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NEUTRAL CITATION NO: [2024] EWCA Crim 1217

IN THE COURT OF APPEAL

CRIMINAL DIVISION

ON APPEAL FROM THE CROWN COURT AT DURHAM

HHJ RACHIM SINGH T20180196

CASE NO 202400177/B1

Royal Courts of Justice  
Strand  
London  
WC2A 2LL  
Thursday 3 October 2024

Before:

LORD JUSTICE WARBY

MR JUSTICE MARTIN SPENCER

HIS HONOUR JUDGE DREW KC  
(Sitting as a Judge of the CACD)

REX

V

MALCOLM TEASDALE

Computer Aided Transcript of Epiq Europe Ltd,  
Lower Ground, 46 Chancery Lane, London WC2A 1JE  
Tel No: 020 7404 1400; Email: rcj@epiqglobal.co.uk (Official Shorthand Writers to the Court)

NON-COUNSEL APPLICATION

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

MR JUSTIC MARTIN SPENCER:

1. By this application, the applicant, Malcolm Teasdale, renews his application for leave to appeal against the Order of HHJ Singh dated 18 December 2023 for the appointment of an Enforcement Receiver, permission having been refused by Steyn J. Notice of Steyn J's refusal was sent to the applicant's last known address on 22 May 2024 and was returned. It would appear that he had been evicted from that address on 7 May 2024. On 17 June 2024, the applicant contacted the Criminal Appeal Office stating that he had not received the single judge's decision because he had moved, and he provided his new address. The single judge's decision was sent to the new address and the notice of renewal was returned on 27 June 2024. Although the applicant should clearly have informed the Criminal Appeal Office as soon as he moved and not waited over a month, the delay is not significant, and we grant an extension of time for the applicant to make this renewed application.
2. The background is as follows. In 2017, the applicant was charged with an offence of concealing criminal property under section 327(1)(e) of the Proceeds of Crime Act 2002 and an offence of converting criminal property under section 327(1)(c) of the 2002 Act. In January 2017, a large number of items of stolen property had been recovered from the applicant's storage facility. The applicant had been selling the stolen items through his daughter's eBay account because he had been banned from using eBay himself. Between 4 November 2013 and 6 January 2017, items with a total value of £360,000 were offered for sale on eBay and between a similar period the PayPal account associated with the eBay account paid £320,000 into the applicant's Lloyds Bank account. During that period £285,000 was withdrawn from the account. The property had been stolen from a number

of different venues in the Northeast and Yorkshire, lorries had been targeted and high value goods taken and placed in the applicant's hands for sale. On 25 February 2019, he pleaded guilty to those two offences and on 24 May 2019 he was sentenced to 24 months' imprisonment suspended for 24 months on each count, concurrent. The sentencing judge also imposed three requirements, namely a 6-month curfew, an order to carry out 140 hours of unpaid work and a rehabilitation activity.

3. On 20 July 2020, confiscation proceedings were concluded on an agreed basis, whereby HHJ Singh made a Confiscation Order pursuant to section 6 of the Proceeds of Crime Act 2002. The value of the benefit was £250,503.30, the available and realisable amount was £200,103.17. The applicant was ordered to pay the realisable amount within 3 months or in default to serve 30 months' imprisonment.
4. On 10 June 2021, the applicant's renewed application for permission to appeal against the Confiscation Order was refused by the Full Court. On that occasion the Court noted that the applicant had recently lodged an application for an extension of time to apply for permission to appeal his conviction. That application came before the Full Court on 9 December 2021 and was also refused.
5. On 9 March 2023, the default sentence of 30 months' imprisonment was activated.
6. As at 3 October 2023, £191,433.90 of the Order remained unpaid, which included interest of £35,197.73 accumulating at 8% per annum. An application for the appointment of an Enforcement Receiver, pursuant to section 50(2) of the Proceeds of Crime Act 2002 came

before HHJ Singh on 18 December 2023. That application was supported by a witness statement dated 3 October 2023 from a financial investigator, Ms Emma Fuller. She gave evidence that the defendant retained assets as follows:

(i) A 50% beneficial interest in 2 properties in Seaham, Co Durham.

(ii) A 100% beneficial interest in a Lloyds Bank account in the name of the applicant and encompassing the proceeds/encashment of a pension with the Mineworkers Pension Scheme. The pension was valued at the confiscation hearing in the sum of £53,419.13. In addition, the sum of £15,020.85 had also been paid to this account from the Mineworkers Pension Scheme representing arrears that were owed to the applicant at the point of realisation.

(iv) A 100% interest in 42 Tyman PLC shares currently valued at 267p per share. The shares were valued at the confiscation hearing in the sum of £72.66 (175p per share).

(v) A 100% interest BSD Crown Ltd valued at the confiscation hearing in the sum of £7,334.64 (24p per share).

Ms Fuller further submitted that the statutory conditions for appointment of an Enforcement Receiver pursuant to section 50 of POCA had been met in respect of the applicant, namely:

- a. A Confiscation Order had been made;
- b. The Confiscation Order had not been satisfied; and
- c. The Confiscation Order was not subject to appeal.

7. On 18 December 2023, when the applicant represented himself, HHJ Singh made the Order for the appointment of an Enforcement Receiver. He noted that the Court of Appeal had heard applications by the applicant on two occasions and had ruled against the applicant. The learned judge stated that there was no valid appeal against the conviction or the Confiscation Order and that he would not go behind the orders of the Court of Appeal. He considered that the application before him was proportionate and necessary to ensure that the Order of the court was complied with. It is against that Order that the applicant now seeks permission to appeal.
  
8. Seeking leave to appeal, the applicant relied on five grounds of appeal:
  - (i) The Judge failed to respond to a legal issue that rendered his ruling defective.
  - (ii) A point of law was ignored causing significant procedural error.
  - (iii) Fresh information has come to light that affects the legality of both the confiscation and enforcement.
  - (iv) Granting the Order was a breach of the ECHR and is incompatible.
  - (v) There has been misconduct by the prosecution, and the punishment regarding confiscation and enforcement has been disproportionate. The Prosecution have been aware since 24 September 2019 that all of the goods have been returned to their rightful owners in pristine condition.
  
9. Steyn J gave the following reasons for refusing leave to appeal:

“Your grounds are not reasonably arguable. Your application for leave to appeal

against the receivership order is substantially based on an allegation that the Confiscation Order is unlawful. Your challenge to the Confiscation Order has already been determined against you by the Full Court of Appeal: Teasdale [2021] EWCA Crim 987 and Teasdale [2021] EWCA Crim 1974. In any event, it is not reasonably arguable that the agreed Confiscation Order was not compliant with R v Waya [2013] 1 AC 294 or that it was incompatible with article 1 of protocol 1, article 3 or article 5 of the European Convention of Human Rights, or any other provision of the Convention. Your assertion that you in fact received no benefit as all the goods were returned in pristine condition is baseless and unarguable: it is contrary to the evidence, your agreement on advice and reflection to the Confiscation Order, and the conclusions of the full Court.

It is not reasonably arguable that the judge made any error in concluding that - your challenges to the Confiscation Order having been rejected by the full Court - it was necessary and proportionate to make the receivership order, to ensure that the order of the court is complied with, and the statutory criteria were met. It is misconceived to assert that enforcement of the Confiscation Order breaches your human rights or entails any misconduct on the part of the CPS.

It is also incorrect, and not reasonably arguable, that your wife had no opportunity to make representations. She had a reasonable opportunity to make representations. She was served with the Crown's application to appoint an Enforcement Receiver and informed of the hearing listed on 13 October 2023. She chose not to attend or respond to the Crown's application. On that occasion, the Recorder adjourned the hearing in view of your, and your wife's, absence. Following that hearing the Crown again separately served the application on your wife, and notified her of the adjourned hearing listed on 26 October 2023. Again, she chose not to attend or respond to the Crown's application. On that occasion you attended court and informed the judge that you and your wife had been served with the Crown's application and you would be representing your joint interests."

10. We agree with those reasons. In his letter to the Court of 24 June 2024, the applicant, as well as explaining the reasons for the delay, repeats many of his previous unmeritorious arguments. The repetition of these arguments does not render them meritorious. The only new matter he raises is that he and his wife are experiencing extreme hardship and are homeless. However, in our judgment, this does not render the order to appoint an Enforcement Receiver disproportionate and it is not a relevant matter to be taken into account.

11. This renewed application for leave to appeal is accordingly refused.