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IN THE COURT OF APPEAL  
CRIMINAL DIVISION  
ON APPEAL FROM THE CROWN COURT  
NOTTINGHAM  
HUGHES J T20047468  
CASE NO 202203237/B3  
[2024] EWCA Crim 1442



Royal Courts of Justice  
Strand  
London  
WC2A 2LL

Thursday 18 July 2024

Before:

LADY JUSTICE MACUR

MRS JUSTICE STACEY

RECORDER OF WOLVERHAMPTON  
(HIS HONOUR JUDGE MICHAEL CHAMBERS KC)  
(Sitting as a Judge of the CACD)

REX

V

SHANE ANTHONY HUDSON

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NON-COUNSEL APPLICATION

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## J U D G M E N T

LADY JUSTICE MACUR:

1. On 21 December 2005, Shane Hudson (“the applicant”) was convicted of conspiracy to pervert the course of public justice, contrary to section 1(1) of the Criminal Law Act 1977 and sentenced to 4 years’ imprisonment, with 454 days spent on remand to be taken into consideration. He was acquitted of murder at the direction of the trial judge, Hughes J (as he then was). Professor Guy Ruddy was the pathologist who examined the body of the deceased and subsequently gave evidence at trial.
  
2. On 15 June 2022, the applicant was convicted of stalking involving fear of violence or serious alarm or distress, contrary to section 4A(1)(ab)(2) and subsection (5) of the Protection from Harassment Act 1997. The complainant was Professor Guy Ruddy. The applicant was committed to the Crown Court for sentence.
  
3. On 20 September 2022 in the Crown Court, the applicant was sentenced to an extended determinate sentence of 9 years (comprising 4 years’ imprisonment and a 5-year extended licence). An application for leave to appeal against sentence was filed on 29 September 2022. On 8 November 2022, the applicant filed applications for leave to appeal against the 2005 conviction and an extension of time of 6139 days in which to do so. On 14 November 2022, the Registrar wrote to the applicant seeking clarification of the grounds of appeal against conviction which had been self-drafted, and providing guidance on how they may be improved. On 25 January 2023, the single judge refused leave to appeal sentence for the stalking offence. On 30 January 2023, the applicant renewed his application for leave to appeal sentence for that offence. On 3 March 2023, further submissions were received in relation to his application for leave to appeal

conviction.

4. On 6 March 2023, a Respondent's Notice was filed in relation to the application for leave to appeal against conviction. Both renewed applications for leave to appeal the stalking sentence and the applications in respect of the 2005 conviction were referred to the Registrar for directions. Consequently, on 14 March 2023, the Registrar referred the applications regarding the 2005 conviction to the Full Court for determination and, understandably, directed that the application regarding the stalking offence should be listed before the same constitution and on the same day. It was obviously reasonable and proportionate to do so the stalking offence arose from the appearance of Professor Rutty in the 2005 trial.
  
5. On 16 March 2023, the applicant telephoned the Criminal Appeal Office on several occasions. He was advised that his applications regarding conviction had been referred to the Full Court and that he would receive a letter once the referral had been formally processed. He later telephoned to inquire about his sentence application and was advised that the case was ready to be listed but that the conviction and sentence applications were going to be listed before the same Court on the same day. The applicant said that he did not want that to take place. The applicant telephoned again and reiterated that he did not want the applications to be heard together as this, he asserted, was unfair and lacked impartiality. At that time, the applicant asked for a Form A (Notice of Abandonment) to be sent to him. He was advised to read that form very carefully, as he appeared to be under the impression that he could temporarily abandon his applications in relation to the 2005 conviction and then resurrect them after determination of his application in relation

to the stalking offence sentence.

6. On 21 March 2023, the applicant telephoned the Criminal Appeal Office yet again. He remained unhappy with the decision that both applications were to be heard on the same date by the same constitution. He said he was considering temporarily abandoning his conviction application. He was advised that any notice of abandonment is final. On 24 March 2023, the applicant telephoned the Criminal Appeal Office to advise that he was abandoning his application in relation to conviction. He was reminded, again, that he could not temporarily abandon proceedings, and that the abandonment would likely to be treated as final. He said he was abandoning, nonetheless.
  
7. On 5 April 2023, the applicant signed a Form A abandoning all proceedings relating to his conviction applications in this Court. It was accompanied by a letter. The letter and Form A were referred to the Criminal Appeal Office Senior Legal Manager who confirmed that the abandonment appeared to be unequivocal and could be processed. On 12 May 2023, the applicant's renewed application for leave to appeal against sentence was refused by the Full Court. He now applies to have the abandonment of his conviction application treated as a nullity. He asserts in a letter, dated 4 February 2024, that he abandoned his application for leave to appeal against conviction because he was under pressure not to appeal and because of "sinister behaviour by the court and the CPS". He said he felt he had no choice but to abandon his appeal, or he would have been "punished" in another appeal that he had at the same time regarding sentence. Further, he said at the time of the abandonment he was not in the right frame of mind and was suffering from PTSD. He could not think clearly or understand correctly.

## *Discussion*

8. It is unnecessary to relate the facts of the conviction which this applicant seeks to appeal.

The merits or otherwise of any appeal are irrelevant to the nature of the application now made before this Court that it should set aside his notice of abandonment. The relevant legal principles are clearly established and have been reiterated by this Court on several occasions. The case of R v Medway (Andrew George) [1976] QB 779, reviewed the then Criminal Procedure Rules and authorities to date, and determined:

“In our judgment the kernel of what has been described as the ‘nullity test’ is that the Court is satisfied that the abandonment was not the result of a deliberate and informed decision; in other words, that the mind of the applicant did not go with his act of abandonment. In the nature of things it is impossible to foresee when and how such a state of affairs may come about; therefore it would be quite wrong to make a list, under such headings as mistake, fraud, wrong advice, misapprehension and such like, which purports to be exhaustive of the types of case where this jurisdiction can be exercised. Such heading can only be regarded as guidelines, the presence of which may justify its exercise.”

Subsequently, in R v Smith (Paul James) [2013] EWCA Crim 2388, this Court reviewed the extant Criminal Procedure Rules and more contemporaneous decisions on the point, namely R v Offield [2002] EWCA Crim 1630; R v Elrayess [2007] EWCA Crim 2252 and R v LR [2013] EWCA Crim 1913 and at paragraph 58 conceded:

“From this review of the law we derive four propositions which are relevant to the present case:

- i) A notice of abandonment of appeal is irrevocable, unless the Court of Appeal treats that notice as a nullity.
- ii) A notice of abandonment is a nullity if the applicant’s mind does not go with the notice which he signs.

- iii) If the applicant abandons his appeal after and because of receiving incorrect legal advice, then his mind may not go with the notice which he signs. Whether this is the case will depend upon the circumstances.
  - iv) Incorrect legal advice for this purpose means advice which is positively wrong. It does not mean the expression of opinion on a difficult point, with which some may agree and others may disagree.”
9. This is not a case of incorrect legal advice. The applicant makes clear that his decision to abandon was made because of his perception as to the appropriateness of one Court dealing with both renewed applications for permission to appeal sentence and applications relating to the 2005 conviction. He repeats this in his letter of 4 February 2024 terms:
- “I felt bullied and that I had no choice but to abandon my appeal, or I would be punished in another appeal I had at the time regarding sentence.”

We do not accept this contention. The chronology provided as to the contact between the Court of Appeal (Criminal Division) office and the applicant indicates that the applicant was treated civilly and courteously. Attempts were made to clarify his self-penned grounds of appeal to assist his application. It was he who requested the notice of abandonment to effectively force his views as to the propriety of the two sets of applications being heard together, despite the clearest instruction that that which he sought to do, namely to temporarily abandon his applications regarding the 2005 convictions, was not without consequences; that is the notice of abandonment would be final, subject to this Court treating the notice of abandonment as a nullity. There is absolutely nothing in this suggestion that he would be “punished” in another appeal, nor any basis to suggest that he was ever so informed.

10. Form A advises:

“Please ensure that you have read the notes for guidance attached before completing this form. Write in BLACK INK and use BLOCK CAPITALS.”

The accompanying notes for guidance provide as relevant:

“1. Where an appeal or application for permission to appeal is abandoned, the appeal or application is treated as having been dismissed or refused by the Court of Appeal. (r.36.13(4)(c))

A ‘conditional’ abandonment, for example, on the condition that the appellant may renew the application at some future time, will not be accepted ...

3. The notice may be signed by, or on behalf of, the appellant. Any person signing on behalf of the appellant must give his address and status...

4. Legal representatives must not abandon an appeal or application for permission to appeal without the appellant’s express instructions. If signing on behalf of the appellant, a legal representative is confirming that the appellant has been fully advised of the consequences of abandoning the appeal or application, and that only in exceptional circumstances will the Court of Appeal have power to declare a notice of abandonment to be a nullity.”

The guidance goes on to make clear either Part 1 or Part 2 must be completed but not both. Part 1 must be completed where all proceedings in the Court of Appeal under the Criminal Appeal reference number are abandoned; Part 2 where the appellant is continuing any proceedings in the Court of Appeal under the above Criminal Appeal reference.

11. In this case, the applicant did not receive legal advice so far as is known to the Criminal Appeal Office but did receive advice from the Criminal Appeal Office in terms that would indicate what the consequences of signing the notice of abandonment could be. Form A in this case has been completed by the applicant in black ink (as instructed) and

in capitals, making clear that he abandons conviction but not sentence. He has signed and dated the form. There is nothing which indicates that “the applicant’s mind did not go with his pen”. There is no evidence to support the applicant’s contention that at the relevant time he was suffering severely from PTSD, nor otherwise that he did not understand or was not thinking clearly. On the contrary, it appears to us that his determination to manipulate the listing of his application was conscious and deliberate. He sought to gain what he thought to be an advantage. His self-misguided attempt to do so does not justify us in treating his notice as a nullity, rather the reverse. The application is dismissed.



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