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IN THE COURT OF APPEAL
CRIMINAL DIVISION

CASE NO 202100966/B3
[2022] EWCA Crim 968



Royal Courts of Justice
Strand
London
WC2A 2LL

Wednesday 6 July 2022

Before:

LADY JUSTICE CARR DBE

MR JUSTICE FRASER

RECORDER OF WESTMINSTER
(HER HONOUR JUDGE DEBORAH TAYLOR)
(Sitting as a Judge of the High Court)

REGINA
V
FLORIN BOGDAN SCORCEA

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NON-COUNSEL APPLICATION

J U D G M E N T

MR JUSTICE FRASER:

1. This is a renewed application for permission to appeal against conviction following refusal by the single judge. The applicant also requires an extension of time in which to bring an appeal of 160 days, and a further extension of time in which to renew his application for permission to appeal of 202 days. He was notified of the refusal by the single judge on 11 August 2021 and the form seeking to renew that application was only returned on 6 March 2022.
2. On 30 September 2020, following a trial in the Crown Court at Liverpool before HHJ Swinnerton and a jury, the applicant was convicted of four offences. Two were assault by beating contrary to section 39 of the Criminal Justice Act 1988. For these he was sentenced to 1 month and 2 months of imprisonment respectively, those terms to run concurrently. He was also convicted of one count of making a threat to kill contrary to section 16 of the Offences Against the Person Act 1861 and one count of blackmail contrary to section 21(1) of the Theft Act 1968. For the threat to kill, which was treated as the lead offence by the judge in accordance with the Totality Guideline, he received an extended sentence of 8 years with the custodial element being 5 years together with an extended licence period of 3 years. The blackmail offence attracted a concurrent determinate sentence of 4 years.
3. It is unnecessary to recite the facts in any great detail. The applicant and two others lived in shared accommodation. Due to difficulties that arose there, there were altercations between them which led to the applicant reacting extremely aggressively, making threats, including those involving a threatened attack with a knife, threat to kill and a threat to rape the 14-year-old daughter of one of the other two men. The police were called and the applicant was charged and tried. The applicant is a Romanian national and there was an interpreter at the trial although the applicant in his evidence confirmed that he understood English.
4. The jury were provided with a written Route to Verdict which included the issues that arose on the different counts. The legal directions given to the jury were entirely correct. The applicant's trial counsel advised that there were no grounds upon which the applicant could appeal. The applicant therefore drew up his own Form NG.
5. The grounds which he included are as follows:
 - Ground 1. That the applicant was not allowed to use his own language (Romanian) at trial.
 - Ground 2. There was evidence on the applicant's mobile phone. The applicant had told the police about this but they did not investigate. The applicant did not tell his solicitor not to disclose recordings and his solicitor was incompetent.
 - Ground 3. That the applicant's solicitors presented one of the recordings as being made on 16 March 2020 when it was actually made on 17 March 2020.
 - Ground 4. The recordings were not interpreted but they were crucial to the applicant's case.
 - Ground 5. There was a translation of recording 1 but it was not accurate. In the recording the two complainants were speaking about money that they owed the applicant.
 - Ground 6. The solicitor did not call the applicant's witness. The applicant also gave his solicitor papers about his release from prison in Spain and his behaviour in the UK.
 - Ground 7. That the applicant had been diagnosed with serious mental health issues and

- his representative did not bring these issues to the attention of the trial judge.
6. We have the benefits of a Respondent's Notice from the prosecution. A waiver form was signed by the applicant due to nature of the complaints in these grounds about the applicant's legal team at the trial and we have the benefit of their response.
 7. We agree with the single judge that these complaints against counsel at the trial are groundless and also that the legal team at trial represented him to a high standard. This included but was not limited to defeating a bad character application mounted by the prosecution that sought to put in evidence before the jury in this trial his previous conviction for attempted murder in Spain. As a single example: there were agreed translations of phone messages before the jury and they were agreed by interpreters appearing and instructed both for the defence and for the prosecution as being correct.
 8. The full grounds of appeal have been considered by the single judge and refused. His reasons are comprehensive and carefully detailed and he has carefully explained both why there is no arguable basis for any of the grounds but also that the application was so lacking any arguable merit that a loss of time order should be considered by the Court were the applications to be renewed.
 9. We do not repeat those reasons here but they are set out in the Criminal Appeal Office summary at pages 10 through to 12:

"I have considered the appellant's papers and grounds of appeal. No good reason has been given as to why the Court should grant an extension of time and in any event the appeal is without merit. There is no argument made which casts doubt upon the safety of the appellant's conviction. I have considered the appellant's solicitors' and counsel's helpful notes (and the appellant's response of 4 June 2021) as well as Counsel's original (and clearly correct) advice on merits of appeal against sentence and conviction. Although the appellant's grounds are confused and difficult to follow, it is clear when one considers the proceedings as a whole that there is no arguable error and the trial was fair and the appellant received excellent representation. I will address the specific grounds below.

Ground 1 - Use of Romanian Language

The appellant claims he was denied a fair trial because he was not able to use his own language. At the start of his evidence in chief the appellant was asked if he understood English and said he did. A court-appointed interpreter was present throughout his evidence (and indeed the trial) to assist him if required. He had access to an interpreter throughout the trial and there was no unfairness to him in the conduct of the trial in English. At no point did he indicate an inability to follow matters to his legal representatives.

Ground 2 - Evidence from Phone

The appellant suggests that there is evidence from his phone that would have supported his case, and that his solicitor has lied about this. At the PTPH on 4th May 2020 the defence indicated that recordings of the incident from Mr Scorcea's phone were available and that the Crown may not wish to proceed with the case once the contents became available. At a hearing on 12th June

2020 the defence were ordered to serve any recordings, and translations, on which they intended to rely by 29th July 2020. For reasons explained by second counsel, Mr Lamb, the defence subsequently indicated to the prosecution that they would not be relying on any such evidence (based on advice from first counsel). At what should have been the first day of trial on 14th September 2020, newly instructed counsel Mr Lamb took further instructions from Mr Scorcea who said he that he did now want to rely on the recordings. Copies of the recordings were then made available to the prosecution, along with the translation obtained by the defence. The trial was then adjourned until 28th September. Mr Lamb's note to the Court also makes clear that he acted throughout on the appellant's instructions.

Ground 3 - Whether the recording was made on 16th or 17th March 2020
In his evidence in chief Mr Scorcea referred to one recording having been made on 16th March and said the other recording related to the incident on the 17th March. In any event, the jury were able to listen to both recordings, and to consider the evidence of Mr Scorcea, Mr Gancef and Mr Putan about what was said and done on both dates. This ground goes nowhere.

Ground 4 - the interpretation of the recording presented to the court

The appellant takes issue with the translation of the recording that was put before the jury. It seems that the dispute surrounds the translation of a Romanian phrase used by Mr Scorcea in a particular recording - the words were directed at Alexandru Gancef. In Romanian Mr Scorcea says, during an argument about money said to have been owed to him by Mr Gancef: 'Daca nu te omor din bataie vineri, sa ma sculpi in gura. Ca decizia nu o iei tu, ma!'. In the original translation provided by the defence, this was translated as: 'If I won't smack the fuck out of you on Friday, then you can spit in my mouth! It's not up to you to decide bro!'. A translation obtained by the police translated this phrase as: 'You can spit in my mouth if I won't kill you by beating on Friday. As you won't be making the decision.' There were two interpreters present at court when the trial began - one to assist Mr Scorcea and one to assist the witnesses. They were both asked to look at the Romanian transcript of the recording and to translate it. One interpreter said it meant: 'Spit me in mouth if I don't give you a serious beating on Friday. You don't take any decision.' The other interpreter said it translated as: 'If I won't beat you up to death on Friday you can spit me in the mouth, Cause it's not your decision.' They agreed that the Romanian word 'omor' referred to murder/death. The jury were given a transcript that included the original Romanian followed by this explanation: 'A literal translation of this is 'If I won't beat you to death on Friday you can spit me in the mouth. Cause it's not your decision.' Translated idiomatically this would be: 'Spit me in the mouth if I don't give you a serious beating on Friday. You don't take any decisions.'" This form of words was agreed with the defence. Alexandru Gancef said in evidence that he interpreted this particular threat as a threat to seriously beat

him up. He said that a further threat - involving killing - was made later on in the hallway when Mr Scorcea was not recording the conversation, and was carrying a machete and a knife. In his summing up, the judge said the following about this aspect of the evidence: 'He (Mr Gancef) was begging him (Mr Scorcea) to leave him alone, and he agreed in cross examination that the threats in the kitchen were more about beating him up rather than killing him, and you will remember there is a section in the transcript where the literal word is 'kill', but the sense of the idiom is 'severely beat.'" (Transcript of summing up, Page 15C). There is no arguable error or unfairness.

Ground 5: The accuracy of the translation Addressed above.

Ground 6: Defence solicitor did not call a witness

The appellant argues that his solicitor did not call a witness. However he does not identify which witness he says his solicitor failed to call. It may be a character witness and Defence counsel, Mr Lamb, has explained his advice to the appellant about the inadvisability of calling character evidence given Mr Scorcea's previous conviction in Spain for attempted murder.

Ground 7: Serious mental health issues

The appellant submits that he has serious mental health issues and that this was not brought to the attention of the judge or the jury. It was a matter for the defence legal team and the defendant to raise any concerns about Mr Scorcea's mental health before the trial. Mr Scorcea was clearly able to give instructions to his counsel, to follow proceedings and to give evidence on his own behalf. As his Counsel has explained to this Court: 'I was not informed of any formal diagnosis of mental health issues when I assumed conduct of the trial after the usual stage dates had been met. The appellant did at times make threats to dispense with the services of myself and those instructing me but never carried them out...'"

10. We entirely agree with the single judge. This application is wholly without merit.

11. The Vice-President of the Court of Appeal (Criminal Division) observed in R v Gray [2014] EWCA Crim 2372:

“The only means that the Court has of discouraging unmeritorious applications which waste precious time and resources is by using the powers given to us by Parliament in the Criminal Appeal Act 1968 and the Prosecution of Offences Act 1985.”

12. The Full Court has scarce resources. The continuation and renewal of grounds of appeal and applications that are hopeless uses those resources on unmeritorious hearings that cause delay and expense. The delay affects other users of the court including meritorious appellants, particularly where, as here, detailed reasons are given. It is incumbent upon applicants properly to reflect upon whether their applications have any arguable merit whatsoever. This application does not. We consider that the lack of any proper explanation for any of the considerable delays, including the one seeking to renew the application, would of itself justify an order for a loss of time. However, when put with what are frankly hopeless grounds of appeal, this application can be seen to be

completely lacking in any substance and the argument that the Court should adopt the procedure set out in R v Gray becomes a compelling one.

- 13.** We therefore dismiss the application, refuse the two applications for extensions of time and order loss of time in the period of 56 days which will not count towards the applicant's 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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