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IN THE COURT OF APPEAL

CRIMINAL DIVISION

[2024] EWCA Crim 633



No. 2022-03852-B1

Royal Courts of Justice

Thursday, 2 May 2024

Before:

LADY JUSTICE WHIPPLE

MR JUSTICE WALL

HER HONOUR JUDGE LUCKING KC

REX

V

SIPHO SIPHIKA

**REPORTING RESTRICTIONS APPLY:  
THE SEXUAL OFFENCES AMENDMENT ACT 1992**

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Transcript prepared from digital audio by  
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THE APPLICANT appeared remotely in person.

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



**LADY JUSTICE WHIPPLE:**

- 1 This is a renewed application for leave brought by Mr Siphika, who acts in person and is unrepresented. As is the usual way in this court for a renewed application, the judgment given by the court is only in summary form.

Reporting restrictions

- 2 The provisions of the Sexual Offences Amendment Act 1992 apply to this offence to protect the complainant's identity. Under those provisions where a sexual offence has been committed against a person, no matter relating to that person shall during that person's lifetime be included in any publication if it is likely to lead members of the members of the public to identify that person as the victim of that offence. The prohibition applies unless waived or lifted in accordance with section 3 of the Act.

Anonymity

- 3 The applicant seeks reporting restrictions to protect his own identity, by letter to the court dated 15 June 2023. That application is repeated in subsequent letters. In effect, he seeks anonymity for various reasons, including: that his children may be adversely affected by public exposure of the details of this case; that he risks a loss of reputation and possibly income; that a charity he volunteers for may be adversely affected by public awareness of his appeal. In our judgment, these are not sufficient reasons to grant anonymity to this applicant in the context of a criminal appeal. The reasons put forward by the applicant are essentially that he wishes to protect his

private interests. Those private interests must be weighed against the wider general public interest in open justice.

- 4 The wider public interest prevails in this case. The public has a right to know who has been convicted of an offence and who is pursuing an appeal against that conviction. Applicants to this court are ordinarily named although there are some very clearly prescribed exceptions. Not to name the applicant would very much be the exception to the rule. In this case, no prescribed exception applies and we see no other reason why we should accede to the applicant's request for anonymity. We refuse his application.

#### Attendance

- 5 The applicant sought a direction from the court that he should be permitted to be present at this renewed application for leave. Under the rules, he has no right to attend and he has no right to address the court. However, the court indicated earlier this week that it would permit the applicant to attend via CVP, if he wished to do that. He has attended this morning and we gave him liberty to address the court for 15 minutes. He has addressed the court fluently and coherently within that time and we are very grateful to him for all that he has said.

#### Background

- 6 The background to this application is, of course, well known to the applicant and need not be repeated at length. On 30 March 2022 in the Crown Court at Croydon, following a trial before HHJ Charles, the applicant was convicted unanimously on a retrial of one count of rape. The underlying offence occurred on 10 December 2017. The complainant was a colleague from the applicant's place of work. They had been

to an office party and both of them had consumed alcohol. The applicant then took the complainant to a hotel in Croydon and at that hotel they had sexual intercourse. He said that the sex was consensual. The complainant said that it was not. In the event, the jury was sure that the complainant was telling the truth.

- 7 On 31 March 2022, the applicant was sentenced by the trial judge to a period of 8 years imprisonment with the usual consequential orders made. He now renews his applications for an extension of time of 236 days in which to seek leave to appeal against conviction, for leave to appeal and for a representation order. These applications were all refused by the single judge.

#### Grounds of Appeal

- 8 The reasons for refusal were set out extensively and clearly by the single judge in his order of 4 July 2023. Since receiving the single judge's order, the applicant has submitted a number of letters and other documents to this court. He has responded to the single judge's decision with a line by line commentary of some length. The paperwork in this case is now very extensive.
- 9 Having spent some time reviewing the papers in advance of this hearing, we can say that the content of those papers is highly repetitive. The essentials of the applicant's case are summarised in a letter dated 12 April 2023 and we take that letter as the starting point for our consideration (it may be that the letter should in fact have been dated 12 April 2024, but the date is not material).
- 10 By that letter, the applicant's case boils down to these following three grounds. First of all, abuse of process. Secondly, misconduct by his legal representatives at trial. Third, a failure to accord him a right to a fair trial. It is convenient to consider his

case by reference to those three grounds, which repeat earlier grounds, all of which were addressed in the respondent's notice and by the single judge.

### Conclusion

11 As to abuse of process, as the applicant is aware and has urged upon us, the police are required to pursue reasonable lines of inquiry. But the applicant has an expansive view as to what counts as “reasonable”. We do not accept the applicant’s submissions about what the investigators might reasonably have been expected to do. The applicant suggests a great many lines of inquiry. It is not clear to us how those lines of inquiry, whether looked at separately or collectively, might have led to a different outcome in this case. The reasonableness of the police’s approach to this investigation is confirmed by the applicant’s former legal team as well as by the Crown in their respondent’s notice. Much of the witness evidence from witnesses who the applicant argues should have been called at trial was reflected in agreed facts. Other witnesses were spoken to, but there were good reasons why they were not called at trial. There was some CCTV missing but the circumstances in which that CCTV went missing is fully explained in the respondent’s notice and in any event we are not persuaded that the absence of that or any CCTV gives rise to any arguable abuse of process in this case. All of these points are addressed in the respondent’s notice which, on careful reflection, we feel bound to accept.

12 The point which perhaps the applicant misses is this: in the end this was a straightforward case for the jury. The issue for the jury was whether they could be sure that the complainant was telling the truth. They were. The complainant's evidence related to what went on inside the hotel room away from the gaze of CCTV and where there were no other witnesses. In light of some of the evidence in the case, notably the text that was sent by the applicant to his friend very shortly after the

events in dispute, the jury's conclusion cannot be said to have been remotely surprising.

13 As to the conduct of the applicant's legal representatives, we see no reason to doubt the professionalism and competence of the applicant's barrister and solicitor at trial. The statement of Nick Dowling, recently put before the court and which we have read with care, does not help or alter that conclusion. There is no suggestion in his statement that the barrister in question did not conduct the defence fully and fairly. The Crown, by their counsel, did not see any questionable behaviour by defence counsel at trial. Prosecuting Counsel would have been under an obligation to raise any concerns of misconduct. We see no arguable criticism of the way the defence team (counsel and solicitor) conducted themselves or the applicant's defence at trial.

14 As to the right to a fair trial, we can agree, of course, that the applicant is entitled to a fair trial, but from all that we have seen, he had one.

15 We are satisfied, as was the single judge, that there has been no failure of investigation of process or of fairness in this case.

16 Standing back, and considering all the evidence that we have seen, we are further satisfied that this conviction is safe.

17 Like the single judge, we therefore refuse the extension of time sought and we would, if time had been extended, in any event have refused the application for leave to appeal.

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**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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