

Neutral Citation No: [2019] EWCA Crim 1280

Case No: 201801898 B3

IN THE COURT OF APPEAL

CRIMINAL DIVISION

Royal Courts of Justice

Strand

London, WC2A 2LL

Tuesday, 9 July 2019

B e f o r e:

LADY JUSTICE NICOLA DAVIES DBE

MR JUSTICE PHILLIPS

MR JUSTICE JULIAN KNOWLES

R E G I N A

v

JXP

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Ms M Sikand appeared on behalf of the **Applicant**

Mr A Johnson appeared on behalf of the **Crown**

J U D G M E N T

(Approved)

LADY JUSTICE NICOLA DAVIES DBE:

1. On 2 April 2012, before Mr Recorder Burns sitting in the Crown Court at Nottingham, JXP, the applicant, pleaded guilty to the production of a controlled drug of class B, namely cannabis. On the same date he was sentenced to a term of imprisonment of 8 months. The applicant had served 186 days on remand and was entitled to immediate release. The co-accused, Mr Vu, was sentenced to 36 months' imprisonment.
2. On 26 July 2013, a deportation order was made. On 4 September 2014, the applicant was detained in Colnbrook IRC pursuant to the Immigration Act 1981. He was released on bail on 7 July 2015. The court has been informed that he has since been granted discretionary leave to remain, which expires on 16 February 2021.
3. The applicant is a Vietnamese national. He does not speak English. All proceedings and assessments have been conducted via a Vietnamese interpreter.
4. The applicant seeks to permission to appeal his conviction on the grounds that:
 - i. He is a victim of trafficking ("VoT").
 - ii. There was a clear nexus between his trafficking and the commission of the offence.
 - iii. If his status as a victim of human trafficking had been known at the time of the proceedings below a decision would have been made not to prosecute him.
 - iv. Alternatively, had such a decision not been made there would have been grounds for the Crown Court to stay the proceedings as an abuse of process.
5. The applicant's application has been referred to the Full Court by the single judge, who also granted an anonymity order, which we continue indefinitely.
6. The applicant seeks an extension of time of 2,192 days in which to seek leave. He applies for permission to adduce fresh evidence.

The applicant's immigration proceedings

7. On 8 August 2012, the applicant's application for asylum was refused. A deportation order was made. Appeals to the First-tier Tribunal and the Upper Tribunal were unsuccessful.
8. On 9 May 2015, a referral was made to the National Referral Mechanism ("NRM") by a key worker from the Medaille Trust.
9. On 11 May 2015, the applicant made an application to revoke his deportation order. He relied on a witness statement dated 11 May 2015 in which he asserted that he was a VoT.
10. On 16 July 2015, the Home Office acting as Competent Authority ("the Competent Authority") concluded that there were reasonable grounds to believe that the applicant had

been a VoT (“the Reasonable Grounds Decision”). The Competent Authority had considered the applicant’s 11 May 2015 witness statement.

11. On 2 December 2015, the Competent Authority concluded that the applicant had been a VoT (“the Conclusive Grounds Decision”). The decision letter indicated that the applicant’s application to revoke his deportation order remained under consideration.

The criminal appeal proceedings

Extension of time

12. On 3 December 2016, the applicant was referred to his present solicitors, Birds Solicitors, who are present today. He did not qualify for legal aid and was unable to afford to instruct the solicitors until 18 September 2017. The witness statement of Philippa Southwell, the solicitor now instructed by the applicant, sets out the detail of the steps taken by her firm since the initial communication from the applicant’s immigration solicitors in December 2016 seeking advice on appeal against conviction. We have considered the chronology, the detail and reasoning set out in Ms Southwell’s statement. We grant the extension of time.

Fresh evidence

13. The applicant seeks permission to rely on fresh evidence consisting principally of:
 - i. Two witness statements made by the applicant dated 11 May 2015 and 13 February 2018;
 - ii. The decisions of the Competent Authority;
 - iii. A psychiatric report by Dr Obuaya dated 13 November 2015 and medical records from immigration detention and from his NHS general practitioner.
14. The respondent does not object to the court receiving and considering the new evidence *de bene esse* pursuant to section 23 of the Criminal Appeal Act 1968. This is the course which the court has taken.

Background

The Crown Court proceedings

15. On 16 November 2011, a fire occurred at a factory unit in Draycott Road, Long Eaton, Nottingham (“the property”). The applicant was present in the property together with his co-accused, Mr Vu. Members of the public saw them running from the location. The applicant was in possession of a laptop computer, which was taken from him by a member of the public. Members of the public detained Mr Vu until police officers arrived. The applicant was found by a police officer and arrested. At the time of his arrest he was in possession of a mobile telephone.

16. The factory unit was separated by two containers. On one side was a temporary shelter. A number of burnt plants were found which were subsequently identified as cannabis. The electrical supply had been modified, such that any electricity used within the property would not have been registered by the electrical meter.
17. On 17 November 2011, the applicant was interviewed under caution by the police. At interview he stated that he is a Vietnamese national who had travelled to the UK about a month earlier. In Vietnam he worked as a teacher but lost his job as a result of injustice and unfairness. He travelled to China and thereafter sought to travel to Europe. He travelled from Russia to the UK in the back of a lorry. He travelled alone. He was told that accommodation would be arranged for him when he arrived. He would pay for his travel later.
18. Having arrived in the UK the applicant was taken to Kings Cross station. He then went alone to Hackney, where he trained as a manicurist. The applicant left Hackney because he could not find work. He decided to travel to Nottingham. He did so freely. He took the wrong train and arrived in Long Eaton. He tried to contact a friend in Nottingham by telephone but failed to get through. He rang another friend, he told him that he was stranded at Long Eaton train station and asked if he could come and stay with him. The friends he tried to contact were Hung Vu Nguyen (“HVN”) and Som Huy Vu. Mr Vu is from the same home town as the applicant. He was taken to Mr Vu’s place. He stayed there for approximately a week.
19. A few days after arriving at Mr Vu’s property the applicant was asked to help pump water. He saw that the water was being pumped for plants. He asked Mr Vu what the plants were. He was told they were cannabis. He contemplated leaving but, as he did not have anywhere to go, he did not. He helped pump water on one occasion. He spent his time playing games on the laptop. He did not go in the room in which plants were being grown. He did know how many plants there were. He guessed “about a dozen”. There were about three or four other persons in the house. The applicant did not know what they were doing. He stayed in his room.
20. He was not allowed to leave the property. Mr Vu told him that he must stay there and could not go outside. He was not threatened to stay. He left the property once. He went to Tesco with a western man. Mr Vu gave him £40 to buy personal effects and a voucher for a mobile phone.
21. Subsequent to the police interviews of both, the applicant and Mr Vu were charged.
22. On 19 December 2011, the applicant signed a defence statement, the content of which was consistent with the account given in his police interview.
23. At a Plea and Case Management Hearing on 2 February 2007, the applicant and Mr Vu were arraigned on an indictment containing two counts. The first alleged the production of a controlled drug of class B, namely cannabis, and the second alleged the abstraction of electricity. The applicant entered not guilty pleas to both counts.
24. On 22 March 2007, the applicant made an application for asylum.

25. On 2 April 2012, the applicant and Mr Vu were listed for trial before the Recorder. Mr Vu had pleaded guilty to Count 1.
26. At court, in consultation with his solicitor and legal team, the applicant was advised that a *Goodyear* indication could be sought from the judge. The applicant instructed his counsel to seek such an indication in respect of a guilty plea being entered to Count 1. A *Goodyear* indication was given. The Recorder indicated that the custodial threshold was passed but that any custodial sentence would be suspended.
27. The applicant instructed his counsel that he wished to plead guilty. The applicant signed an endorsement on his former counsel's brief. It read:

“I [JXP] have decided to plead guilty to count 1. I know by this guilty plea, I am admitting to being involved in the production of cannabis at the factory where I was staying. I know that the prosecution will accept that I played a lesser role in the enterprise and the Judge has indicated that I would receive a suspended sentence order if I plead guilty. I wish to plead guilty on the basis that I was only there and involved between 8th and 16th November. I do not put forward any other basis. I have made this decision of my own free will and no pressure has been applied.”
28. In court, the Recorder indicated that he had failed to consider the applicant's immigration status. As a result, he was minded to sentence the applicant to a term of imprisonment that would lead to the applicant's immediate release. The applicant maintained his guilty plea to Count 1. Count 2 was ordered to lie on the file.

The applicant's statements made subsequent to the Crown Court proceedings

29. The witness statements contain the following:
 - i. The applicant stated that he “hadn't given a full account of [his] experiences to the Home Office before” because he was ashamed as to how he had been “deceived by a group who brought me to China and then Russia”. He had to draft previous witness statements in connection with his immigration proceedings himself. He told his girlfriend what he wanted to say and she wrote it in English.
 - ii. In 2008, a man who had previously hired the applicant offered him a job in China. The applicant and another male travelled in a truck to their destination, which was in a remote area. They worked long hours at a dying factory. After a month they asked about their salary and were told they had been sold to China to work for no salary. As punishment for asking, they were beaten and deprived of food. They decided to escape but were caught by guards. The applicant did not see the man again but he heard the guards talking of throwing him off a mountain. He was hit and injured by the guards. His injuries became infected and he was injected.
 - iii. After ten days the applicant was transferred to another place, where he was injected every day. When the injections stopped he felt uncomfortable, tired and nauseous. When he told the guards about this, they injected him again and he felt better. He was

told that if he wanted to be “happy” he had to follow instructions. The applicant was forced to have sex with men three to four times a week, for which he received no payment. He was put in a room, injected with drugs and not allowed out. He did not ask to be paid as he was dependent on the drugs.

- iv. In May 2009, the applicant was taken on a train with a Chinese man. He was later told he was in St. Petersburg, Russia. He did not try to escape because he was dependent on drugs. When he arrived he was placed in various flats where he was expected to engage in sex with men. He was always guarded. He was given food. He was not paid but he was given drugs.
- v. After more than a year in Russia the authorities raided the flat and the applicant was taken to a police station. He was interviewed. He explained that he had been forced to do sex work. The Russian authorities contacted the Vietnamese embassy and the applicant was sent back to Vietnam. When he arrived in Hanoi he was arrested by the police and detained. He suffered heroin withdrawal symptoms in detention. On his release he returned to his father’s area and was again detained by the police.
- vi. As a result of his sexual exploitation the applicant suffers from hepatitis B and C and severe haemorrhoids.
- vii. Following his release from police detention the applicant’s aunt made arrangements for him to leave Vietnam. She told him to follow the instruction of those he was travelling with. He was taken to the Chinese border in a lorry. He entered China by foot. He flew to Russia. He entered Russia using a passport that was not in his name. The people he was travelling with kept his passport. He was taken to a house. The people he was with promised they would arrange his journey for him and they would arrange work for him so he could repay them.
- viii. The applicant travelled with others by truck, lorry and on foot. He did not know the places he travelled through. He arrived in the UK in or around August 2011. He and about five others were taken to a service station. A man was waiting there. He took them in the car to a house.
- ix. At the house was a man named Mr Vu and two guards.
- x. The applicant was told that he would be found a job. The applicant stayed in a room with two other men. One night the applicant managed to escape while the guards were drunk.
- xi. The day after the applicant escaped he met another Vietnamese male to whom he told his story. The male said he could stay temporarily at his house. He stayed for about two weeks, helping with housework and cleaning. He met a woman who subsequently became his partner. She was an acquaintance of the man who helped him. They became friends. In October 2011, they moved in together.
- xii. In November 2011, the applicant had an argument with his then partner and moved out. The applicant did not know that she had become pregnant. She gave birth to

their child in July 2012. He telephoned a friend with whom he had travelled to the UK: HVN. HVN told the applicant to travel to him in Nottingham. On the journey the applicant became lost and arrived at Long Eaton station. He called HVN, who said that his friend would collect the applicant and bring him to Nottingham.

- xiii. A Vietnamese lady approached the applicant. She asked if he was lost or waiting for someone. He called HVN. The lady spoke with HVN. HVN told the applicant to go with the lady for the night. She took him to a house and said that he could stay for a few days before meeting HVN. At the house the applicant saw Mr Vu again. The applicant was told that the lady would contact HVN for him. His mobile phone was taken away.
- xiv. The applicant was asked to help get water into a tank. He did so. He was then asked to go and water plants. He entered a room. He saw “a lot of lighting and plants and a complicated electricity system. It appeared to be cannabis”. The room was hot and there was a strong smell. He refused to water the plants but was told that if he did not do so he would be killed. The applicant was punched. His arm was burnt with a lightbulb. He was told not to tell anyone. He was not permitted to leave the house. He was locked in a room in the warehouse. The western boss had locked all the doors, the applicant could not leave.
- xv. Three “western men” were present during the day but not the night. One of the men was in charge. Mr Vu told the applicant that they had spent £30,000 in bringing him to the UK. He “had to work for them in order to pay that off”. The traffickers told the applicant that if he returned to Vietnam they would find him and kill him.
- xvi. Mr Vu was not the “big boss”. The applicant did not know him from Vietnam. Mr Vu had told the applicant that if he was arrested he should say that he knew Mr Vu from Vietnam and was only staying in the house.
- xvii. The applicant had his own phone when he arrived at the house. He tried to use it to call friends but it was taken away. The phone on his person when he was arrested did not belong to him. He had picked it up when leaving the property to try to call someone after he had fled. He did not know who it belonged to.
- xviii. The applicant was allowed to use the laptop that was taken from him for one to two hours a day to play computer games. Mr Vu allowed him to use it as he was upset. It was not connected to the internet.
- xix. He was scared to speak to the police when arrested as there is a lot of police corruption in Vietnam. He had been threatened by the traffickers and was cautious of the police. He was afraid that the traffickers may find and kill him. The applicant was not sure if the police were connected to his traffickers.
- xx. The applicant did not provide the full picture in his asylum interview. He was threatened by Mr Vu not to reveal what had happened to him. He was told by Mr Vu that the western men “have connections everywhere, even in Vietnam” and was worried about repercussions.

- xxi. The applicant entered a plea on the advice of his solicitor to reduce his sentence. He did not want to plead guilty.

Psychiatric report

30. The report dated 23 November 2015 was prepared by Dr Obuaya, a consultant psychiatrist. Dr Obuaya diagnosed the applicant as fulfilling the criteria for a severe depressive episode without psychotic features. He further diagnosed symptoms of a post-traumatic stress disorder (“PTSD”), although found a diagnosis of PTSD was “not warranted” and that the symptoms are “best understood as occurring in the context of his depressive illness”.
31. He opined that the major precipitants for the illness are a number of traumatic experiences that the applicant had described suffering, which included being trafficked on more than one occasion, subsequent bonded labour (in China and later in the UK), and sexual slavery (in China and Russia).
32. The doctor considered the applicant’s “accounts of his past experiences, the objective reports of his psychological symptoms and his current mental state, and found that they are in keeping with the experiences of a victim of trafficking”. He considered the possibility that the applicant had feigned or exaggerated the account but he said that his clinical impression was that the applicant was trying to describe his past experiences accurately. The doctor did not identify any significant discrepancies in the applicant’s account of his past experiences during his interview with the doctor as compared with his witness statement and the NRM referral form.

The medical records

33. The medical records of the applicant include the time when he was in immigration detention and on seeing his GP subsequent to his release in July 2015. They confirm the diagnosis of hepatitis B and C, occurrences of intermittent rectal bleeding and a referral to a general surgeon for treatment of haemorrhoids, a procedure that was subject to lengthy delay. They also record attendances with an NHS GP in September 2015 relating to the applicant’s mental health.

Conclusive Grounds Decision

34. The Conclusive Grounds Decision of the Competent Authority is accompanied by the “Conclusive Grounds Consideration Minute”. The Competent Authority considered the May 2015 witness statement of the applicant, the psychiatric report and the solicitor’s submissions. The Minute recorded in considerable detail the account given by the applicant, the submissions made in the NRM, the relevant directive and articles. It found that the three basic components of human trafficking, namely action, a means and exploitation, were made out on the applicant’s evidence. It considered the applicant’s journey, his work and exploitation in China, Russia and the UK. The Competent Authority concluded that the applicant is a VoT for the purposes of the Council of Europe Convention on Action against Trafficking in Human Beings.

The law

35. The 2000 Palermo Protocol and article 4(a) of the Council of Europe Convention on Action against Trafficking in Human Beings defines human trafficking as:

“... the recruitment, transportation, transfer harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.”

36. The relevant principles to be considered in cases of alleged VoT are now well established. Giving the judgment of the court in *R v EK* [2018] EWCA Crim 2961, Gross LJ referred to the legal framework as “now well-travelled territory” and referred to the summary of the relevant law he provided in *R v S(G)* [2018] EWCA Crim 1824 at [75] and [76]. The principles are derived from the decisions and guidance of the court in *R v M (L and Others)* [2010] EWCA Crim 2327; *R v N (A and Others)* [2012] EWCA Crim 189; *R v L (C and Others)* [2013] EWCA Crim 991; and *R v VSJ* [2017] EWCA Crim 36. In *VSJ* the court summarised the relevant principles at [20] as follows:

“i) The obligation under Article 26 of the Council of Europe Convention is given effect in England and Wales through (1) the common law defences of duress and necessity or (2) guidance for prosecutors on the exercise of the discretion to prosecute (which has been revised from time to time) or (3) the power of the court to stay a prosecution for abuse of process (see *R v M(L), B(M) and G(D)*, 2010 at paragraphs 7–12)

ii) In a case where (a) there was reason to believe the defendant who had committed an offence had been trafficked for the purpose of exploitation, (b) there was no credible common law defence of duress or necessity but (c) there was evidence the offence was committed as a result of compulsion arising from trafficking, the prosecutor has to consider whether it is in the public interest to prosecute. (See: *R v M(L), B(M) and G(D)*, 2010 at paragraph 10.)

iii) The court’s power to stay is a power to ensure that the State complied with its international obligations and properly applied its mind to the possibility of not imposing penalties on victims. If proper consideration had not been given, then a stay should be granted, but where proper consideration had been given, the court should not substitute its own judgment for that of the prosecutor (see *R v M(L), B(M) and G(D)*, 2010) at paragraph 19).

iv) Where this court concludes that the trial court would have stayed the indictment had an application been made, the proper course is to quash the conviction, (see *R v M(L), B(M) and G(D)*, 2010) at paragraph 17).

v) The obligation under Article 26 does not require a blanket immunity from prosecution for victims of trafficking. Various factors should be taken into account in deciding whether to prosecute; if there is no reasonable nexus of connection between the offence and the trafficking, generally a prosecution should proceed. If some nexus remained, then prosecution would depend on various factors including the gravity of the offence, the degree of continuing compulsion and the alternatives reasonably available to the defendant. Each case was fact specific. (See *R v M(L), B(M) and G(D)*, 2010 at paragraph 13–14).

vi) The distinct question for decision in the case of a trafficked defendant is the extent to which the offences with which he is charged (or of which he has been found guilty) are integral to or consequent on the exploitation of which the person was a victim (see *R v L(C), N, N & T*, 2013, at paragraph 33). The court made clear such a decision is a fact sensitive one:

‘We cannot be prescriptive. In some cases the facts will indeed show that he was under levels of compulsion which mean that, in reality, culpability was extinguished. If so, when such cases are prosecuted, an abuse of process submission is likely to succeed. That is the test we have applied in these appeals. In other cases, more likely in the case of a defendant who is no longer a child, culpability may be diminished but nevertheless be significant. For these individuals prosecution may well be appropriate, with due allowance to be made in the sentencing decision for their diminished culpability. In yet other cases, the fact that the defendant was a victim of trafficking will provide no more than a colourable excuse for criminality which is unconnected to and does not arise from their victimisation. In such cases an abuse of process submission would fail.’

vii) The reason why the criminality or culpability of a trafficked person is diminished or extinguished does not result merely from age but in circumstances where there has been no realistic alternative available to the person but to comply with the dominant force of another individual or group of individuals (see *R v L(C), N, N & T*, 2013 at paragraph 13).

viii) The decision of the competent authority as to whether a person had been trafficked for the purposes of exploitation is not binding on the court but, unless there was evidence to contradict it or significant evidence that had not been considered, it is likely that the criminal courts will abide by the decision (see *R v L(C), N, N & T*, 2013 at paragraph 28).”

37. At [21] the court noted that the present policy of the CPS as expressed in 2015 in respect of those not within the scope of the 2015 Act is to require the prosecutor to consider three question on a fact-specific basis in each case where the defence of duress does not arise on the evidence, namely:

- i. Is there credible evidence that the applicant falls within the definition of the trafficking in the Palermo Protocol and the Directive?
- ii. Is there a nexus between the crimes committed by the applicant and the trafficking?
- iii. Is it in the public interest to prosecute?

Grounds of appeal

38. It is the applicant's case that he is a VoT and that this is confirmed by the Conclusive Grounds Decision.
39. If what is now known had been known prior to the decision to prosecute, the CPS would have concluded that it would not be in the public interest to prosecute the applicant or to maintain such a prosecution.
40. The "reasonable nexus of compulsion" between the alleged offence and the circumstances of exploitation was defined in *R v (L and Others)* (above) as:

"The extent to which the crime alleged against him was consequent on and integral to the exploitation of which he was the victim."

The definition of human trafficking encompasses threats of violence within the means amounting to coercion. There is strong evidence that the applicant was subjected to threats of violence which gave him no choice but to help cultivate the cannabis. His traffickers used violence against him, burnt him with a lightbulb and locked the door so he could not leave. They took his phone. They also told him they would find him and kill him if he left. The definition of human trafficking encompasses fraud and debt bondage as part of the same list of means amounting to coercion. There is good evidence that the applicant was subjected to both. He was lied to by the woman who said he would only have to stay in the house for a few days before his friend, HVN, would pick him up. Mr Vu later told him that he had to work in order to pay off the money his traffickers had paid in bringing him to the UK.

41. The psychiatric evidence from Dr Obuaya shows that the applicant exhibited symptoms of PTSD consistent with his general experiences of fear and coercion as a trafficking victim. This is evidenced by the applicant's medical records during his time in immigration detention, which show that he was considered on various occasions to be at risk of self-harm.
42. It follows that the continuation of the prosecution in the circumstances of this case constituted a clear violation of his rights under article 26 of ECAT as well as article 8 of the Directive.

The respondent's case

43. The respondent contends:

- i. The applicant seeks to rely on assertions as to the basis of his offending which he did not advance below;
 - ii. There is no credible evidence that the applicant is a VoT;
44. It is now accepted by the respondent that if the court accepts that the applicant's account of his journey to Long Eaton and as to what occurred at the cannabis factory did take place then there is a nexus between the applicant's trafficking and his offending.
45. In respect of his contention that the applicant's account is not credible, the respondent relies upon inconsistencies in the account given by the applicant as recorded in his police interview under caution and in his defence statement as compared with those now contained in his witness statement, in particular:
 - i. He did not state that he been taken to a house after his arrival in the UK, from which he had escaped. He stated he was taken to Kings Cross station and thereafter trained as a manicurist;
 - ii. The applicant did not identify any link between any persons who brought him to the UK and those in the house in Nottingham. Mr Vu was a person he said he knew from his home town in Vietnam;
 - iii. The applicant did not state that he had been threatened when in the house in Nottingham nor that he had been beaten or looked in a room.
46. The respondent also relies on the omission from the applicant's earlier accounts of the fact that he did not trust the police or that he was fearful of the police officers in the light of his treatment in Vietnam and that he was scared of repercussions from his traffickers and ashamed of the sexual exploitation, which he did not wish his girlfriend and partner to learn of.
47. We are grateful to Mr Johnson for the succinct and focussed submissions made to the court. They have been directed to this point, namely that the applicant's account that he just happened to become lost and wrongly arrive at the station at Long Eaton where he was then taken by a person or persons to a cannabis factory located in that area is not credible.. Further, the absence of such a credible explanation was not identified, still less analysed, by the Competent Authority.
48. In addition, other unsatisfactory aspects of the appellant's evidence are identified as follows:
 - i. That the applicant stated that the western men in charge of the factory were present during the day;
 - ii. The fire occurred at 4.50 pm and only the applicant and Mr Vu were encountered leaving the property;
 - iii. When he left the property, the applicant was in possession of a mobile phone and a

laptop.

The respondent, relying upon the chronology provided by the applicant, notes that he had been involved in proceedings before the First-tier Tribunal and the Upper Tribunal but did not raise the issue of his trafficking in these proceedings.

Discussion and conclusion

49. We are satisfied that the fact that the applicant did not disclose his experiences of trafficking and exploitation at the time of the 2012 criminal proceedings is not unusual in such a case. We accept that at the time the applicant was interviewed by the police and seen by his legal team he gave an account which in part represented what he had been told to say in the event of questioning. We accept that it was not until the applicant was seen by immigration solicitors, and the NRM was made, that a detailed account of what had occurred began to emerge. In our judgment, such behaviour is consistent with accounts given by others in similar circumstances, as reported in cases before the Court of Appeal Criminal Division. We also accept that there are some internal inconsistencies in the applicant's accounts but they do not, in our judgment, serve to undermine the totality of his evidence.
50. The thrust of the respondent's case as presented to the court today is twofold:
- a. the lack of a credible explanation by the applicant as to how he came to arrive at Long Eaton and thereafter find himself in a cannabis factory in the Long Eaton area; and
 - b. the failure by the Competent Authority to properly analyse this aspect of the appellant's evidence.
51. The Competent Authority was in possession of the applicant's witness statement dated 11 May 2015. At paragraphs 46 to 49 of that witness statement it is recorded:
- “46. I contacted my friend who I had got to know during the journey to the UK. During the journey from Russia to here he was travelling with me so he had given me his telephone number. He also arrived in the UK on the same day with me. He stayed with me for a day in the same house where I was held at first, before he was taken somewhere else. He was given a mobile but I wasn't, I don't know why. His name was [HVN].
47. I called him and he gave me an address that I could go to. He said that I should arrive at Nottingham station. I got on a train and I got lost and I arrived in Long Eaton station. I called him when I arrived and told him I had arrived in Long Eaton and I didn't know how to get to Nottingham. He then said he would get his friend to pick me up. He told me either his friend or he would take me back to Nottingham.
48. It was raining and getting darker and darker. Two Western men and a Vietnamese woman approached the station. She came over straight away and approached me, and asked me whether I was lost or waiting for someone. I

phoned [HVN] back and the Vietnamese woman was listening to my conversation with him.

49. [HVN] told me to pass her the phone. After they spoke she told me that I should come to stay with her until the next morning as it was too late. She passed the phone back and I spoke to [HVN]. He also said I should go with her. I don't know whether that woman was sent by [HVN] or not. Neither of them told me that she was sent but they both said I should go with her."

52. The Competent Authority referred to that aspect of the claimant's evidence in its minute as follows.

"In early November 2011, he had an argument with his girlfriend and left the house. He contacted a friend that he had known from the journey that he undertook from Russia to the United Kingdom and who was at the first house with him for a day before he left to go somewhere else. His name was [HVN] and he was given a mobile while the claimant was not. [HVN] stated that he could help him with work and gave him an address in Nottingham. The claimant got a train and became lost and was overheard by a lady who was known as Sister Hai, when he was calling his friend. She stated that he could stay with her until the morning. She was with two western men. She stated she would contact his friend. The claimant was taken to the house and he recognised a man called Vu that had been at the first house."

53. We accept that this aspect of the applicant's evidence was deserving of a more rigorous analysis than appears in the Minute. However, in approaching the decision of the Competent Authority, in particular the Conclusive Decision and the detail and the reasoning which leads to it, we take account of what was said by the court in *R v VSJ* (above) at paragraph 20(8), that:

"The decision of the competent authority as to whether a person had been trafficked for the purpose of exploitation is not binding on the court but, unless there was evidence to contradict it or significant evidence that had been not considered, it is likely that the criminal courts will abide by the decision (see *R v L(C)* at [28])."

54. There is no evidence to contradict what the applicant said. Further, we take account of the fact that the Competent Authority is a specialist authority with particular expertise and knowledge in this area of trafficking. The Minute sets out in considerable detail the applicant's account. It clearly analysed whether that account met the requirements of trafficking and concluded that it did. We accord weight to the decision of this specialist authority.
55. We also attach weight to the evidence of an independent psychiatrist and to entries in the applicant's medical records, both as to the development of a depressive illness, symptoms of PTSD and the conditions of hepatitis B and C, which are stated to be consistent with the alleged sexual activity and the taking of heroin. A psychologist in January 2013 reported

that the applicant was describing flashbacks regarding his detention and torture in Vietnam. He was experiencing nightmares two or three days a week. He was described as being hypervigilant, unable to trust others and suffering from insomnia. The psychologist concluded that there were evident features of PTSD and severe depression.

56. In November 2014, medical records from Colnbrook IRC report that the applicant was stressed and having difficulty sleeping. Following his release he saw his GP and on 23 September 2015 the applicant saw the GP with his partner, who expressed concern that the applicant was withdrawn, low in mood and cutting his arms. It was documented that he was waking up terrified and found himself sitting alone on the floor staring into the distance. He had insomnia and a poor appetite. The next day the crisis resolution and home treatment team of the local secondary care mental health provider saw the applicant. The applicant complained of insomnia, a poor appetite, flashbacks and nightmares as well as episodes of self-harm. He was commenced on antidepressant medication but was not felt to be psychotic and discharged back to the care of his GP.
57. Having examined the applicant in November 2015, Dr Obuaya made the clinical diagnosis set out at paragraph 30 above and stated that the applicant's symptoms were precipitated by a number of traumatic experiences he had described suffering. The major precipitants were identified by the doctor as being trafficked on more than one occasion, subsequent bonded labour in China and in the UK and sexual slavery in China and Russia.
58. Dr Obuaya concluded that the applicant's accounts of his past experiences, the objective reports of his psychological symptoms and his current mental state were in keeping with the experiences of a VoT. The doctor concluded that a number of adverse life events were likely to have predisposed the applicant to later exploitation at the hands of traffickers.
59. In our judgment, the opinion of the psychiatrist, together with entries in the applicant's medical records, which detail his physical and mental health, provide objective evidence of the applicant's account of his trafficking experiences.
60. We accept and agree with the conclusion of the Competent Authority that the applicant is a VoT. We are satisfied that there is a clear nexus of compulsion between the committing of the cannabis offence and the trafficking. The applicant was in the property as a result of the actions of traffickers. He was unable to leave the property and was put in fear of fleeing by reason of what he was told. His fear was not only of the traffickers in the area where he was staying but also of their international reach. This was not his first experience of trafficking nor of the consequences of attempting to escape. We take account of and give weight to the fact that he was unable to communicate in English and was staying in a place where he was geographically isolated.
61. Accordingly, we grant permission to appeal. We find that the appellant's 2012 conviction is unsafe and should be quashed. The appeal is allowed.

MS SIKAND: Thank you very much, my Lady.

My Lady, Ms Southwell asks me to raise with you that in fact his leave to remain expires on 16 February 2021 because you may have misheard me: I said 30 months but you may have

heard that as 13 months.

LADY JUSTICE NICOLA DAVIES DBE: My apologies, I will correct it in the judgment.

MS SIKAND: My Lady, you also made mention of *R v VCL* paragraph 20(8) but you meant *VSJ*, because that is the correct citation of *VSJ*, paragraph 20(8).

LADY JUSTICE NICOLA DAVIES DBE: I will go back and double check it.

MS SIKAND: Thank you, my Lady.

My Lady, just one ancillary matter. I make an application, if I may, for a representation order to cover Ms Southwell's work post lodging. I am told, and this has happened in this past, that this court can make a retrospective representation order to cover the work post lodging. So at the time of lodging the appeal she was covered by a different funding regime but post lodging there is no funding for my solicitor. My Lady, there is a great deal of work in these cases, as you will have seen, certainly after the decision of the single judge there was a great deal of evidence sought and of course Ms Southwell had to take instructions, which requires an interpreter, and then putting before the court various documents. So I make the application simply to cover the work she did post lodging.

LADY JUSTICE NICOLA DAVIES DBE: Very well, it is granted.

MS SIKAND: Thank you.

LADY JUSTICE NICOLA DAVIES DBE: Is that it?

MS SIKAND: That is it, my Lady, thank you very much.

LADY JUSTICE NICOLA DAVIES DBE: My thanks to you both for the considerable work which I know each of you has put into the preparation of this case and for the written and oral arguments. Thank you very much.

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

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