WARNING: reporting restrictions may apply to the contents transcribed in this document, particularly if the case concerned a sexual offence or involved a child. Reporting restrictions prohibit the publication of the applicable information to the public or any section of the public, in writing, in a broadcast or by means of the internet, including social media. Anyone who receives a copy of this transcript is responsible in law for making sure that applicable restrictions are not breached. A person who breaches a reporting restriction is liable to a fine and/or imprisonment. For guidance on whether reporting restrictions apply, and to what information, ask at the court office or take legal advice.

This Transcript is Crown Copyright. It may not be reproduced in whole or in part other than in accordance with relevant licence or with the express consent of the Authority. All rights are reserved.

IN THE COURT OF APPEAL

CRIMINAL DIVISION

ON APPEAL FROM THE CROWN COURT AT SOUTHWARK
HHJ HEHIR T28720217
[2024] EWCA Crim 1398

CASE NO 202401902/B1-202401905/B1

Royal Courts of Justice
Strand
London
WC2A 2LL

Wednesday 30 October 2024

Before:

LADY JUSTICE MACUR

MR JUSTICE GOSS

SIR NIGEL DAVIS

REX
V
HASSAN SERDOUD

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)

MR A WATERMAN KC appeared on behalf of the Applicant.
MS A MACDONALD appeared on behalf of the Crown.

J U D G M E N T

LADY JUSTICE MACUR:

1. On 26 April 2024, Hassan Serdoud ("the appellant") was convicted of failing to surrender to bail, contrary to section 6(1) of the Bail Act 1976. He was sentenced to 2 months' imprisonment consecutive to the sentence of 4 years 6 months' imprisonment that had been handed down, in his absence, on 12 January 2024. The substantive conviction for bribery, contrary to sections 1(1) and (2) of the Bribery Act 2010, and resultant sentence were both subject to an unsuccessful oral application for permission to appeal to the Full Court. The judgment refusing leave is reported at [2024] EWCA Crim 644. This is an appeal against conviction and sentence for the Bail Act offence. Leave to appeal is not required: section 13 Administration of Justice Act 1960.

2. Proceedings under section 6 of the Bail Act 1976 may be conducted either as a summary offence or as a criminal contempt of court. The burden of proof is on the accused to prove that he had a reasonable cause for failure to surrender to custody (see section 6(3)).

3. The facts of the substantive offending and sentence are contained within the report previously referred to, and it is unnecessary to repeat them again here, save to provide a chronology for the extant appeals.

4. On 12 July 2023, the appellant and his co-defendants' sentences were adjourned for hearing to 21 September 2023. The appellant was granted unconditional bail. On 21 September 2023, the appellant was not in attendance. The court had been informed, by a letter dated 20 September, that the appellant had flown to Morocco on 9 September to seek emotional support from his family and was also seeking to obtain medical advice

from professionals in respect of his mental health and surgery to his spine. The appellant's sentence was adjourned until 24 November 2023. The remaining co-defendants were sentenced by the court. On 24 November 2023, the appellant was not in attendance. A further letter, dated 20 November 2023, attaching a medical report, informed the court that the appellant had undergone spinal surgery on 24 October 2023 and was unable to travel. A further adjournment of the hearing was sought. The court adjourned the hearing until 12 January 2024 and warned that the sentencing would proceed on the next occasion.

5. On 12 January 2024, the appellant did not attend and was believed still to be in Morocco. A letter from the appellant and two medical reports were provided to the court on 11 January 2024. The court proceeded to sentence the appellant in his absence for the substantive offence and issued a warrant not backed for bail. On 18 April 2024, the appellant returned to the jurisdiction and surrendered to the warrant. The court adjourned consideration of the Bail Act offence until 26 April 2024 to allow the attendance of Mr Waterman KC, who appears before us today.

6. On 26 April 2024, the appellant pleaded not guilty to the offence of failing to surrender to bail on 12 January 2024. The matter was dealt with as a summary procedure before the judge only.

7. The appellant gave evidence regarding his movements in the period September 2023 to April 2024 (a transcript of the whole of the proceedings is available and to be found on DCS commencing at Y797). We have been taken to parts of the transcript today. We do

not refer to them further save in respect of certain submissions that were made before us.

8. In short, the judge did not find the appellant to be a convincing witness. He made findings of fact that the appellant:

(1) Did undergo medical treatment in Morocco. He underwent an operation on 24 October and was in hospital for a week after that procedure.

(2) However, he exaggerated how unwell he was in Morocco.

(3) Some "at least" of the Moroccan medical material produced to the court was written with input from Mr Serdoud, because of self-reporting we infer, "the specific intention on his part of providing him with a veneer of cover" for failing to attend on 12 January. (4) Lied in saying that it never occurred to him to inform the court in early September that he was going to Morocco because he knew that the judge would not sanction it.

(5) Intended in going to Morocco when he did, to stay there as long as he could and evade, or at least postpone for long as he could, sentence.

(6) Did not intend to return to the jurisdiction before the sentencing date (12 September). He could have done so but did not.

(7) Could have returned back to the United Kingdom on 12 January, if necessary, with medical assistance and other practical help in doing so.

(8) Chose not to return on 12 January and his decision not to return then related to his mental rather than physical state, as indicated in an email sent to the judge on 10 January to the effect "he mentally did not feel that he wanted to".

(9) It was not a good reason not to answer his bail, even considering his physical condition. The judge said:

> "My clear conclusion is that the defendant's intention was to stay

> in Morocco as long as he possibly could, possibly forever. That is why he left the United Kingdom on 9 September and travelled to Morocco, and I am satisfied on the balance of probabilities that his failure to appear on 12 January was in further … intention that he had formed some months earlier. I conclude that he only chose to return to the United Kingdom or returned, because he felt he had no practical choice and that one way or the other, he had run out of road in Morocco. My conclusion is therefore that he has failed to discharge the burden on him, to show a reasonable excuse for failing to appear before me on the date in question and I convict him of the Bail Act charge."

9. Turning to sentence, the judge determined that this was a category 1A case. There had been a deliberate attempt to evade or delay justice for as long as possible. The appellant fell very substantially short of showing that he could not have come back on 12 January, and it was not a case, as had been submitted, that he had an excuse just short of a reasonable one. There was a delay of 3 months. There had been an appreciable knock-on effect on the criminal justice system. The starting point was 6 weeks' custody with a range of 28 days to 26 weeks' custody. The one specific aggravating feature was the fact that the appellant was unlawfully at large for over 3 months and outside the jurisdiction. In mitigation, however, the judge noted that the appellant had come back voluntarily and on notice even though he did not come back promptly.

10. The judge took into account that the appellant reached the decision to go to Morocco "when he was not thinking straight" because of the disturbances in his family life. The judge also took into account the ongoing medical issue which would make imprisonment more difficult than would otherwise be the case.

The Grounds of Appeal

Ground 1: appearance of bias/prejudice

11. Mr Waterman argues that the judge had already formed a clear view that the appellant could not be believed. He should have recused himself. The judge's approach throughout appeared to give the appearance of bias or prejudice. He even stated he had already formed the view that the appellant was dishonest and manipulative during the bribery trial. It follows that the judge may well not have been able to approach the issue fairly or at least did not give the appearance of doing so. Mr Waterman cites *Wilkinson v S & Or* [2003] EWCA Civ 95 at [24] to [27].

Ground 2 - the judge's conclusions were not open to him on the evidence

12. It was not open to the judge to conclude that the appellant had failed to show reasonable course. There was no reasonable or rational view of the evidence on which he could reasonably have rejected the appellant's decision to return to the United Kingdom as showing strong support for his credibility generally and for the claim on 12 January that he did indeed wish to return to face his sentence. There was no reasonable basis for concluding that the appellant had simply run out of road. Other than the appellant's choice, there was no evidence of any other factor causing the appellant to return.

13. It was unfair, and therefore an unreasonable conclusion for the judge to reach, that the appellant should sought his permission for going to Morocco and that he did so as a plan to avoid his sentencing for as long as possible, including 12 January 2024. The appellant had a return ticket for 15 September 2023, although that ticket was not available at the time that the judge dealt with the matter in April 2024.

14. There was no evidence upon which the judge could reach the conclusion that the

appellant had input into the content of the medical letters,.DS Whitehead (the officer in the case) had been invited to check with the doctors but the judge dismissed this suggestion peremptorily. The judge was also wrong to find that the appellant was outside the jurisdiction having left on 9 September with a plan to evade his sentence as long as possible. His voluntary return, supported by the medical evidence, renders this conclusion unreasonable.

15. As to sentence, the judge wrongly placed the failure to attend into culpability A and harm category 1. He should have placed it into culpability category C. The appellant could demonstrate a reason for failure to surrender just short of a reasonable excuse, and it was wrong to conclude that the failure to attend caused a substantial delay and/or interference with the administration of justice. Only the appellant's sentence was delayed so no interference was caused to the administration of justice in relation to any other person's case. The judge wrongly aggravated the length of the order. None of the aggravating features listed in the guideline is present.

16. Mr Waterman has expanded upon those written submissions orally before us today. In doing so, he makes clear that he does not accuse the judge of actual bias, rather that the appearance of bias and indicates that he draws a distinction between a preformed as opposed to provisional view. He submits that the judge in his conduct throughout the hearing demonstrated that his view was preformed; his cross-examination of the appellant was with intent to substantiate the view which he had already reached.

Discussion

17. Mr Waterman concedes that as a matter of principle, the judge's prior involvement as the trial judge did not disqualify him from the quasi-contempt hearing. We agree; see *Shaw v Kovak* [2017] 1 WLR 4773.

18. The judge explicitly indicated that he found the appellant's evidence at the substantive trial to be "thoroughly dishonest". He was at liberty to do so: he had observed the appellant giving evidence over five days and was corroborated in his view by the verdict of the jury. This character assessment may have disappointed the appellant but would not lead a reasonable and informed observer to suspect that the judge was biased bearing in mind his frank appraisal and subsequent self-direction in terms:

> "That does not mean that he was dishonest necessarily in his evidence to me [today], it would be a lazy assumption to start off on that basis. In addition, although at trial on the basis of the evidence including his lengthy evidence in his own defence, I formed the distinct opinion that he is a manipulative individual, who will do and say whatever he can to get out of a tight corner. I warn myself against the lazy assumption that he must have been trying to manipulate me in these proceedings. And I do not proceed on the basis that anything that he told me from the witness box must have been dishonest or manipulative."

19. Neither would the judge's reprimand of the appellant for his repeated introduction to almost every answer he gave to the judge's questions in terms of "I'm being completely honest..." give rise to such a view. As the judge openly cautioned the appellant, such introduction could tend to give the contrary impression as to the appellant's overall credibility. We are not persuaded that such judicial comment would raise a perception of bias to the fully informed objective observer.

20. The judge did make fairly frequent interventions in questioning the appellant, some of

which questions, were peripheral to his subsequent determination of whether the appellant had intended to return for sentence but for adverse surgical outcome and mental or emotional decline. But whilst the judge did question the appellant about the fact that he did not notify the court that he intended to travel to Morocco, nor seek permission to do so, he acknowledged that the appellant was not in breach of his bail to fail to do so. Nevertheless, it was reasonable for the judge to express surprise that "within two days of arriving [in Morocco] in September 2023... he was presenting himself at the clinic of a psychiatrist and complaining of depression and distress, symptoms of that sort." The judge was entitled to find, on the balance of probabilities, that what the appellant was laying down a basis to justify his absence from court.

21. We find the interventions were numerous but not excessive. However, Mr Waterman complains not only as to the number but the manner of the interventions. We agree the judge's questions were challenging, but we do not consider that he overstepped the mark. These were contempt proceedings and it was the judge who had the responsibility for determining whether there had been a contempt of the court on 12 January; he was concerned to understand the appellant's position. We find it is significant that following those interventions Mr Waterman KC did not ask the judge to recuse himself based on perceived bias.

22. The return air ticket for 15 September was not produced at the hearing, although its existence was asserted and relied upon to show the appellant's professed intent of a return to the jurisdiction. The judge specifically requested sight of it; Mr Waterman indicated that it was not available to him. That it can now be produced begs the question of why

the appellant did not produce it before, but in fact it takes the matter no further and consequently we would not have admitted it into evidence. It seems to us that it presents a double-edged sword. Why, having purchased a return ticket to the Unites Kingdom mere days after his arrival in Morocco would the appellant seek medical and psychiatric interventions which he must have realised would delay his departure is an unanswered question. The 'return ticket' provides no basis for appeal. The judge was entitled to find on other evidence that, regardless that it may have been available to the appellant he had already decided not to return in time for sentence.

23. We do not consider that the judge was in error to focus upon the appellant's failure to attend on 12 January 2024, nor was it unreasonable to proceed in his absence. The judge had made clear to the appellant's legal representatives that he was sceptical about the medical material adduced and required the appellant to attend for sentence on 12 January, or else be sentenced in his absence and a warrant issued not backed for bail. It was evident that the appellant had been so informed since he sent an email to the judge: "imploring me in the strongest terms not to sentence him then."

24. On 12 January 2024 the judge acknowledged that he had, in previous hearings, expressed scepticism as to whether the appellant had undergone surgery at all but, as we indicate above, did make a finding that the surgery had taken place. Contrary to the appearance of bias by his previous assertions, this finding demonstrates the judge's open-minded approach to the evidence.

25. The only updated medical record produced for 12 January was that of Dr Benjelloun Mohammed (a general surgeon) dated 10 January 2024. The medical note indicated that on examination that day the appellant "could not walk without crutches and sometimes used a wheelchair and personal assistance. There was diffuse inflammation of the lumber region upon examination." This did not indicate that the appellant was immobile nor, as he claimed in oral evidence, that he was unable to sit to travel on a plane to the United Kingdom.

26. Further medical reports were adduced in March 2024. Significantly that of Dr Bouzoubaa MD is said to be "written to the patient for medical and administrative purposes." Dealing with the surgery which took place on 24 October 2023, it indicates:

> "Short-term evolution was satisfactory, but the patient could still not walk without aid because of pain and gait imbalance, <u>including to 12 January 2024</u>. The patient at this date has not yet fully recovered but will be able to travel on a regular flight by the beginning of April 2024. Meanwhile he should continue to keep doing rehabilitation and physiotherapy ..." (Emphasis provided.)

27. The appellant saw Dr Mohammed on the 10 January and not the 12 January. The appellant's position on 12 January, a date with obvious relevance, could only have been self-reported and not independently observed. Further, there is no explanation why Dr Bouzoubaa was able to say that the appellant would be fit to travel at the beginning of April, one week after his meeting with the appellant, without any further examination to take place.

28. Further, there was a letter from Zara Waliaallah, a psychiatrist/ psychotherapist, dated

15 March 2024, confirming that the appellant had first consulted her on 11 September 2023 and "presented with symptoms of a major depressive episode, sadness, anhedonia, insomnia, diminished appetite with panic attack ..." She went on to say, "At the present time the patient is in relapse, and it is difficult for him to make decisions ...". This diagnosis apparently based on his self-reporting. We are unsurprised that this letter held little sway with the judge. As he indicated in discussion with Mr Waterman, many defendants facing imprisonment would be in a similar emotional state.

29. Ms Macdonald, for the respondent prosecution, draws our attention to Criminal Practice Direction 5C. That is, a court is not absolutely bound by a medical certificate and may, in exercise of its discretion, disregard a certificate which it finds unsatisfactory. Circumstances where the court may find a medical certificate unsatisfactory include where the defendant is certified as suffering from stress, anxiety, depression and there is no indication of the defendant recovering within a realistic timescale.

30. What is more, the appellant's email to the judge in January 2024 and evidence as to his physical and mental condition on 24 April 2024, did not correspond with each other or the medical reports. We find no merit whatsoever in the submission that the prosecution could have 'verified' the medical reports. The appellant's solicitor and leading counsel were, of course, at liberty to address what should have been the obvious lacuna and any issues arising and to seek further evidence if they deemed it appropriate to do so. As it is, Mr Waterman frankly admits that the medical evidence that was adduced and upon which he had to rely in making submissions was not of a "gold standard".

31. Mr Waterman argues that the appellant's voluntary return to face sentence in April 2024 should have been an important incident in the judge's determination. That is, it reflected upon the integrity and credibility of the appellant's evidence that he would have returned in January to be sentenced if he was physically and mentally able to do so. He says there was no indication whatsoever that the appellant had "run out of road". We do not agree that the judge was obliged so to find.

32. In short, we conclude that the judge was entitled that the appellant travelled to Morocco with the intention to avoid, for as long as possible, the sentence which was inevitably to be passed. We do not consider that the judge reached that view peremptorily nor do we consider that had a preformed view from the outset.

33. Consequently, we dismiss the appeal against conviction.

Appeal against sentence

34. Since we accept the narrative ruling of the judge, it follows that we are unable to accede to Mr Waterman's submissions that this case was more properly to be placed within category C culpability and lesser harm. On the findings made by the judge, he was entitled to conclude that the appellant had deliberately evaded sentence which constituted a criminal contempt of the court. Harm that had been done to the criminal justice system as a whole and was not merely to be seen as confined to the appellant's case.

35. The starting point was 6 weeks which needed to be increased to accommodate the aggravating feature of lengthy absence abroad. As the judge indicated in his sentencing

remarks, it is a matter of principle to sentence breach of bail consecutively to the substantive sentence in the case.

36. Therefore, the appeal against sentence is also dismissed.

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

Lower Ground, 46 Chancery Lane, London WC2A 1JE

Tel No: 020 7404 1400

Email: rcj@epiqglobal.co.uk