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Neutral Citation No. [2024] EWCA Crim 231

IN THE COURT OF APPEAL  
CRIMINAL DIVISION



CASE NOS 202202589/B4 & 202202990/B4

Royal Courts of Justice  
Strand  
London  
WC2A 2LL

Thursday, 22 February 2024

Before:

LORD JUSTICE DINGEMANS  
MR JUSTICE WALL  
THE RECORDER OF NORWICH  
HER HONOUR JUDGE ALICE ROBINSON  
(Sitting as a Judge of the CACD)

REX  
V  
LUCAS NDHLOVU

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NON-COUNSEL APPLICATION

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

LORD JUSTICE DINGEMANS:

**Introduction**

1. This is the hearing of renewed applications for leave to appeal against conviction and the hearing of an appeal against sentence for which limited leave has been granted. The appellant also applies for an extension of time in which to seek leave to appeal against conviction. This is required because he says he thought the matter was being handled by solicitors and counsel and then the Covid-19 Pandemic intervened. The applicant seeks to rely on fresh evidence from his previous girlfriend in support of his character and his defence to the underlying counts of which he was convicted.
2. The complainant in this case has the benefit of life long anonymity pursuant to the provisions of the Sexual Offences (Amendment) Act 1992.
3. The matter arises in this way. On 10 December 2021 in the Crown Court at Leeds before Mr Recorder Patrick Palmer, the appellant who was then aged 46 was convicted of two counts of rape, contrary to section 1(1) of the Sexual Offences Act 2003. He was acquitted of three counts of rape contrary to the Sexual Offences Act and a sexual assault. On 11 February 2022 he was sentenced to five years' imprisonment for the offending. There was a count of making indecent images of a child which was ordered to lie on the file.

**Leave to appeal against conviction**

4. So far as the renewed application for an extension of time and leave to appeal against conviction is concerned, the appellant has made a whole series of points about the safety of his conviction. He has complained in particular about translation of texts, some of which were written in Shona, some of which were in English and needed no translation,

and the significance of his being sent by the complainant a consent video about a cup of tea, which is a well-known video on consent, which the applicant has pointed out he sent to a number of his friends. The appellant seeks to rely on fresh evidence in the form of a statement from his previous girlfriend to show that he had used no violence upon her in their relationship.

5. We have looked through all of the grounds of appeal and all of the letters which the applicant has written but we are unable to identify any arguable grounds of appeal against conviction and endorse what the single judge said in relation to those matters.

### **The appeal against sentence**

6. We then turn to the issue of sentence. The Registrar identified two problems with the sentence imposed by the judge. First of all that each individual sentence for the two counts of rape of which the applicant had been convicted was not pronounced in court. The same problem had occurred in *R v Whitwell* [2018] EWCA Crim 2301, [2019] 1 Cr.App.R (S) 19, which was remedied by the Court of Appeal announcing the sentence for each count. Secondly, the sentence is that which the judge has pronounced and not recorded administratively. The surcharge order of £170 was not pronounced during the sentencing remarks in open court but was just simply recorded on the court record and therefore imposed administratively.
7. We therefore take the opportunity to address those two problems. In relation to the first issue we can confirm that in relation to each count of rape the sentence was one of five years' imprisonment concurrent with each other, making the overall sentence of five years which the judge had imposed.
8. As to the second issue we can confirm that an administratively recorded sentence is not valid, and we therefore quash the victim surcharge order of £170.

9. We can confirm that we have looked carefully through the materials to identify whether there are any other errors with the sentence or whether it was manifestly excessive or otherwise unlawful but there are no such errors. In those circumstances there is no other basis for interfering with this sentence.

**Conclusion**

10. For these short reasons we refuse the extension of time for seeking leave to appeal against conviction because there are no arguable grounds against conviction and refuse leave to appeal against conviction. We confirm the sentence of five years imprisonment on each count of rape, concurrent with each other, making an overall sentence of five years imprisonment. We quash the victim surcharge order of £170.

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

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