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IN THE COURT OF APPEAL

CRIMINAL DIVISION

[2024] EWCA Crim 93



No. 2023000053 B5

Royal Courts of Justice

Thursday, 18 January 2024

Before:

LORD JUSTICE POPPLEWELL
MR JUSTICE CHOUDHURY
HER HONOUR JUDGE ANGELA RAFFERTY KC

REX

V

NRZ

REPORTING RESTRICTIONS APPLY:

The provisions of the Sexual Offences (Amendment) Act 1992 apply to these offences, which were committed against the applicant's daughter, who is referred to in this judgment as "C". No matter relating to her shall, during her lifetime, be included in any publication if it is likely to lead members of the public to identify her as a victim of these offences. This prohibition applies unless waived or lifted in accordance with s.3 of the Act.

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J U D G M E N T

LORD JUSTICE POPPLEWELL:

- 1 The provisions of the Sexual Offences (Amendment) Act 1992 apply to these offences, which were committed against the applicant's daughter, who is referred to in this judgment as "C". No matter relating to her shall, during her lifetime, be included in any publication if it is likely to lead members of the public to identify her as a victim of these offences. This prohibition applies unless waived or lifted in accordance with s.3 of the Act. For these reasons it has been necessary to anonymise the name of the applicant.
- 2 On 12 October 2020, the applicant was convicted at the Crown Court at Newcastle upon Tyne, before HHJ Morland and a jury, of 15 counts of sexual abuse of his daughter, C. They included repeated oral and vaginal rapes and digital penetration of her vagina occurring when she was aged between 13 and 22.
- 3 The application for leave to appeal against conviction fashioned by the applicant after negative advice from the legal team who represented him at trial was 771 days out of time. His application for an extension of time was refused by the single judge on the grounds that there was no good reason shown for the lengthy delay and that, in any event, there was no merit in the grounds of appeal, nor in the application to adduce fresh evidence in support. The applicant renews the application for an extension of time.
- 4 The facts of this case are set out in the CAO Summary, which the applicant has received and there is no need to set them out at length. The grounds of appeal may be summarised as follows:
 - 1) A statement from L, C's sister, stating that the applicant had not abused her (i.e. L) was not disclosed to the defence. The Respondent's Notice revealed that no statement had been obtained from L, but that she had been spoken to by the police and confirmed that she had not been abused by the applicant and that this was recorded in an Adult Concern form, which had not been listed on the unused material schedule.
 - 2) Lawyers failed to represent the applicant competently by failing to call L to say that she had not been abused by the applicant and by failing to call two other witnesses, to say that complaints which C had made of sexual abuse by them when she was 6 and 14 years old, respectively, were false. The application to adduce fresh evidence referred to the evidence as coming from these three witnesses. No statements were attached to the application, but the nature of evidence in each case was identified in the form W as being "He/she can confirm that the alleged victim is being untruthful".
- 5 By a letter dated 16 June 2023, the applicant requested further disclosure, comprising (a) a copy of the Adult Concern form referred to in the Respondent's Notice in respect of L; (b) a social services report concerning C; and (c) purportedly missing messages between C and MM, to whom C had first made a complaint of the abuse.
- 6 In refusing the application, the single judge said this:
 - 1) "So lengthy a delay in lodging this appeal against conviction, which was in October 2020, is not acceptable and no sufficient explanation has been given. I have, nevertheless, considered the grounds advanced.

- 2) Even if the recorded statements of [L] should have been disclosed by the prosecution, they were not material to the outcome. There was no suggestion at trial that the applicant had sexually abused anyone else. Indeed, he received a good character direction, albeit modified to reflect allegations of violence.
- 3) The criticisms of the trial legal team are not justified. There clearly was, whatever the applicant now says, an informal decision at the time not to call the identified witnesses. They would not have been in any significant position to undermine the pros case or advance the defence case (of denial). There was and is no significant evidential basis for asserting that the complainant had previously made the complaints of sexual abuse with regard to the two other men ... which were false. Any attempt to bring in such allegations under s.100 of the CSA 2003 or s.41 of the YJCEA 1999 at trial would, inevitably, have failed. There is no basis for the admission of fresh evidence now in such circumstances.
- 4) The applicant has subsequently sought further disclosure, but not only should disclosure issues (if any) have been resolved at trial, the latest request is plainly a speculative fishing expedition and is unjustifiable.
- 5) The grounds advanced, whether taken individually or cumulatively, are devoid of merit. The jury were properly directed in the summing-up, they heard the evidence, they believed the complainant, they disbelieved the applicant.”

7 We have considered the papers carefully and entirely agree with the single judge’s reasons. We have also considered the applicant’s response to those reasons in his letter of 31 August 2023, but that letter essentially repeats points with which the single judge dealt and does nothing to undermine any of his conclusions.

8 Accordingly, the renewed application is dismissed.

CERTIFICATE

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the Judgment or part thereof.

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This transcript has been approved by the Judge.