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IN THE COURT OF APPEAL
CRIMINAL DIVISION



CASE NO 202301229/B3
[2024] EWCA Crim 791

Royal Courts of Justice
Strand
London
WC2A 2LL

Tuesday, 18 June 2024

Before:

LORD JUSTICE WARBY
MR JUSTICE HOLGATE
MR JUSTICE MURRAY

REX
V
LEROY JETHRO GIBBS-HIGGINS
(aka TERRY WAYMARK)

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NON-COUNSEL APPLICATION

J U D G M E N T
(Approved)

MR JUSTICE MURRAY:

1. On 28 March 2023 in the Crown Court at Leicester before HHJ Brown, the applicant, Leroy Jethro Gibbs-Higgins (also known as Terry Waymark), then aged 41, pleaded guilty to one offence of arson.
2. On 4 August 2023 at the same court, HHJ Brown sentenced the applicant to an extended determinate sentence of nine years six months, comprised of a custodial term of four years six months' custody and an extension period of five years.
3. The applicant renews his application for leave to appeal his conviction after refusal by the single judge. He also renews his application for an extension of time of 41 days to apply for leave to appeal his sentence after refusal by the single judge.

The facts

4. In April 2022, Claire Jones met the applicant and shortly afterwards entered into a relationship with him.
5. Just after midday on 14 June 2022, Ms Jones was asleep in her bed in her flat in Vestry House at Humberstone Gate in Leicester when she was awakened by the applicant. The applicant told her that someone had been knocking on her door. Miss Jones was a light sleeper and would normally be awakened by knocking, but she had heard none. The applicant then left the bedroom for a few minutes. About 30 seconds after he returned the smoke alarm went off.
6. Ms Jones got out of bed, went into the hall and saw folded sheets of paper hanging out of the letterbox. They were burning. She managed to remove them and put out the fire. It could still be seen that the sheets were bank statements for a person living at an address in Belvoir Street.
7. The applicant told Miss Jones that he had seen a man outside her flat at the time of the knocking, and he gave a description of a white male with black hair and a short stubbly beard.
8. Ms Jones rang 999 at 12:27 and the police arrived shortly afterwards. In Miss Jones' presence the applicant gave a description to the police of a man that he said had knocked on the door, describing him as a bearded Muslim man between five foot four inches and five foot six inches in height, wearing a white shirt and blue jeans.
9. The police investigation demonstrated that there was no fire damage to the outside of the door or to the bristles inside the letter box. The only damage was to the inside of the door.
10. Two pest control employees were working in Vestry House at the time of the fire, both bearded and both wearing a white shirt and dark work trousers. Each gave witness statements saying that he had nothing to do with the fire and that he had been doing pest control work in the building. Their evidence was supported by CCTV evidence.

11. The applicant was arrested a few days later, after the CCTV had been viewed. He answered “no comment” to questions put to him during his police interview. His room at the Ibis hotel in the City was searched. Police found written notes about Ms Jones and her bank details, as well as bank statements for persons living at an address on Belvoir Street.
12. At the time of sentence, the applicant had 22 prior convictions for 72 offences, including a conviction in 2004 for two offences of arson that had been committed the prior year, as well as offences of criminal damage, fraud, theft, obtaining property by deception, perverting the course of justice, harassment, stalking, impersonating a police officer, and various breaches of court orders.

Grounds of appeal against conviction and sentence

13. The applicant has submitted grounds of appeal against conviction and against sentence and has sent various detailed letters to the court, all of which he has drafted himself. We have carefully reviewed all of this material.
14. The applicant has also referred in his papers to having new evidence that he wishes to present to the court. However, he has not provided any such evidence nor has he indicated what this evidence is or how it is relevant to either of his applications. We proceed therefore only on the papers that he has provided.
15. Given that the applicant's grounds of appeal against conviction involve criticism of his legal representation, he was invited to waive legal professional privilege in respect of his trial solicitors and counsel. They were then invited to comment on his grounds of appeal and his criticisms of their conduct of his case. We have considered their responses.
16. In refusing leave to appeal against conviction, the single judge said:

"I have considered the papers in your case and your grounds of appeal.

Having read the detailed and comprehensive chronology of the proceedings from your solicitors and your Counsel, it is clear that your application for permission to appeal is entirely without merit. There is no objective basis for your dissatisfaction with your legal team (reflected in part by your previous attempt(s) to change representation, the last of which was refused by the Court).

There is no arguable case to contend that your decision to plead guilty, as to which you gave clear instructions, was made having considered the advice being given and the strength of the case against you. Indeed, at one point you indicated your desire to do so in open Court.

There is no arguable basis to contend that your conviction, upon your guilty plea, is unsafe."

17. We agree. The applicant offers an array of complaints about the circumstances leading to his conviction. Although his grounds are somewhat erratic and incoherent, his complaints

appear in substance to be the following:

- a. The applicant complains that he was somehow disadvantaged by the strike by members of the Criminal Bar Association that occurred during the course of the proceedings against him. He does not, however, make clear how this makes his conviction unsafe.
- b. The applicant complains that he was forced to work with a solicitor that he did not want to work with. The chronology shows that the court at least once permitted the applicant to transfer his representation to a new firm of solicitors due to a breakdown in his relationship with the first set of solicitors. But the court, after careful consideration, refused a second transfer to yet another firm of solicitors for good reasons. As is clear from the response of his trial solicitors and counsel, after his second request to transfer his representation was refused, the applicant did engage with his legal team and provided instructions. The papers make clear that the applicant was competently and professionally represented despite his difficult conduct as a client.
- c. The applicant complains that the complainant was an unreliable witness. However, the complainant did not give evidence, as the applicant pleaded guilty.
- d. The applicant complains that he was forced to plead guilty. This is his principal ground. We will say more about this in a moment.
- e. The applicant complains that he was told by his legal advisers that he could not adduce any bad character evidence against any of the prosecution witnesses. His principal desire appears to have been to adduce bad character evidence against Ms Jones, the complainant. His counsel explained to him the difficulties that this presented, including that some of the alleged bad character evidence was irrelevant and therefore inadmissible, and that an attack on the complainant's character risked the possibility of the whole of the applicant's extensive offending history being admitted as bad character evidence. There is no merit in the suggestion that this clearly correct advice, which he adopted and followed, rendered his conviction unsafe.
- f. The applicant complains that there were a number of serious breaches of his rights under the Human Rights Act. He has failed, however, to identify any circumstances justifying his complaint.
- g. The applicant complains that the prosecution had no real evidence that he started the fire. However, in fact the prosecution case was a strong circumstantial case given that:
 - i. there was clear forensic evidence that the fire was started inside Miss Jones' flat and there is no evidence to suggest that Miss Jones started the fire or had any motive to do so;
 - ii. in any event the evidence from the pest control workers, as supported by

the CCTV evidence, effectively eliminated them as potential suspects; and

- iii. the fire was started with bank statements relating to an address in Belvoir Street and further bank statements relating to that address were found on a search of the applicant's room at the Ibis hotel.
 - h. The applicant complains that the prosecution did not show him any paperwork. However, all the relevant prosecution materials were available to the applicant's legal team via the Digital Case System, and his legal team would have discussed all of the relevant material with the applicant in order to take his instructions.
18. As to the applicant's principal complaint that he was "forced" to plead guilty, there is no evidence that any unfair pressure, much less the use of force, was used on the applicant. The papers show, to the contrary, that the impetus to plead guilty came from the applicant, his indicating on more than one occasion that he intended to do so. His plea was given freely and unequivocally, and he fully understood the offence he was pleading to and why. There is also no evidence that the applicant's free admission of his guilt was a false one. As we have already noted, the prosecution case was, in fact, a strong one.
 19. In R v Tredget [2022] EWCA Crim 108, [2022] 4 WLR 62 (CA) at [148]-[178], a particularly strong constitution of this Court offered detailed guidance as to the proper approach to an appeal against conviction following a plea of guilty. The appellant must show that the conviction was unsafe. Under normal circumstances, a plea of guilty by a defendant, who must know whether he or she committed the offence charged, amounts to a public admission of the facts. This establishes the safety of the conviction, absent special circumstances. The Court in Tredget identified three broad categories of case in which an appellant is entitled, notwithstanding having entered a guilty plea, to argue that his or her conviction is unsafe. None of these categories apply to this case.
 20. There is, accordingly, no merit in any of the applicant's proposed grounds of appeal against conviction. His application for leave to appeal against conviction is therefore refused.
 21. As to the applicant's application for an extension of 41 days to apply for leave to appeal against sentence, the applicant's excuse for the delay is that the court lost his original application for leave to appeal against sentence. Although there is no evidence that this occurred, we have considered the substance of his grounds of appeal against sentence. In essence, he complains that the sentence was manifestly excessive.
 22. We agree with the single judge that there is no merit in this ground. By reason of the combination of medium culpability factors and the judge's finding, which cannot be faulted, that there was a high degree of premeditation, the judge was entitled to place the applicant's culpability in Category A (high culpability) of the applicable Sentencing Council guideline. The judge found that Ms Jones had suffered serious psychological harm, a finding that was open to the judge on the evidence of Ms Jones' victim personal statements. The judge was entitled to place the harm caused by the applicant's offence in harm Category 1 of the guideline. On this basis the guideline starting point for sentence was four years' custody with a category range of two to eight years' custody.

23. The judge adopted the guideline starting point and then adjusted it upwards substantially to reflect the significant aggravating factor of the applicant's lengthy offending history, which includes one conviction for two offences of arson, as well as the aggravating factors of the lies he told about the cause of the fire and the commission of the offence in a domestic context. Balanced against this, there was little mitigation of substance. The judge was fully entitled to conclude that this offending merited a sentence of at least five years before consideration of any discount for the applicant's plea of guilty. The judge allowed a 10 per cent discount for the applicant's plea of guilty, even though the plea had been made after the first listing for trial.
24. The judge had an incontrovertible basis for concluding that the applicant is a dangerous offender under the relevant legislation, and the judge was therefore fully justified in imposing an extended determinate sentence. The maximum licence period of five years was appropriate given all the circumstances, including the offender's lengthy offending history.
25. There being no merit in the applicant's grounds of appeal against sentence, there is no point in granting the extension of time sought, even assuming that his reason for the delay had any merit. Accordingly, the applicant's application for an extension of time to apply for leave to appeal against sentence is refused.

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

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