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IN THE COURT OF APPEAL

CRIMINAL DIVISION

Neutral Citation No. [2020] EWCA Crim 1190

CASE NO 201901644/C1

Royal Courts of Justice

Strand

London

WC2A 2LL

Thursday 27 August 2020

Before:

LORD JUSTICE HADDON-CAVE

MR JUSTICE JEREMY BAKER

MRS JUSTICE MOULDER DBE

REGINA

V

MATTHEW DEREK CLARKE

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NON-COUNSEL APPLICATION

JUDGMENT

MR JUSTICE JEREMY BAKER:

1. The provisions of the Sexual Offences (Amendment) Act 1992 apply to these proceedings. Therefore, no matter relating to the complainant 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.
2. On 16 February 2017 the applicant, Matthew Clarke, appeared at Lincoln Crown Court. He was legally represented and pleaded guilty to 18 counts on a 28-count indictment alleging various sexual offences against a single female complainant. The offences to which he pleaded guilty included offences of rape of a child under 13.
3. The proceedings were adjourned to allow the prosecution to consider the sufficiency of those pleas and the matter next came before the Crown Court on 7 April 2017, by which time the prosecution had notified the defence that the pleas were insufficient and a trial would be required. Moreover, the prosecution had reviewed the original indictment and having noted that it contained drafting errors, including references to dates and statutory provisions, they had drafted a new indictment. However, as the defence had not had sufficient time to consider this indictment the proceedings were adjourned so as to enable them to do so.
4. The matter next returned to the Crown Court on 12 April 2017 before Mr Recorder Mann QC and although he initially considered staying the first indictment and granting leave to prefer the new one, ultimately, he granted the applicant leave to vacate his pleas on the first indictment, and for that indictment to be amended in the terms of the new indictment. Once this had been done the applicant then entered pleas of guilty to all the counts on the amended indictment and the matter was adjourned for sentence.
5. The final hearing took place at the Crown Court on 22 June 2017 when HHJ Pini QC

sentenced the applicant on the various counts to which he had pleaded guilty resulting in a special custodial sentence, under section 236A of the Criminal Justice Act 2003, of fifteen-and-a-half years, comprising a custodial period of fourteen-and-a-half years and an extended licence period of 1 year.

6. The applicant now seeks to renew his application for an extension of time (some 721 days) to apply for leave to appeal conviction after refusal by the single judge.
7. The explanation for the considerable delay in this case is set out in a letter from the applicant dated 20 December 2019, in which it is stated that he had originally consulted fresh solicitors, who provided him with erroneous advice, following which he had sought to deal with the matter on his own and had encountered delays in receiving the necessary documentation from them.
8. We do not consider that given the limited nature of this appeal this explanation justifies the delay and accordingly refuse the renewed application for an extension of time. Nevertheless, like the single judge, we too propose to deal with the merits of the renewed application for permission to appeal.
9. The original grounds of appeal are contained in a document dated 29 April 2019, which were perfected in a 10-page document with reference to the transcripts of the hearings. There is also a document entitled "Additional grounds of appeal against conviction" and more recently these had been updated in a document dated 20 December 2019.
10. Essentially what is submitted is that after the applicant had entered pleas of guilty on 16 February 2017 the judge should have proceeded to sentence either on that occasion or on 7 April 2017. It is submitted that the court's failure to do so and instead its decision to permit the vacation of the applicant's original pleas of guilty and the amendment of the indictment amounted to an abuse of the process of the court.

11. It is suggested that the indictment was not signed and that this results in the subsequent proceedings being a nullity. Moreover, that the indictment is bad for duplicity and/or lacking in sufficient particulars to afford the applicant knowledge of what was being alleged against him.
12. It is apparent from section 5(1) of the Indictment Act 1915 that an indictment may be amended at any stage either before trial or during it. Moreover, in *R v Love and Hyde* [2013] 2 Cr App R 4, this court refused leave to appeal against conviction where, after an accused had pleaded guilty to a count of burglary of a building, the judge had permitted the applicant to vacate his plea so as to enable the prosecution to amend the indictment by specifying that the building was a dwelling, thus raising the maximum sentence for the offence from 10 years to 14 years under section 9(3) of the Theft Act 1968.
13. Moreover, in *R v MJ* [2018] EWCA Crim 2485, this court determined that the effect of the provisions of section 116 of the Coroners and Justices Act 2019, which amended section 2 of the Administration of Justice (Miscellaneous) Provisions Act 1933, resulted in the previous rule that an unsigned indictment was a nullity, being abrogated and that regardless of whether the indictment was signed or not, providing section 2 had been complied with, that the indictment would be valid, such as was the case in the present case.
14. We have had the advantage of reading a note from counsel who represented the applicant throughout these proceedings. It is apparent from the outset that the applicant had signed a Proof of Evidence dated 16 February 2017, which made it clear that he accepted having a full blown sexual relationship with the complainant which commenced when she was 8 years of age with kissing and cuddling, progressing to performing oral sex on the applicant when she was 12 years and continued thereafter with various sexual assaults

up to the age of 15.

15. Thereafter, on 16 February 2017 counsel had a conference with the applicant, following which he pleaded guilty to 18 of the counts on the original indictment including, as we have said, pleas to rape of a child under 13, which qualified him as an offender of particular concern under section 236A of the Criminal Justice Act 2003. What then took place is that during the period of adjournment, which was granted to the prosecution to consider the sufficiency of the pleas which had been entered by the applicant, it became apparent that some of the dates and statutory provisions which had been referred to in the original indictment were in error and the decision was made to seek to rectify these by way of amendment.
16. This is what took place on 12 April 2017 and having permitted the applicant to vacate his pleas of guilty to the original indictment, the Recorder permitted the prosecution's application to amend the indictment in accordance with its draft and thereafter, following a further conference with counsel, the applicant decided to plead guilty on all counts on the amended indictment and did so on further arraignment.
17. As we have already pointed out, this was an entirely permissible procedure to adopt and one that caused no unfairness to the applicant, such that it is unarguable that any abuse of process took place.
18. Moreover, having regard to the extensive admissions which the applicant had made in his proof of evidence and the manner in which he thereafter was dealt with by the court on 22 June 2017, there are no arguable grounds that the amended indictment was either duplicitous or lacking in sufficient particulars to afford the applicant knowledge of what was being alleged against him.
19. Accordingly, there is no merit in any of the applicant's grounds of appeal against

conviction and we would have refused permission to appeal if we had not already refused him the necessary extension of time.

20. Given the persistence of this application, notwithstanding the refusal by the single judge and the wholly unmeritorious nature of the applications, both for an extension of time and for renewed permission to appeal, we will make a loss of time order in this case of 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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