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IN THE COURT OF APPEAL

CRIMINAL DIVISION

[2024] EWCA Crim 484



No. 202202144 B1

202201945 B1

Royal Courts of Justice

Tuesday, 30 April 2024

Before:

LADY JUSTICE WHIPPLE
MR JUSTICE HILLIARD
HER HONOUR JUDGE LUCKING KC

REX
v
WESLEY KEVIN DAVISON

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Official Court Reporters and Audio Transcribers

5 New Street Square, London, EC4A 3BF

Tel: 020 7831 5627 Fax: 020 7831 7737

CACD.ACO@opus2.digital

The Applicant was not represented, did not attend.
The Crown were not represented.

J U D G M E N T

MR JUSTICE HLLIARD:

- 1 On 8 October 2021, in the Crown Court at Guildford, the applicant was convicted of attempted robbery. On 3 March 2022, he was sentenced to four years' imprisonment to run consecutively to the prison sentence he was already serving. He now renews his application for an extension of time (224 four days as regards conviction and 40 days as to sentence) and for leave to appeal against conviction and sentence after refusal by the single judge.
- 2 The case involved an allegation of attempted robbery on 12 February 2019. The applicant was said to have entered the back office of a hotel in Surrey and unsuccessfully attempted to steal cash by using force on a member of staff, Hannah Scammell. The applicant was chased from the scene and apprehended. His DNA was found on a hat left at the scene. The applicant accepted at trial that he had been in the office but said that he had gone to the hotel to use a lavatory and thought that the office was a bathroom. His evidence was that Miss Scammell entered the room and attacked him.
- 3 In her first statement Miss Scammell said that the applicant hit her in the face but that she did not know if that had been accidental or deliberate. In her second statement, taken the day after the incident, she said that he had punched her in the face while trying to grab the money. Here, she appeared to be of the opinion that it was deliberate.
- 4 The applicant has drafted his own grounds of appeal. We have made every allowance for that. We have considered all the arguments he had advanced. If we do not make reference to any particular point, it is because we do not think it adds anything of substance. We have also looked at material he has submitted since the single judge made his decision. We are aware that the applicant had not seen his lawyers' observations before they were submitted to the single judge.
- 5 The applicant makes a number of complaints about his lawyers. His solicitors have responded with their comments. His barrister has not responded to requests for information. The applicant says that his representatives were at fault in failing to instruct an expert to examine an injury to Miss Scammell. We do not think that this would have been necessary or useful. The real question was how any injury was caused, and an expert would not be able to say whether it was deliberate or accidental. The applicant says that he was inadequately represented by his barrister who was drunk and smelled of alcohol. We have not been able to identify any failures during the trial. Prosecuting counsel and the defence solicitors do not support the suggestion of alcohol consumption. The applicant says that his first solicitors signed his first defence statement before he had had the opportunity to approve it. In the first defence statement, presence at the scene was not accepted by the applicant. This is consistent with a note on the PTPH form for November 11, 2019, where the issue in the case is recorded as "Identification". The applicant had the opportunity at his trial to give his account about the contents of the first defence statement.
- 6 The applicant says that the jury was told that he was in prison which was prejudicial, that the judge did not allow the jury to be told of his bowel complications which were relevant in his defence, and that the judge sent the applicant back to custody whilst the jury was still deliberating. The applicant says, in addition, that the summing-up favoured the prosecution. The fact that the applicant was in custody arose in the context of evidence that he had not been interviewed by the police. The applicant said that he did not want to be interviewed as there was no solicitor available because he was in prison. The judge told the jury not to hold the fact he was in prison against him. The applicant had become disruptive in the cells while the jury was in retirement. He appears from the transcript to have agreed to return to custody rather than remain at court. The jury was told that in the applicant's records there

were notes about a problem in relation to his bowels, and mention of a possible colonoscopy or gastropathy although no procedure had, in fact, taken place. In evidence, the applicant had said that he needed to urinate. He had referred to a medical problem. There was nothing in the notes about urinary incontinence. In summary, there is nothing in any of these points. We cannot see any unfairness in the summing-up.

7 The applicant says he is 80 per cent sure that one of the jurors was a juror in a previous case of his and would have been aware of his previous record. There is no sufficient basis to explore this any further. We are satisfied that the applicant would have raised this matter at the time if there was any substance to it. The applicant complains that there were disclosure failures by the police/prosecution. These issues were raised at the time. We cannot see that there is anything in these points which could have any impact on the central issues in the case, namely why the applicant was in the office and what happened there.

8 Accordingly, we are satisfied that there are no arguable grounds to appeal against conviction. In those circumstances, there is no purpose to be served in granting the substantial extension of time which would be needed.

9 The applicant also seeks leave to appeal against sentence on the basis that the trial judge did not take account of his mental and physical health conditions and did not have the benefit of a pre-sentence report.

10 If the offence had been completed, it was agreed by counsel on both sides that it would have been a category 2B robbery for the purposes of the sentencing guidelines, with a starting point of four years' imprisonment and a range of three to six years. The offence was very close to the full offence. The judge said that it was aggravated by the applicant's previous convictions. He had been convicted over 46 occasions of 132 offences and was serving a sentence of imprisonment at the time of sentencing. It was for the judge to weigh personal mitigation, and it is not arguable that four years' imprisonment was manifestly excessive. In the circumstances, no pre-sentence report was required.

11 Thus, there are no arguable grounds to appeal against sentence and there is again, therefore, no purpose to be served in granting the extension of time which would be needed.

12 Accordingly, all these applications must be refused.

CERTIFICATE

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the Judgment or part thereof.

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This transcript has been approved by the Judge.