IN THE COURT OF APPEAL
CRIMINAL DIVISION

Case No: 2018/01608/C3

NCN: [2023] EWCA Crim 802

Royal Courts of Justice
The Strand
London
WC2A 2LL

Friday 30th June 2023

B e f o r e:

LORD JUSTICE STUART-SMITH

MR JUSTICE JACOBS

HIS HONOUR JUDGE JEREMY RICHARDSON KC
(Sitting as a Judge of the Court of Appeal Criminal Division)

R E X

- v -

MICHAEL JOHN LOVELL

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Non-Counsel Application

J U D G M E N T

Friday 30th June 2023

LORD JUSTICE STUART-SMITH: I shall ask Mr Justice Jacobs to give the judgment of the court.

MR JUSTICE JACOBS:

Introduction

1. The provisions of the Sexual Offences (Amendment) Act 1992 apply to this offence. Under those provisions, where a sexual offence has been committed against a person, no matter relating to that person shall during that person's lifetime be included in any publication if it is likely to lead members of the public to identify that person as the victim of the offence. That prohibition applies unless waived or lifted in accordance with section 3 of the Act.

2. On 15th March 2018, following a trial in the Crown Court at Bournemouth before His Honour Judge Climie and a jury, the applicant (then aged 59) was convicted by a majority of 11:1 of one count of rape (count 4) and was sentenced to a Special Custodial Sentence of 15 years, comprising a custodial term of 14 years and an extended licence period of one year, in accordance with section 236A of the Criminal Justice Act 2003. He was acquitted of count 1 (indecent assault), counts 2 and 3 (rape), and counts 7 and 8 (rape), which we will describe in due course. Counts 1 to 3 related to the complainant's mother; counts 7 and 8 related to the complainant. In addition, the applicant was acquitted on the judge's direction of counts 5 and 6 (rape of the complainant). In relation to those counts, no evidence was offered against him and not guilty verdicts were entered, pursuant to section 17 of the Criminal Justice Act 1967.

3. The applicant now applies for an extension of time (1433 days) in which to renew his application for an extension of time of four days for leave to appeal against conviction, following refusal by the single judge in September 2018.

4. The original application for leave was drafted by trial defence counsel and was confined to a single short point. In connection with the renewal application the applicant has not had the assistance of counsel. His grounds of appeal were originally set out in a form completed on 21st November 2022. Subsequent to the form completed in support of the renewal, he has provided a large number of handwritten letters which reiterate or supplement those points. The points now advanced are numerous and the original ground of appeal drafted by counsel is not the focus of the application.

5. The applicant also seeks to adduce fresh evidence from four witnesses who attended various parts of the trial. That evidence does not relate to the underlying offence of which the applicant was found guilty. Rather they concern aspects of the conduct of the trial towards its conclusion and specifically: (1) a statement alleged to have been made by the trial judge at the end of the trial, when he is said to have told the jury that if they could not reach a decision, he would make it for them; and (2) the absence of a juror from court at the time when the jury were sent to deliberate. Neither allegation finds any support in the transcript of the trial and indeed each is contradicted by the transcript.

The Facts

6. In 2013 the complainant, "C", disclosed to his then girlfriend that he had been sexually abused as a child by the applicant, who was at that time in a relationship with the complainant's mother. C then repeated the disclosure to his mother and father and, as a result, the matter was reported to the police and a video interview conducted in July 2013.

7. C said that he was first sexually abused by the applicant when his mother was not present in the house. The applicant was drunk and entered his bedroom and repeatedly told him to take off his clothes. C said that he did not want to and asked why. However, when the applicant became overtly aggressive, in fear he agreed. He recalled the applicant commenting something like this: "Well, you might like this, give it or not. It's not your choice". He recalled that his head was then held to the bed whilst the applicant penetrated his anus. C said that it became habitual, up to once or twice a week. He did not tell anyone because he was not sure how to complain and worried that no one would believe him.

8. C's evidence was that the abuse only occurred at one address. During the trial, it was established that they had moved to that particular address in June 1999, when C was 10 years old. In light of that agreed fact, the judge directed not guilty verdicts in relation to counts 5 and 6, and the prosecution were allowed to amend the particulars of counts 7 and 8 to increase the number of alleged occasions so as to reflect C's evidence that he was raped once or twice a week each year. Counts 7 and 8 then alleged rape on at least 20 occasions.

9. The defence case was that this never happened. The applicant gave evidence that he was never alone with the complainant and that the complainant was either at his father's address or at his grandparents' address at the weekends. There were, he said, extremely rare occasions when he was alone with C and there was no opportunity that would ever have allowed for the abuse that C described to have taken place. He had no idea why the allegations were being made, but they were not true.

10. The issue for the jury was factual: whether the applicant penetrated the complainant's anus, and, if so, on how many occasions in relation to counts 7 and 8.

The Trial

11. We have been provided by the applicant with a transcript of the trial, as well as the summing up and developments after the summing up, including the jury verdict. The transcripts have been prepared by The Transcription Agency, a company independent of the court system, and they contain certifications that the transcript is an accurate and complete record of the proceedings or part thereof.

12. The applicant's proposed grounds of appeal include complaints as to the completeness of the transcript provided. He alleges that certain passages have been omitted. One passage is the alleged statement by the trial judge to the jury to the effect that if they could not decide the case, he would do so.

13. From our reading of the transcripts, we are entirely satisfied that the transcripts are a genuine record of the proceedings which took place. We have no reason to doubt their accuracy or completeness. We have read many transcripts in the course of sitting on criminal appeals, and there is nothing at all unusual about these. The transcripts enable one to see exactly how the case developed, the closing speeches made by the prosecution and defence, the summing up and the delivery of the verdict by the jury.

14. Defence counsel has provided a response to certain allegations made by the applicant, including the extraordinary allegation that the trial judge, the prosecution barrister, and possibly the defence barrister have all been involved in editing the recordings sent to the transcript company so as to remove evidence and judicial directions. Defence counsel says that this was completely untrue.

15. We have no doubt that this very serious allegation is untrue. There is nothing in the transcript to suggest such editing, or to contradict the certification by the transcriber. None of the individuals referred to, including the trial judge, would have any involvement in the production of the transcript.

16. It is also clear from a reading of the transcript that the applicant was well represented by trial counsel. Counsel conducted a thorough cross-examination of both C and his mother. His closing speech to the jury was well constructed and advanced well-judged arguments. He achieved a considerable measure of success in that the applicant was acquitted of all counts involving C's mother, and was also acquitted of counts 7 and 8, which involved allegations of multiple rapes of C.

17. One of the points made by defence counsel in closing argument in relation to those counts was that the jury had to be sure that C was raped on no less than 20 occasions during each of the periods covered by those counts. The jury verdict was to convict of count 4, which concerned the first occasion when the rape happened, but to acquit in relation to the charges of multiple rapes. This is readily understandable. The jury were sure that the first rape happened, but were unsure as to whether or not there were 20 rapes during each of the periods charged in counts 7 and 8.

18. This disposes of the only point advanced in counsel's original grounds of appeal which argue, by reference to the acquittals on counts 7 and 8, that there was a lurking doubt that something went wrong with the jury's verdict. On that point the single judge said that there was "nothing illogical or necessarily surprising in the jury being sure that you had raped the complainant on at least one occasion, but not being sure that you had committed at least 20 further rapes in each of the periods specified". We agree with the single judge's observation.

19. In his Advice on Appeal, defence counsel said expressly that "there is no complaint about the trial process or the summing up".

20. None of the other points now raised by the applicant as defects in the trial process were apparent to defence counsel in 2018. This is not surprising. The transcript shows that that trial was conducted with professionalism by the judge, prosecuting counsel and defence counsel. The directions of law to the jury were clear and contained no error. The summing up of the evidence was concise, with the jury being focused on the critical factual issues which they needed to consider. That the jury applied themselves properly to that task is apparent from their decision to acquit on all of the counts, except for count 4.

21. It is apparent from our reading of the papers in this matter that many of the points raised by the applicant are so implausible that they must be untrue and are obvious fantasy. There is no record of the judge telling the jury that if they could not come to a decision, then he would do that for them. No judge sitting in a criminal case would ever do such a thing. Defence counsel, unsurprisingly, has said that this allegation is completely untrue. If this had been said, there would have been an immediate objection from defence counsel and it would have been the first ground of appeal. Unsurprisingly, the transcript records no such statement having been made. On the contrary, the judge dealt carefully with a problem which arose when one juror injured himself playing football. The defence did not want the jury to go down to 11 and the result was that there were some delays so that the juror could recover

sufficiently in order to attend.

22. Another argument, supported by the fresh evidence which the applicant has sought to adduce, is that the adverse verdict was not an 11:1 majority verdict. This was because, albeit unrecorded on the transcript, the jury had been reduced to 11 people. This allegation is also obviously untrue. The concluding part of the judge's summing up includes a direction to the jury to reach a unanimous verdict on which all 12 of them were agreed. When the jury foreman delivered the verdict, he said that it was an 11:1 verdict. At no stage does the transcript record any juror being discharged.

23. The applicant also alleges that he had only a brief meeting with his lawyers prior to trial. This allegation was also made, together with many of the applicant's other allegations, when the applicant's case was considered by the Criminal Cases Review Commission ("CCRC") in 2022. The CCRC had obtained the relevant file from the applicant's solicitor and rejected the argument that the defence team failed to prepare for the trial. They considered conference notes in February 2018 (approximately one month before trial), which indicated that a detailed discussion took place on a large number of material issues. This was after a lengthy proof of evidence had been obtained from the applicant. The same point is made in a letter from the solicitors sent in response to the present allegations made by the applicant.

24. The CCRC also expressed the view that the Court of Appeal would not consider that the applicant was poorly represented. That is precisely our view.

25. We will not discuss each of the other points raised by the applicant. Most if not all of them relate to the applicant's disagreement with the verdict which the jury reached on the facts. However, it was for the jury to decide the facts. In circumstances where there was no irregularity in the trial process or defect in the summing up, and where the jury's verdict is readily understandable, there is no basis for this court to interfere with the verdict of the jury.

26. The CCRC decided that there was no real possibility that the applicant's conviction would not be upheld. It therefore decided not to refer the case to the Court of Appeal. For our part, we have concluded that there are indeed no arguable grounds for saying that the applicant's conviction is unsafe.

27. We therefore refuse the renewed application for leave to appeal. We refuse the application to adduce the new evidence to which we have referred in the course of this judgment. We also refuse the application for a very lengthy extension of time. The applicant has said that he did not originally renew the application because the single judge had ticked the box which warned him that a renewal would result in a loss of time.

28. In our judgment, this renewed application is so completely lacking in any merit that it is, exceptionally, an appropriate case for a loss of time order. The applicant will therefore serve an additional 28 days.

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

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