



IN THE COURT OF APPEAL  
CRIMINAL DIVISION  
[2024] EWCA Crim 625

CASE NO 202400031/B4

Royal Courts of Justice  
Strand  
London  
WC2A 2LL

Tuesday, 14 May 2024

Before:

LORD JUSTICE EDIS  
MR JUSTICE MURRAY  
HIS HONOUR JUDGE DENNIS WATSON KC  
(Sitting as a Judge of the CACD)

REX

V

A.B.R.

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MR F FITZGIBBON appeared on behalf of the Applicant  
MR A JOHNSON appeared on behalf of the Crown

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**APPROVED JUDGMENT**

1. LORD JUSTICE EDIS: On 24 October 2022 in the Crown Court at Merthyr Tydfil, this applicant pleaded guilty to a single count of producing a controlled drug of class B, namely cannabis. On a later date also in 2022 he was sentenced to eight months' detention in a young offender institution. All of that, as will appear, is highly unsatisfactory in the circumstances which prevailed at the time when these events took place. Mr Andrew Johnson, who appears before us for the prosecution, has informed us that the Crown wishes to apologise for what happened in this case and that there are lessons which can be learned and will be learned from it.
2. The applicant (as he currently is) applies for an extension of time of some 396 days for leave to appeal against conviction. The Registrar has referred that application to the full court. He also seeks leave pursuant to section 23 of the Criminal Appeal Act 1968 to introduce fresh psychiatric evidence and evidence concerning his status as a victim of trafficking.
3. We grant leave and the extension of time which is necessary in order to pursue the appeal. We have been supplied with extensive information which explains how it was that the potential relevance of the appellant's status as a victim of trafficking was appreciated and established over the year or more since sentence was imposed.
4. It is unnecessary to say anything very much at all about the offence to which the appellant pleaded guilty. He was present at a cannabis farm in Porth when it was entered by the police and its plants seized. When he was interviewed he explained that he had entered the United Kingdom unlawfully from Albania. He had been promised work here by which he would be able to pay the debt of £24,000 which he had incurred in paying for his passage. He had in fact instead been pressurised by violent threats against him and his family to undertake gardening duties at the cannabis farm.

5. That was all set out in a basis of plea which was subsequently served on his behalf after a period of time during which there had been some enquiries about his status as a victim of trafficking. None of that prevented circumstances arising where he entered his guilty plea and was sentenced to detention.
6. Mr Fitzgibbon KC, who has presented this appeal before us on paper and briefly orally, argues that the Crown Prosecution Service failed to apply its published policy in dealing with these cases. He submits, first, that it was an abuse of process to prosecute him while a referral to the National Referral Mechanism was in progress and had not been resolved. He submits that it is an abuse of process because no reasonable prosecutor in possession of the facts and following policy should have allowed the prosecution to continue. Secondly, he submits that given the undiagnosed mental health problems from which the appellant suffers, his plea may have been the result of a failure by him to understand the advice that he received about his defence. For those two different reasons, Mr Fitzgibbon submits, the conviction is unsafe.
7. In support of those grounds, the fresh evidence on which he seeks to rely is the post-conviction confirmation of his status as a victim of trafficking, there now being a Conclusive Grounds Decision in his favour on that question. Secondly, the fresh evidence is contained in a psychiatric report which diagnoses depression, anxiety and PTSD rendering him vulnerable to exploitation.
8. The prosecution have considered carefully the merits of this appeal and although by their concession they accept that the conduct of the prosecution was in error, they are in our judgment to be commended for approaching the appeal in the way that they have in the recent past. They accept that the published policy of the CPS was not properly followed in this case and we are told that the review of the case has concluded that it would not be

in the public interest to prosecute this appellant for that reason. In those circumstances they also accept that the fresh evidence suggests that the guilty plea could have been equivocal, may have resulted from a defective understanding of the position and that in that regard it may be that the appellant has been deprived of a defence which would quite probably have succeeded had it been advanced at trial. Therefore, the prosecution does not oppose this application and appeal.

9. We have not heard full argument in this case for the reasons which we have just summarised. We therefore do not propose to examine the two different routes to the quashing of this conviction to identify which of them should lead to that result. The question of whether prosecutions initiated in these circumstances are capable of constituting an abuse of process was dealt with and authoritatively resolved by this court in R v AAD, AAH and AAI [2022] EWCA Crim 106, [2022] 1 Cr.App.R 19. The position was further considered by this court in R v AFU [2023] EWCA Crim 23, [2023] 1 Cr.App.R 16 and R v BKR [2023] EWCA Crim 903, [2023] 2 Cr.App.R 20. It is clear that conduct of a prosecution in the way in which it is conceded that this prosecution was conducted is capable of amounting to an abuse of process. It is also clear in our judgment that in the circumstances which prevailed at the time when this appellant entered his guilty plea, there is good reason to suppose that this is a case where the guilty plea deprived the appellant of a defence which would quite probably have succeeded and that this is one of those cases where an appeal can succeed notwithstanding the entry of a guilty plea. Whichever of those two routes to the ultimate destination is adopted, the ultimate destination is not in our judgment in doubt. This conviction is unsafe and therefore quashed.

10. In the circumstances we do not anticipate that the prosecution will seek a retrial and if

that anticipation is correct proceedings will end here. Mr Johnson?

11. MR JOHNSON: My Lord, given the basis upon which the conviction is quashed then quite plainly no proper application for a retrial would follow.

12. LORD JUSTICE EDIS: Thank you very much. We do not order a retrial and that therefore concludes the proceedings against this appellant.

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

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