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Neutral Citation No. [2023] EWCA Crim 1359

IN THE COURT OF APPEAL
CRIMINAL DIVISION

Case No: 2022/02049/B4, 2022/01183/B4



Royal Courts of Justice
The Strand
London
WC2A 2LL

Tuesday 7th November 2023

B e f o r e:

LORD JUSTICE DINGEMANS

MR JUSTICE JAY

MR JUSTICE KERR

R E X

- v -

LYNNE HENRY

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Non-Counsel Application

J U D G M E N T

LORD JUSTICE DINGEMANS:

Introduction

1. The applicant renews her applications for leave to appeal against both conviction and sentence, and for an extension of time in which to make those renewals, after refusal by the single judge.
2. The applicant is a 68 year old woman who was, before her conviction in relation to this matter, of previous good character. On 25th January 2022, in the Crown Court at Manchester, she pleaded guilty to the fraudulent evasion of income tax. On 8th March 2022 she was sentenced to eight months' imprisonment, suspended for 12 months, with a requirement to undertake 80 hours of unpaid work.
3. There is a need for a short extension of time because of a delay in lodging the application for renewal. We confirm that in the light of the reasons for the delay, if there are arguable grounds to appeal, we would grant an extension of time because it would then be in the interests of justice to hear the appeal.

The factual circumstances

4. The applicant was the owner of four flats in Manchester and a further flat in London, all of which were let to paying tenants. Between 2012 and 2018, she received £198,000 odd in income from the properties. The prosecution case was that HMRC records showed that, during the relevant period, she had not registered for self-assessment, nor PAYE. It followed that no tax returns had been filed in relation to the rental income and no income tax had been paid.
5. The applicant attended a voluntary interview with HMRC on 4th November 2019, but answered "No comment" to all questions. On 19th December 2019 HMRC received a letter from her accountant confirming that rental income had been received from the properties and indicating that the applicant wished to bring her tax affairs up to date. HMRC set up a "SAFE account" into which the outstanding income tax could be paid, but no money was received until 22nd January 2021. On 3rd February 2021, the applicant was charged with

failing to pay £24,446.60 in income tax. Between January and May 2021 four payments were made by the applicant into the SAFE account, which totalled £8,043.

The sentence

6. After pleading guilty, a pre-sentence report was obtained. The applicant stated that she did not intend to let properties out to tenants. At the time of the report she stated that her income was just under £4,000 from letting the rental properties, but one property was still mortgaged, for which she paid just under £1,000 per month. The remainder of the income was put back into refurbishing them, and so she had made little profit. She did not know that tax would be owed and she described herself as naïve. She said that she had paid over £8,000 into the account set up by HMRC and as far as she was concerned, the debt had been repaid. The author of the pre-sentence report identified no destabilising factors in relation to her circumstances, and recommended a 12 month community order with unpaid work.

7. The judge sentenced the applicant on the basis that she had avoided £6,848.20 in income tax. He applied the guidelines and adopted a starting point of 15 months' imprisonment, which he reduced to eight months to reflect mitigation and the applicant's age and guilty plea, and he suspended that sentence.

No arguable ground for leave to appeal against conviction

8. The applicant renews her application for leave to appeal against both conviction and sentence on a number of grounds. We confirm that we, like the single judge, can see no arguable grounds of appeal against conviction or sentence.

9. As to the first proposed ground of appeal for leave to appeal against conviction, that the applicant had been bullied into pleading guilty on a false premise, we note that she had indicated a willingness to plead guilty on a basis that the loss was £6,848.20. This was not acceptable to the prosecution, who maintained that the correct figure was just over £24,000. The judge expressed a view that the difference would not make any material difference to sentence, and he invited the applicant to enter a written basis of plea, which she did. The prosecution did not accept that, but in the end the judge sentenced on that basis. There is

nothing to suggest that the applicant's plea of guilty was anything other than informed and voluntary.

10. The second and third proposed grounds of appeal relate to what was said to be a disclosure of material relating to where £168,000, which had been paid into one of her bank accounts, had come from. It seems that these grounds arise because the applicant was asked questions in relation to money laundering in her interview under caution. However, that payment never formed part of the evidence against her in relation to the charge on the indictment, and it appears from trial counsel's response, served after a waiver of privilege had been provided, that this sum has concerned the applicant for some time, but it was not a matter which could be explained by the prosecution. It played no part in calculations in respect of unpaid tax. There is, therefore, no basis on which to find any arguable ground of appeal against conviction in relation to that matter.

No arguable ground for appeal against sentence

11. The applicant renews her application for leave to appeal against sentence on the basis that the prosecution had falsely stated a number of matters in the opening of the case: for example, that she had made no payments to HMRC SAFE account. In fact, what the prosecution should have said was that she had made no payments, apart from the four payments between January and May, to which we have already referred. That was made clear in the prosecution opening note, and it seems that the judge was fully aware of all the relevant circumstances.

12. Complaint is made that the applicant had, in fact, as a matter of history been registered for PAYE, but that was a long time ago and was not material to anything that occurred before the judge.

13. Complaint is made that prosecution counsel had dropped his voice so that the applicant could not hear. There is nothing to support this allegation, and the applicant was represented at the hearing.

14. Complaint is made that HMRC reported as aggravating factors the failure to pay amounts

identified as due by the applicant's accountant and to respond to warnings, and that there had been no earlier warning that that would be said in the sentencing hearing. Those were aggravating factors. There was no need to identify them in advance of the hearing. The whole point of the hearing was to address the aggravating and mitigating factors, and the judge rightly took them into account.

15. In all those circumstances we can discern no arguable ground of appeal against either conviction or sentence. We therefore refuse the application for the extension of time and therefore refuse the application for leave to appeal.

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

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