



Neutral Citation Number: [2019] EWCA Crim 1389

Case No: 2018/00699 B5

IN THE COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM LEEDS CROWN COURT
HHJ COLLIER QC
T20087475

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 31/07/2019

Before:

LADY JUSTICE THIRLWALL DBE
MR JUSTICE FRASER
and
SIR DAVID FOSKETT

Between:

O

**Applicant/
Appellant**

- and -

The Queen

Respondent

Ms Paramjit Ahluwalia (instructed by **Philippa Southwell of Birds Solicitors**) for the
Applicant/Appellant

Mr Andrew Johnson (instructed by **The Crown Prosecution Service**) for the **Crown**

Hearing date: 16th May

Approved Judgment

Thirlwall LJ:

1. This is the judgment of the court to which we have all contributed, Fraser J having made the major contribution. O applies for an extension of time and permission to appeal in respect of two convictions. On 29 July 2008 she entered guilty pleas at the Crown Court at Leeds to two counts which arose out of the same circumstances: possession of a false identify document with intent contrary to Section 25(1)(a) of the Identity Cards Act 2006; and attempting to commit fraud contrary to Section 1(1) of the Criminal Attempts Act 1981. The identity document was a Dutch passport in the name of Mary Igunbor. It had been a genuine passport, but the biographical details page within the passport had been modified. The applicant was sentenced by HHJ Collier QC, the Recorder of Leeds, to 15 months imprisonment on each count, those sentences to run concurrently. She served her sentence and was released some years ago.
2. This case is covered by an Order made on the last directions hearing on 14 February 2019 under Section 11 of the Contempt of Court Act 1981 which prohibits publication of the name of the applicant. The applicant seeks continuation of that order, regardless of the outcome. We have considered the guidance of the Vice President of the Court of Appeal (Criminal Division) at [9] to [15] of *R v L* and *R v N* [2017] EWCA Crim 2129. In particular the starting point is the importance of the principle of open justice, and anonymity orders can only be justified when they are strictly necessary.
3. In this case, threats were made to the applicant’s safety – including threats to kill – at an earlier stage and indeed these formed part of the grounds for her successful asylum appeal (to which we refer in greater detail below). We are satisfied that on the facts of this case the applicant’s Article 3 rights are engaged. The information provided by the applicant about her trafficking, the violence and repercussions experienced by her in Italy, and the risks both to her and also potentially to her children, are all matters that are relevant to continuation of the anonymity order. We will refer to the applicant as “O” and return to this subject at the end of this judgment.
4. The applicant requires an extension of time of 3,457 days, or approximately 9 years 5½ months. The applications for an extension of time and for leave to appeal have been referred to the Full Court by the Single Judge. There is also an application for permission to adduce fresh evidence under Section 23 of the Criminal Appeal Act 1968. That section provides as follows in Section 23(1):

“For the purposes of an appeal, or an application for leave to appeal, under this Part of this Act the Court of Appeal may, if they think it necessary or expedient in the interests of justice –

... (c) receive any evidence which was not adduced in the proceedings from which the appeal lies.”
5. Under Section 23(2), the Court of Appeal is to have regard to the factors listed at (a) to (d) of that sub-section when considering whether to receive any evidence. Section 23(2)(d) includes whether there is a reasonable explanation for the failure to adduce the evidence in the proceedings the subject of the appeal.

6. The applicant seeks to rely upon the following:
 1. The First Tier Tribunal decision which upheld her application for asylum. This is date 10 November 2009;
 2. The psychiatric report of Professor Katona which she relied on in her asylum appeal. This is dated 11 October 2009;
 3. The report of an expert into trafficking by Bisi Olateru-Olagbebi also relied upon in her asylum appeal. This is dated 19 October 2009;
 4. Her statement of 26 October 2009 served in respect of her asylum appeal;
 5. Two further witness statements from her, dated 30 January 2018 and 12 March 2019.
7. In very brief summary, the basis of her applications and of her appeal, were she to obtain the necessary permission, is that she was a Victim of Trafficking at the time of the offences. She submits that her personal circumstances, and the offending, are such that the convictions should be quashed as unsafe.
8. At the directions hearing of 14 February 2019 the applicant applied for an assessment by an intermediary for the purposes of her giving oral evidence upon the hearing of her applications by the Full Court. This was refused. The Respondent also sought a direction that she be cross-examined on her account at the hearing before us, which was granted. We therefore heard her evidence, and she was cross-examined on certain elements of her account, *de bene esse*. We considered all of the fresh evidence *de bene esse*.

The Facts

9. The applicant was born in Nigeria and her first language is Edo. She also speaks Pidgin English, and although her language skills are far more developed now than they were in 2008, she gave evidence before us (and was cross-examined by the Respondent) with the assistance of an interpreter.
10. Her parents died when she was 2 years old. She was brought up in Nigeria by a relative but in abusive circumstances. Her evidence was that she was trafficked to Italy in April 2007, at the age of 23, by someone identified only as “Joy”. Whilst in Italy, she was used as a domestic help by Joy for minimal or no wages, and was also subject to forced sexual exploitation, including by groups of men. She was presented with what was said to be a debt of 20,000 Euros owed to Joy which she was told she would have to pay off by working. She escaped in September 2007 but was apprehended, being badly beaten as a punishment for her escape, which required a period of hospitalisation. After her release she experienced death threats from Joy, or those connected to her.

11. She lived in Italy until July 2008, when another woman called “Sophia” offered to obtain travel documents to assist her in travelling to England, which she did. She was taken to England by Sophia on the Tuesday before her arrest and given use of an identity document to enter the United Kingdom at Gatwick Airport, but this was taken from her as soon as entry had been achieved. The date of the Tuesday before her arrest would have been 8 July 2008. She was immediately taken by Sophia to Leeds in Yorkshire by train. By this stage in her life, she could not speak English.
12. Her evidence was that she was effectively abandoned by Sophia at Leeds Railway Station and although she asked for help from different people, they were all either unwilling to assist her, or could not understand her. Eventually, she was assisted by a couple, called “William” and “Julia”. William was white; Julia was black and spoke her language. By this stage the applicant had been in the United Kingdom for three days. They took her to their house, allowed her to wash, and provided her with food. They permitted her to stay with them for two days (which equates to the weekend of 12 and 13 July 2008). On Monday 14 July 2008 they explained to her that she should go to the Post Office at Leeds and cash some travellers’ cheques, using the document the subject of Count 1. She attempted to refuse but was told she would have to return to sex work if she did not comply. She did not know what cheques were and had not seen such instruments before. She went to the Post Office, did what she had been instructed to do, and was arrested and charged as we have already described.
13. The applicant’s account at the time she was arrested is contained in a 4-page handwritten note of her Tape Recorded Interview. It sets out the account she gave at the time to the interviewing officer. It is consistent with the account which she gave in her evidence to the Full Court. It identifies that she was taken to Italy from Nigeria and put to work as a prostitute, including being beaten up by men, and hospitalised. It includes threats to kill from the woman in question, who is not named but whom the appellant has identified as “Joy”. We note that although one page of her initial interview with the police upon her arrest is not available, the pages that are available show that she also gave an account to the police upon her arrest on 14 July 2008 which is entirely consistent with her evidence to this court. All of the pertinent ingredients relevant to her being a victim of trafficking were provided in her interview. She waived her rights concerning privilege over her communications with her previous legal advisers in 2008 in accordance with *R v McCook* [2014] EWCA Crim 734. However, in an email of response from the solicitors who acted for her at the time, they explained that due to the passage of time no documents in respect of her case are available, and the partner in the case had no specific recollection of her case. The circumstances of her coming to plead guilty are not therefore clear, her evidence being that she did not really understand what “guilty” in fact meant and she was told that she should plead guilty to reduce the sentence. It follows that she understood that pleading guilty would lead to punishment i.e. that she was taking responsibility for the crimes. Although an interpreter was provided for her in 2008, she states that she still did not understand fully since the interpreter spoke to her in Pidgin English which was not her own language, and in which she is far more proficient now than she was in 2008.
14. The sentencing remarks make it clear that at least part of her account was before the court and must have been provided by those acting for her at the time. The judge said “I accept there must have been others behind you in relation to this”. He stated that he

was not recommending deportation and also stated that he knew she would be making an application for asylum. However, the length of her sentence triggered the automatic deportation provisions in Section 32 of the UK Borders Act 2007 in any event, as it was a sentence in excess of 12 months in custody.

15. Upon commencement of her prison sentence, she was seen both by the prison chaplain and the Chief Immigration Officer, and the contemporaneous documents available show that both accepted her account that she had been trafficked. She applied for asylum on 11 February 2009. She was given an asylum interview whilst still in custody, and the file note of 25 February 2009 states that the Chief Immigration Officer present agreed that she was probably trafficked. Those who had been trafficked were to become, on 1 April 2009, exceptions to the automatic deportation provisions in the UK Borders Act 2007, and her case was therefore referred for consideration on 25 March 2009. The prison chaplain was involved in a support agency known to the Human Trafficking Centre and through this she was released to a Women's Refuge.
16. Her asylum application was refused on 7 April 2009 and the Secretary of State concluded in that application that she had not been trafficked, nor had she been in any danger in Nigeria. An appeal was submitted on 15 September 2009, and this appeal was allowed by the First Tier Tribunal on 10 November 2009. The Immigration Judge accepted that she suffered from complex PTSD and also was at risk of gender-specific persecution were she to be returned to Nigeria, where she had no social or family network. She had received death threats from Joy, the person who took her to Italy, and she feared reprisals if she were returned to Nigeria. The Immigration Judge on her appeal also found that the circumstances in which she would find herself upon return would be such that her Article 3 rights under the European Convention on Human Rights and Fundamental Freedoms would be breached.
17. The report of Ms Olateru-Olagbegi makes it clear that the experiences of O are not at all unusual, and given the particular area of Nigeria from which she comes, regrettably very usual. Sexual exploitation of this nature has many causes, but someone in the position of O who was orphaned at an early age, and had no immediate family, was particularly vulnerable. Forced prostitution is used as a device to satisfy debt-bondage, which occurred in this case. The psychiatric report of Professor Katona, an Honorary Professor in the Department of Mental Health Sciences at UCL and an Honorary Consultant Psychiatrist at the East Kent Partnership NHS Trust explained that O was suffering from Complex PTSD as a result both of the physical and sexual mistreatment to which she had been subject, as well as the threats to her life.
18. As this court said in *R v VSJ and others* [2017] EWCA Crim 36 at [26] below (where we set out the relevant passages verbatim), the decision of the First Tier Tribunal judge is not binding upon this court but in the absence of evidence which undermines it, it is likely that the criminal courts will abide by that decision. In this case there is no evidence to contradict the findings of the Immigration Judge; on the contrary, all the evidence before this court is consistent with that decision. We also note that every person who has had contact with this applicant, including the Chief Immigration Officer who interviewed her at the prison, has concluded that she was a victim of trafficking.

19. Mr Johnson cross-examined her, concentrating (sensibly) upon the events from her arrival in Gatwick until her arrest in Leeds. The effect of the applicant's answers underlined the credibility of her account.
20. We accept her account and we give permission to rely on all the fresh evidence. We are satisfied that the requirements of Section 23(1) of the Criminal Appeals Act 1968 are satisfied. It is necessary and expedient in the interests of justice to receive this evidence. In particular, none of the evidence from 2009 was in existence at the time of the proceedings in the Crown Court in 2008.

The law

21. The significant shift in approach to defendants in criminal cases who may have been the victims of trafficking began with the decision of this court in *R v O* [2008] EWCA Crim 2835. The convictions with which the court were there concerned were recorded in March 2008, four months before the conviction in this case. The appellant was a 17-year-old trafficked person. Referring to this "shameful set of circumstances" this court allowed the appeal.
22. By 2008 the UK was a signatory to the Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, which entered into force on 25 December 2003, and in 2007 to the Council of Europe Convention on Action against Trafficking in Human Beings 2005. The position as at 2008 was summarised by Hughes LJ (as he then was) when he gave the judgment of the court in decision of this court in *R v LM and others* at [2010] EWCA Crim 2327. At [2] he said:

“*Rantsev v Cyprus and Russia* (Application 25965/04) in the European Court of Human Rights, demonstrates that trafficking may fall within the scope of the prohibition on servitude contained in Article 4 of the ECHR. But the principal current international instrument, which contains specific and positive obligations upon States, is the 2005 Council of Europe Treaty. Its provisions, agreed between States, cover (1) steps to prevent and combat trafficking, (2) measures to protect the rights of victims and assist them and (3) the promotion of international co-operation. The United Kingdom is bound by this treaty. At the time of *R v O* [2008] EWCA Crim. 2835, it had signed but not ratified the treaty and was thus subject to the attenuated obligation under Article 18 of the Vienna Convention on the Law of Treaties to refrain from acts which would defeat its object and purpose.”
23. By the time of the hearing “this country has ratified the Convention (on 17 December 2008) and it is fully bound by it.”
24. The court in *R v LM* emphasised that which had been said by Laws LJ in *R v O* in 2008, and was repeated in *R v GS* [2018] EWCA Crim 1824 of events in 2007, namely that awareness of the law and procedure in relation to the rights of people who

had been trafficked was limited at that time. This is notwithstanding the existence of the Poppy Project and the fact that the UK had signed the 2005 European Convention against trafficking. As Gross LJ put it in *GS* “whatever the position ought to have been, there was only very limited awareness of such rights”. We would add that those rights existed, irrespective of the level of awareness of them.

25. As a minimum the United Kingdom was obliged at the time of the offences in 2008 to refrain from acts which would defeat the object and purpose of the European Convention against trafficking. It was for that reason that the CPS had issued for the first time, guidance about the approach to the victims of trafficking in May 2007. It directed prosecutors as follows:

“... Victims of human trafficking may commit offences whilst they are being coerced by another; when reviewing such a case, it may come to the notice of the prosecutor that the suspect is a “credible” trafficked victim. For these purposes, credible means that the investigating officers have reason to believe that the person has been trafficked. In these circumstances prosecutors must consider whether the public interest is best served in continuing the prosecution in respect of the offence...”

26. After *R v LM* the approach was developed further in *R v N(A) and others* [2012] EWCA Crim 189; *R v L(C) and others* [2013] EWCA Crim 991. EU Directive 2011/36/EU, which follows the Council of Europe Convention on Action Against Trafficking in Human Beings 2005 came into force. The Directive and the decisions of this court, further CPS guidance and greater awareness amongst the professions of the UK’s obligations in this respect has led to a settled approach to these cases.

27. More recently the Modern Slavery Act 2015 was passed in 2015. Parts 1, 2 and 4, along with Section 45, which provides a statutory defence for slavery/trafficked victims who commit an offence, came into force on 31 July 2015. This new approach is not retrospective in effect.

28. In *R v VSJ and others* [2017] EWCA Crim 36, this court reviewed the authorities and identified at [20] the following general principles:

“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).”

Analysis

29. There are three questions which must be posed in cases of this kind:-

1. Is there reason to believe that the applicant has been trafficked?

2. Is there evidence that the offences were committed as a result of compulsion arising from trafficking? Put another way, is there sufficient nexus between the trafficking and the offending? Whichever way it is put, does it extinguish culpability?

3. Assuming the answer to each of those questions is yes, did the prosecutor consider whether it was in the public interest to prosecute, in accordance with the 2007 guidance?

- see *R v M(L), B(M)* (above)

We then consider two further questions, those of exceptional leave and the required extension of time.

1. Is there reason to believe the applicant has been trafficked?

30. As we have already explained we are satisfied that the applicant had been trafficked.

2. Is there a sufficient nexus between the crime committed and the trafficking?

31. Counsel for the Crown focussed his attention on this question. He drew a distinction between being trafficked to Italy from Nigeria, and the trip from Italy to the United Kingdom. The focus of his submissions was what led to her being in Leeds at the material time, and not what occurred prior to that in Italy, or how she came to be in Gatwick. We are satisfied that the whole of her journey to Leeds can properly be described as trafficking. Due to the lack of knowledge on the part of the applicant about the circumstances and degree of connection between Sophia, the woman who took her to Leeds, and the couple who instructed her to carry out the offences, it is not

possible to conclude definitively the strength of any link between them. However, the following features of this particular case seem to us to be notable.

32. Firstly, we do not consider that there is any difference to be drawn between being trafficked from Nigeria to Italy, or within the EU itself. The so-called internal trafficking from Italy to the UK renders, in our judgment, the applicant a Victim of Trafficking when she arrived in the UK. In particular, the circumstances in which she was brought to the UK from Italy make it highly likely that she was being brought to the UK to be exploited in much the same way as she had been exploited in Italy.
33. The Respondent suggested in cross-examination that the person who brought her to the UK, called Sophia, may have been attempting to help her rather than traffic her. We reject that suggestion; Sophia's conduct involved deception at the border and immigration control at London Gatwick, added to by a journey to Leeds followed by, at best, abandonment. We are satisfied that the correct inference to draw was that Sophia was trafficking the applicant.
34. Secondly, there was a very close connection in time between her arrival in the country and the commission of the offences themselves. She had been in the UK a matter of only days, and during that time had no contact with any authorities, having been brought into the country illegally.
35. Thirdly, it is not possible to conclude the degree of connection between Sophia, who took the applicant to Leeds, and the couple called William and Julia who, on the applicant's account (which we accept) coerced her into committing the offences. They might be entirely unconnected, which the Respondent suggested, although that is unlikely. The applicant did not know of any degree of connection between them; however, she could not be expected to know. We do not speculate. The logical inference is that they were connected.
36. Fourthly, William and Julia are the people who took her to their house and instructed her to commit the offences. She was told that unless she did as they instructed, she would have to return to sex work. That falls within the definition of exploitation within Section 4(4) of the Asylum and Immigration (Treatment of Claimants etc) Act 2004, which was in force at the time in any event. It is somewhat fanciful to consider the events at Leeds Station as though they broke the chain of trafficking in this case. The Respondent's arguments require us to ignore the fact of her isolation, inability to communicate in English, lack of money, very recent (if not immediate) arrival in a foreign country, illegal immigration and fear of the authorities.
37. These offences took place in the context of a life of sexual exploitation and repeated trafficking. We conclude that they are both integral to, and consequent upon, the trafficking and exploitation so as to extinguish culpability.

3. Did the prosecutor consider whether it was in the public interest to prosecute at the time, in accordance with the 2007 guidance?

38. As to the third question it is not in dispute that no consideration was given by the prosecutor as to whether it was in the public interest to prosecute. In light of the clear and credible evidence that was available at the time, namely the transcript of her interview, and in the light of the CPS guidance, consideration should have been given

to that question. Proper consideration would have led to a decision that it was not in the public interest to prosecute. As set out at [20](iii) of *R v VSJ*: “If proper consideration had not been given, then a stay should be granted.”

39. At [20](iv) of *R v VSJ* the court said: “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.” We do so conclude.
40. The parties approached this case on the basis that it involved a change of law in the light of the decision in *GS*. *GS* concerned events that occurred prior to conviction in November 2007. The facts of the offending and the offender were markedly different from those in this case. The applicant’s level of culpability was high in respect of a very serious offence, where the jury had rejected a defence of duress. The court concluded, at [77], that even on the law as it is now (ignoring the Modern Slavery Act 2015) it could not be said that it was not in the public interest for the appellant to be prosecuted: “provided only that a prosecutor properly considered the Applicant’s position as a Victim of Trafficking in accordance with the law and guidance to which we have referred, we are unable to conclude that it would be an abuse for the Applicant to be prosecuted.” Accordingly, at [82] the court concluded that “it was not arguable that culpability was extinguished such that a prosecutor, properly applying the law as it now is (let alone the law in 2007) would or might not proceed with a prosecution in the Public Interest.” In light of that conclusion, the fact that it was, as the court found, a change of law case was not, in the end, material to the decision in that case to refuse permission to appeal.
41. Unlike the court in *GS* we are satisfied that the facts of this case are such that on the law post the ratification of the European Convention on trafficking (ignoring the Modern Slavery Act) this prosecution would have been stayed as an abuse of the process of the court. We also consider that the outcome would have been the same on these facts had the position been considered as it should have been in accordance with the 2007 CPS guidance and the attenuated obligations upon the United Kingdom as at July 2008.
42. Even if this were a change of law case, there would ultimately be no difference in the outcome. The court must first consider whether a refusal of leave to appeal would cause substantial injustice. Whatever the answer to that question, the court must also consider the application for a very long extension of the time within which to seek permission to appeal. There, the test is whether or not a refusal would cause significant injustice. In this case either test leads to the same outcome.

4. Would the refusal of leave cause substantial injustice?

43. The fact of these convictions has had, and continues to have, a direct impact upon the appellant’s life. Since being granted asylum she has started a family and obtained qualifications. She is currently enrolled in University studying Human Resources. She wishes to obtain employment and her convictions have, and will continue to have, a significant detrimental impact upon that. She is prevented from accompanying her children on school trips because of her convictions. She has volunteered to work for the Red Cross, but again the convictions prevent her from doing so. She wishes to apply for citizenship and these convictions will impact significantly upon this too.

44. In our judgment, the refusal of exceptional leave would in this case cause substantial injustice. Had it been necessary to do so we would have resolved this question in the applicant's favour.

5. Extension of time required

45. This therefore brings us to the question of delay and the lengthy extension of time required. The delay in this case has been considerable. The extension of time is very long as we have observed. The principles to be applied in an extension of time case are well known. In *R v Hughes* [2009] EWCA Crim 841 at [20] it was said that an extension would "be granted only where there is good reason to give it, and ordinarily where the defendant will otherwise suffer significant injustice". In *R v Thorsby* [2015] EWCA Crim 1 it was stated "the principled approach to extensions of time is that the court will grant an extension if it is in the interests of justice to do so". It was also said in that case that "the public interest embraces also, and in our view critically, the justice of the case and the liberty of the individual..." and "the court will examine the merits of the underlying grounds before the decision is made whether to grant an extension of time." It was also noted that the passage of time may put the court in difficulty in resolving whether an error has occurred and if so to what extent.
46. Here, she was refused indefinite leave to remain in the United Kingdom as a direct consequence of having these two convictions. It was that occurrence that alerted her to the issue of a potential appeal, as the solicitors who were acting for her on her application for leave to remain advised her that she may, as a Victim of Trafficking, have grounds to challenge her convictions. That was in 2015. She was referred to the criminal department of her solicitors in October 2015. However, that department was closed down and she effectively had to start again in terms of seeking representation and then her new solicitors undertaking the necessary enquiries. Her form NG is dated 9 February 2018.
47. There are two periods of delay. The first is up to the notification to her that she would not be granted indefinite leave to remain in 2015; the second is from then, up to the issue of her form NG. We consider an adequate explanation has been provided in respect of both. There is therefore good reason to grant the extension of time, as without it significant injustice will be suffered by this applicant.
48. We are quite satisfied and agree that the public interest did not require her prosecution. The convictions are unsafe. We grant the necessary extension of time, grant permission to rely on the fresh evidence, grant permission to appeal, and allow the appeal. The convictions will be quashed. Our finding in relation to her being a Victim of Trafficking justifies continuation of the order for anonymity in her case and we order accordingly.