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IN THE COURT OF APPEAL

CRIMINAL DIVISION

ON APPEAL FROM THE CROWN COURT AT [LOCATION]  
HER HONOUR JUDGE SMALLER T20217100

CASE NO 202302713/B4

Neutral Citation No: [2024] EWCA Crim 1187

Royal Courts of Justice  
Strand  
London  
WC2A 2LL

Wednesday 25 September 2024

Before:

LORD JUSTICE STUART-SMITH

MR JUSTICE DOVE

MR JUSTICE MARTIN SPENCER

REX

V

“DM”

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NON-COUNSEL APPLICATION

J U D G M E N T

MR JUSTICE MARTIN SPENCER:

1. The provisions of the Sexual Offences (Amendment) Act 1992 apply to this offence and to this judgment, whereby where a sexual offence has been committed against a person, no matter relating to that person shall, during 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. This prohibition applies unless waived or lifted in accordance with section 3 of the Act.
2. On 27 June 2022, in the Crown Court at Croydon before HHJ Smaller and a jury, the applicant (then aged 62) was convicted of the following 12 offences: six offences of indecent assault, contrary to section 14(1) of the Sexual Offences Act 1956, of which one was a sample count and another was a multiple incident count; three offences of rape, contrary to section 1(1) of the Sexual Offences Act 1956, of which two were sample counts and the other was a multiple incident count; one offence of rape, contrary to section 1(1) of the Sexual Offences Act 2003 (a sample count) and two offences of sexual assault, contrary to section 3 of the Sexual Offences Act 2003. He was sentenced to a special custodial sentence of 19 years for an offender of particular concern, pursuant to section 278 of the Sentencing Act 2020, comprising a custodial term of 18 years and a further 1 year extended licence period.
3. The applicant now renews his application for leave to appeal against his conviction and an extension of time to do so, leave having been refused by the single judge. He further seeks leave to adduce fresh evidence, pursuant to section 23 of the Criminal Appeal Act 1968.

4. This case concerns alleged sexual abuse between November 1996 and November 2004 of “PM” (the complainant), aged 9 to 16, by her father (the applicant). The prosecution case was that following the complainant’s mother leaving the family home, due to mental health issues, the applicant became the sole carer to the complainant and her brother. He sexually touched her, forced her to masturbate him and penetrated her vagina with his finger and his penis. The abuse ended when he remarried.

### *Extension of time*

5. Following his conviction, the applicant was given a written advice on appeal against conviction by his counsel at trial, Mr Max Hardy. Mr Hardy concluded that there was no arguable ground of appeal against conviction. Importantly, Mr Hardy also advised the applicant that the time for lodging an application for leave to appeal against conviction is 28 days from conviction and on the procedure should an application be made. This advice was dated 3 July 2020 and therefore left a further 3 weeks for an application to be made in time. Despite this, the application was not made until 9 August 2023 (370 days out of time).
6. In his application, the applicant gives the following reason for the delay:

“My solicitor told me he will do an appeal for me. It will take time and don’t worry about the 28 days deadline; we can still appeal after that. Later, he told me it would be £25,000 to £30,000, which I can’t afford. I did try to look for another solicitor. They also are asking for larger sum of money.”

He says that he then learned that he could make an appeal by himself from a Criminal Cases Review Commission booklet in the prison library.

7. Mr Hardy also represented the applicant at his sentencing hearing on 11 October 2022. In an addendum advice (dated 23 November 2022), Mr Hardy records that he and his instructing solicitors saw the applicant in conference following the sentencing hearing, when he advised that there was no arguable ground of appeal against sentence. We consider it highly unlikely, in those circumstances, that the applicant would have been advised in the terms indicated above by the applicant. In any event, in our judgment, the reasons given by the applicant for the delay do not justify the length of the delay and the extension of time sought is refused.

***The merits of the appeal***

8. Whilst the refusal to extend time alone is sufficient to deal with this application, we nevertheless consider, briefly, the merits of the application. The applicant has put forward eight grounds of appeal relating to:
- (i) His wish to adduce fresh evidence.
  - (ii) Complaint as to the dates of the alleged offence specified in the indictment.
  - (iii) Inconsistency between the evidence of the complainant (PM) and another witness, “HJ”.
  - (iv) The treatment of a witness as being vulnerable and needing special measures when, three days after the trial she was spotted at the tram stop alone and not needing assistance.
  - (v) Inconsistencies within the statements of PM.
  - (vi) The fact that two draft statements taken by Detective Constable Morely, which were in the bundle for Family Court proceedings, were not in the court bundle for the criminal proceedings with one of PM’s statements having changes from the one in the Family

Court proceedings.

(vii) Inconsistencies between the evidence of another witness (“JM”) in the Family Court proceedings and the criminal proceedings and

(viii) Inadequate legal representation.

9. These points were considered by the single judge who considered that they had no merit.

We agree and refer to the decision of the single judge for his reasons which need not be repeated. He concluded that there is nothing in the grounds of appeal such as to lead to any doubt as to the safety of the convictions.

10. Since the decision of the single judge, the applicant has submitted further material:

(i) The applicant’s response to the decision of the single judge, dated 5 August 2024.

(ii) A bundle of photographs accompanying a letter of 13 August 2024.

(iii) A letter dated 15 August 2024, describing the applicant’s relationship with his first wife (PM’s mother).

(iv) A further letter dated 20 August 2024, adding information relating to one of the photographs that was sent on 13 August.

11. In our judgment, there is nothing in any of this additional material to cause us to doubt the correctness of the single judge’s decision. Much of the applicant’s critique addresses the alleged inadequacy of his legal representation. As remarked in the Respondent’s Notice, the applicant’s trial counsel, Mr Hardy, was very experienced and highly competent and gave the applicant a high level of representation at trial. The applicant’s solicitors have fully addressed his complaints in their letter of 7 December 2023, and we

can see no merit in those complaints. Otherwise, the applicant, in his letter of 5 August 2024, largely repeats the points previously made and which were given full consideration by the single judge. In addition, the applicant disputes whether he was fired from his job or made redundant but we consider this to be a peripheral matter.

12. In relation to the application to adduce fresh evidence, despite the applicant's arguments and reasons, we do not consider that there is a reasonable explanation for the failure to adduce the evidence in the proceedings before the Crown Court within the meaning of section 23(2)(d) of the Criminal Appeal Act 1968. The witnesses were known to the applicant before the trial. In any event, we do not consider that any potential evidence from them could conceivably cause us to doubt the safety of these convictions which, in the final analysis, rested upon the credibility of the complainant, whose evidence the jury clearly accepted, rejecting the evidence of the applicant. The legislation gives this Court a discretion, if the Court thinks it necessary or expedient in the interests of justice, to admit fresh evidence. For the reasons given, we decline to exercise our discretion to allow the additional evidence upon which the applicant seeks to rely.

13. For the above reasons, the application is refused.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the

proceedings or part thereof.

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