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IN THE COURT OF APPEAL

CRIMINAL DIVISION

**[2021] EWCA Crim 270**



No. 201903214 B3

Royal Courts of Justice

Thursday, 4 February 2021

Before:

LADY JUSTICE ANDREWS  
MR JUSTICE SPENCER  
HER HONOUR JUDGE AUBREY QC

REGINA  
V  
PHILIP RYLE

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Non-counsel application

**J U D G M E N T**

MR JUSTICE SPENCER:

- 1 This is a renewed application for a lengthy extension of time in which to apply for leave to appeal against conviction, following refusal by the single judge.
- 2 On 17 September 2018 in the Crown Court at Bristol, the applicant stood trial on an indictment charging a single offence of cheating the public revenue. He was represented by very experienced counsel. After the jury was sworn, but before the case was opened or any evidence called, the applicant sought a Goodyear indication on sentence from the judge. The required procedure was followed immaculately. The next day, 18 September, the judge gave the indication sought, after which the applicant changed his plea to guilty. The case was adjourned for sentence.
- 3 On 28 September 2018 the applicant was sentenced by the trial judge, HHJ Longman, to a term of three years, eight months' imprisonment. There is no appeal against sentence. The applicant has been released on home detention curfew.
- 4 The applicant now appeals against conviction despite his guilty plea on the basis that he was not guilty of the charge but felt compelled to plead guilty "in circumstances of extreme duress brought about by the absolute failure of the prosecution to meet its disclosure obligations". He complains of other shortcomings and circumstances which contributed to the pressure he felt under to plead guilty. He makes no complaint against his counsel.
- 5 After submitting a proliferation of documents, the applicant was directed by the registrar to provide concise grounds of appeal in a single document. He did so in a document dated 5 September 2020, which we have considered carefully, as did the single judge.
- 6 The extension of time required to bring the appeal is 315 days. The applicant says the reason for the delay is that he was in prison serving his sentence and was trying to gather fresh evidence. Like the single judge, we have considered whether there is any arguable merit in the proposed appeal, despite the long delay.

- 7 The applicant is unrepresented. The matter is listed before us as a non-counsel application. The applicant indicated his wish to attend the hearing and make oral submissions, and on the direction of the court he was informed that although he had no entitlement to address the court on a renewed application, we would be prepared to hear him briefly. In the event, the applicant has chosen not to attend, and informed the court by email that he would not be attending. We have read all the relevant material placed before us, including what might be described as the applicant's speaking note had he attended the hearing, and another document relating to costs in some related judicial review proceedings.
- 8 We do not propose to rehearse the long and complex background of the case in any detail. The sole issue is whether the applicant has put forward an arguable case that his conviction was unsafe despite his guilty plea. As the single judge explained in giving full reasons for refusing leave (and the extension required), an appeal in such circumstances could only succeed if the applicant was put under improper pressure to plead guilty or his plea was tendered on erroneous advice as a result of which he was deprived of a defence which would quite probably have succeeded.
- 9 Developing this a little further, it is well established that a defendant who has admitted facts which constitute an offence by an unambiguous and deliberately intended plea of guilty cannot ordinary appeal against conviction, since there is nothing unsafe about a conviction based on his own voluntary confession in open court: see *R v Asiedu* [2015] EWCA Crim 714, [2015] 2 Cr App R 8.
- 10 We have read carefully the transcript of the proceedings in the Crown Court on 17 September 2018, the first day of the trial, when the applicant's counsel complained about shortcomings in disclosure, but later that day asked the judge whether he would be prepared to give a Goodyear indication on sentence on a proposed basis of plea. To put this in context, we need summarise only very briefly the prosecution case and the defendant's case

had the trial proceeded.

- 11 The case concerned the submission of VAT returns by companies of which the applicant was the sole director. Rare Stamps Associates Ltd (RSA) purchased stamps at auction and then sold them to UK Philatelics Ltd (UKP). RSA showed the sales on its VAT returns, but did not actually pay any of the VAT due to Her Majesty's Revenue and Customs. RSA was wound up in August 2014, owing HMRC over £480,000.
- 12 The particulars of offence in the count allege that between 1 January 2013 and 31 August 2015 the applicant cheated the public revenue by dishonestly submitting VAT returns intending to cause a loss to HMRC of VAT and make a personal gain through RSA Limited and UKP Limited and another company as the sole director of those companies by fraudulently claiming VAT repayments of £553,030.57 without paying that VAT to HMRC.
- 13 The prosecution case was that the businesses were a sham and a vehicle for fraud in that he would sell collectable used stamps at a loss in order to make dishonest claims for VAT which he had no intention of repaying. The prosecution case was that his behaviour was fraudulent from the outset and that his dishonest gain was in the region of £550,000. The defendant's case was that the businesses were not a sham, the companies were trading profitably and not operating at a markdown. The defence were still seeking further disclosure of business records of the satellite companies that would have helped establish that the businesses were not a sham.
- 14 The compromise in the defendant's basis of plea was that although he maintained his denial that the businesses were a sham, he accepted that there had come a point when behaviour became fraudulent. Quoting from the basis of plea at paragraphs 5 and 6:

"The defendant would accept by his plea that upon the intervention of HMRC in the VAT affairs of RSA in early 2014, it became apparent that the proceeds of sales made by UKP and its satellites were insufficient to satisfy RSA's VAT debt to HMRC. The defendant would accept by his

plea that in those circumstances the submission of further UKP VAT returns amounts to the offence charged. The net value of VAT thereby obtained dishonestly was approximately £300,000."

15 It was on in basis that the judge gave his indication that the maximum sentence on a guilty plea would be four years' imprisonment, applying the relevant Sentencing Council Guideline.

16 In relation to what happened at court, following waiver of privilege trial counsel, Mr Maunder, has provided a full and detailed account both in an advice dated 28 September 2018, the day of sentence, and in his observations dated 21 October 2019 on the application for leave to appeal against conviction. He confirms that the applicant gave written instructions that he wished to plead guilty on the basis which had been put forward to the judge:

"After giving full consideration to the judge's indication, I have decided that I do wish to plead guilty to the charge. I understand that by pleading guilty I am admitting to the court that I am guilty of dishonestly cheating the Revenue. I understand that this is not a decision that I can reverse. I have received such advice as I need in making this decision, but I make it entirely of my own free will."

It was in these circumstances that the applicant entered his guilty plea by which he unequivocally and unambiguously admitted the fraudulent conduct set out in the particulars of offence we have quoted.

17 Like the single judge, we do not propose to address any arguments the applicant has advanced based on the proposition that he was not in fact guilty at all. The admitted fact that he was guilty has been settled by his guilty plea, unless there is some proper reason to go behind that plea. There is not.

18 In his detailed reasons for refusing leave, the single judge addressed each of the factors said by the applicant to have contributed to the pressure he felt under to plead guilty. We adopt all those reasons without repeating them. They are well known to the applicant. He has not

taken issue with those reasons in any further written submissions. The single judge accepted that the applicant found himself in a difficult position, but it was largely of the applicant's own making. He had failed to serve a defence statement in good time despite an earlier judicial direction which meant that the disclosure process had not been completed before the start of the trial. Had the applicant not chosen to explore and pursue the option of pleading guilty, the trial would have proceeded and the disclosure issues would have had to be addressed. Instead, the applicant decided to cut his losses and take the best deal he could. He knew that it was not his only option, but it was the option he chose. The pressure he was under arose from the fact that he was being prosecuted on significant evidence and had failed properly to prepare his defence, in particular by failing to serve a defence statement even after being granted extra time to do so. He also rightly feared that his previous convictions might go before the jury.

19 As the single judge put it:

“None of this amounted to improper pressure. All defendants in criminal cases face difficult decisions and are under pressure. The procedural safeguards and the Goodyear process are designed to ensure that it is used in a way that is fair to defendants, and that is what occurred in this case.”

We entirely agree with the single judge's analysis.

20 In his most recent document, the speaking note to which we have referred, which was emailed to the court on 1 February, the applicant maintains that the non-disclosure of financial records was a deliberate act by HMRC to create improper pressure to secure a guilty plea. He says that this is borne out by the submissions he made in relation to the assessment of costs awarded against him in linked judicial review proceedings. He has provided us with those submissions. He says that in the confiscation proceedings flowing from his conviction the prosecution have served accounting records which should have been served before the trial and which would have afforded him a defence.

21 None of this additional material assists him in his application. For the reasons we have

already explained, his unequivocal confession of cheating the Revenue, albeit on a restricted basis, was made once and for all by his guilty plea. He had the benefit of being sentenced on that restricted basis, thereby avoiding the risk of being convicted and sentenced for the full fraud alleged by the prosecution. He cannot now go behind his guilty plea.

- 22 We are therefore quite satisfied that there is no arguable merit in this appeal. We refuse leave to appeal against conviction and we refuse the extension of time.
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This transcript has been approved by the Judge.