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IN THE COURT OF APPEAL

CRIMINAL DIVISION

CASE NO 201804282/C2

2021] EWCA Crim 409

Royal Courts of Justice

Strand

London

WC2A 2LL

Thursday 11 March 2021

LORD JUSTICE BEAN

MRS JUSTICE WHIPPLE DBE

MR JUSTICE CALVER

REGINA

V

MARK ANTHONY CASTON

Computer Aided Transcript of Epiq Europe Ltd,
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NON-COUNSEL APPLICATION

J U D G M E N T

1. MR JUSTICE CALVER: The provisions of the Sexual Offences (Amendment) Act 1992 apply to this appeal. Under those provisions where a sexual offence has been committed against a person no matter relating to that person shall, in that person's lifetime, be included in any publication if it is likely to lead members of the public to identify that person as the victim of that offence. Accordingly we anonymise the victims in this case.
2. On 2 July 2018, in the Crown Court at Cardiff, the applicant was convicted after a trial of rape (count 3), attempted rape (count 1) and four offences of sexual assault (counts 2, 4, 5 and 6). Counts 1 to 4 concerned sexual offending against the first victim (whom we shall call "victim A"), counts 5 and 6 concerned sexual offending against the second victim (whom we shall call "victim B").
3. On 20 July 2018 the applicant was sentenced in respect of victim A to 12 years' imprisonment on count 3 for rape, 4 years' imprisonment on count 1 for attempted rape to run concurrently to count 3, 8 months' imprisonment on count 2 to run concurrently to count 3 and 8 months' imprisonment on count 4, also to run concurrently to count 3. In respect of victim B he was sentenced to 12 months' imprisonment on each of counts 5 and 6 to run concurrently and a further 8 months' imprisonment on count 4 to run concurrently to counts 5 and 6. This made a total sentence of 13 years' imprisonment.
4. The applicant, who is not represented, renews his application before this Court for an extension of time of 74 days in which to apply for leave to appeal against his conviction and for a representation order after a refusal by the single judge, Bryan J.
5. So far as the circumstances of the offence are concerned the facts are set out in the Criminal Appeal Office summary and accordingly we do not repeat them here.
6. So far as the grounds of appeal are concerned the applicant seeks to argue two grounds of appeal. Firstly, he says that he was given poor advice by counsel at the time of the trial, in that he advised the applicant not to allow his partner, Michelle, to give evidence in support of his defence despite the fact that she had provided two statements (one signed one unsigned) which he says provided strong evidence in his defence, to the effect that Michelle was with the applicant on both occasions when the offences were said to have taken place against victim A and that they therefore did not occur. Secondly, the applicant says that a number of social media messages were shared between victim B, Tammy and their friends which showed that they had wrongfully colluded against him. However, only some of these messages were shown to the court and all of them should have been shown, he suggests. Further, he says that the prosecution failed to comply with defence requests to provide such messages from earlier dates. These messages would, he says, also have supported the defence case that they have wrongfully colluded against him in order to gain possession of the farm.
7. For the reasons given by Bryan J, with which we wholly agree, both of these grounds of appeal are entirely without merit. It also follows from the fact that the appeal is wholly without merit that there are no grounds for extending time in this case. The appeal is inexcusably late and the application, as we have said, has been brought 74 days out of time. We accordingly dismiss both the application for an extension of time and the application for permission to appeal.
8. Finally, section 29 of the Criminal Appeal Act 1968 empowers the Court to direct that time spent in custody pending the determination of an appeal should not count towards sentence. Such an order should be considered where an application is devoid of merit in

order to deter renewal of unmeritorious applications to the full court which waste precious time and resources. This is such a case. This appeal was, as we have said, wholly unmeritorious. In consequence, we direct that 28 days of time spent by the applicant in custody pending the determination of this appeal should not count towards his sentence.

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

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