we can find no fault. There was copious evidence before Judge Mann to justify the making of the restraining order in the form of the witness statements by the various employees of the local authority and the various exhibits that they attached, as well as witness statements

from the police. Judge Mann confirmed that he had seen the evidence in the case and was satisfied that the statutory threshold for making such an order based on that evidence was met. That evidence was not contested by the applicant, whose assertions before the judge were that he was unaware at the time that he was subject to a non-molestation order which he said had not been served on him.

16. The breach was not put before a jury precisely because the Crown offered no evidence in exchange for the applicant accepting the imposition of a restraining order. The statutory condition for such an order to be made that the court was satisfied on balance of probability that the order was necessary to protect the person or persons from harassment by the defendant was met.
17. Further, no reason is advanced for the applicant's failure to submit his appeal within time.
18. We agree with the single judge. We see no arguable merit in this application. We therefore refuse leave to appeal. We also refuse an extension of time.

Lower Ground, 18-22 Furnival Street, London EC4A 1JS

Tel No: 020 7404 1400

Email: rcj@epiqglobal.co.uk