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IN THE COURT OF APPEAL

CRIMINAL DIVISION

NEUTRAL CITATION NUMBER: [2021] EWCA Crim 657

CASE NO 20201446/A4

Royal Courts of Justice
Strand
London
WC2A 2LL

Tuesday 16 February 2021

Before:

LORD JUSTICE HOLROYDE
MR JUSTICE LAVENDER
MRS JUSTICE ELLENBOGEN DBE

REGINA
V
DAVID MARKS

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The Applicant appeared in person

J U D G M E N T

MR JUSTICE LAVENDER: This is a renewed application for an extension of the time limited for appealing against the sentence imposed on the applicant on 13 April 2018 in the Crown Court at Croydon following his conviction on 2 March 2018 on four counts of acting in breach of a restraining order, contrary to section 5(5) of the Protection from Harassment Act 1997.

The restraining order was made in December 2012 and restrained the applicant from contacting a man called David Mooney or posting derogatory remarks about him on social media. The applicant breached the order repeatedly before committing the breaches which gave rise to the four counts with which this appeal is concerned. On 8 September 2014 he was sentenced to six weeks' imprisonment, suspended for 12 months, for breach of the restraining order, having earlier been given a community order for that breach. On the same occasion he was given a consecutive suspended sentence of six weeks' imprisonment for another breach of the restraining order. On 9 January 2015 he was sentenced to 120 days' imprisonment for two further breaches of the restraining order. He was also convicted in 2015 of harassment and in 2016 of sending indecent or offensive messages. Those offences did not involve Mr Mooney.

Count 1 concerned litigation which the applicant pursued against Mr Mooney between July 2015 and October 2016, seeking an injunction against Mr Mooney. By their verdict, the jury found that this litigation was commenced simply in order to harass Mr Mooney. Counts 2 to 4 concerned three derogatory comments about Mr Mooney posted by the applicant on social media: two on Sound Cloud on 31 August 2016; and one on NMB Live on 26 September 2016.

There was a psychiatric report which stated that the applicant suffered from cerebral palsy and that he exaggerated both his singing prowess and physical health problems, but that these

were fantastical beliefs rather than psychotic beliefs. It appeared that he had been diagnosed with paranoid personality disorder and delusional disorder. He was treated with an anti-psychotic drug. His behaviour was described as secondary to a paranoid personality disorder. There was no evidence of a psychotic illness.

In his sentencing remarks, the judge expressly referred to the psychiatric report and set out its contents. The judge noted from Mr Mooney's victim personal statement that the applicant's actions were a very great drain on his life. The judge said that a longer sentence than had previously been imposed was required in order to mark the applicant's continuing conduct.

The proposed grounds of appeal are as follows:

- "1. The Judge did not take into account my mitigation and my defence and my health problems.
2. The Judge knew that the victim was a police informer and also knew that the victim was hijacking my accounts.
3. The Judge knew I was denied a fair trial as the police picked up my solicitor and threatened him on the first day of the trial. I was denied a solicitor and a defence."

The application for leave to appeal against sentence was received in the Criminal Appeal Office on 14 May 2020, which was 733 days out of time. In section 2 of his Form NG the applicant stated:

"The reasons why I didn't appeal was because I was told it was too late. Also this Covid virus has also delayed my appeal."

In refusing the extension of time, the single judge said as follows:

"I have considered the papers in your case and your grounds of appeal.

I refuse the lengthy extension which you require because I do not consider that there is any good reason for the delay in seeking permission to appeal against sentence. The fact that you had previously been told that you were too late is not a good reason. Nor does Covid-19 provide a good reason – an application for permission to appeal should have been made more than 2 years ago.

In any event, it is not arguable that the judge committed any error in sentencing you to concurrent sentences of 12 months' imprisonment, after trial, on each of the 4 counts. Such sentence was in accordance with the applicable sentencing guidelines. None of the matters which you have raised in your grounds of appeal gives rise to an argument that your sentence was manifestly excessive or otherwise inappropriate:

- The judge was aware of your health problems: he had read the psychiatrist's report (as have I), and had seen you over a number of days at the trial.
- The allegation that the victim, Mr. Mooney, was a police informer is unsubstantiated, and (even if true) would not warrant any reduction in your sentence.
- The court log shows that you were not denied representation by virtue of the conduct of the police on the first day of the trial. The trial started on 26 February, and you were represented on that day and on subsequent days, up to the afternoon of 1 March, by counsel. You then decided to represent yourself, and were in due course found guilty by the jury. The sentence was an appropriate one irrespective of whether you were being represented or were representing yourself, and in any event I have seen nothing to indicate that your trial was unfair."

We have considered all of the papers and have looked afresh at the merits of both the application for an extension of time and the proposed grounds of appeal. We have also considered carefully the submissions which the applicant made to us today, although it has to be said that they were largely concerned either with his conviction or with other irrelevant matters, including: (1) a submission that he wants to be able to cross-examine his former solicitors; (2) an allegation that the judge was a liar who had set him up; (3) the assertion that he is not a criminal; (4) complaints that he is being harassed and stalked; and (5) other complaints about the conduct of Mr Mooney.

Taking all of these matters into consideration, we have come to the clear conclusion that the single judge was right for the reasons which he gave to refuse the extension of time and to find that the proposed appeal had no merit. Accordingly, we refuse this application.

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

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