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Case No: 2024/03475/B2
2022/02207/B2

Neutral Citation No [2024] EWCA Crim 831
IN THE COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM THE CROWN COURT AT
MANCHESTER (MINSHULL STREET)
HIS HONOUR JUDGE POTTER

Royal Courts of Justice
Strand, London WC2A 2LL

Wednesday 17th July 2024

B e f o r e:

LADY JUSTICE ANDREWS

MRS JUSTICE CUTTS

HER HONOUR JUDGE MUNRO KC
(Sitting as a Judge of the Court of Appeal Criminal Division)

R E X

- v -

CHOUDHRY HUSSAIN

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Non-Counsel Application

J U D G M E N T

LADY JUSTICE ANDREWS:

1. The Registrar has referred to the Full Court this application for extensions of time in which to bring appeals against conviction and sentence in respect of a Bail Act offence to which the applicant pleaded guilty on 29 January 2020 in the Crown Court at Manchester (Minshull Street). For reasons that will become apparent, it is appropriate for us to grant the necessary extensions of time. In fact, the only appeal that we need deal with is the appeal against conviction.
2. Following the referral of the matter to the Full Court, fresh counsel were instructed to represent the Appellant and the Crown. After they had conferred, it became apparent to both of them that the Crown Court had no jurisdiction to try the appellant for the matter to which he had pleaded guilty, and therefore the Crown indicated that they acceded to the appeal. In those circumstances counsel jointly contacted this Court and asked that we should dispose of the matter on the papers and excuse their attendance, which we have agreed to do.
3. The background is straightforward. The appellant stood trial in 2015 for serious offences of which he was subsequently convicted in his absence. He had given his evidence in chief and was partway through his cross-examination. The cross-examination was due to resume on a Friday. The appellant asked the judge if he could be excused attendance that day because he wished to attend the funeral of a close relative. He was on bail throughout the trial on conditions which included the surrender of his passport to the police, and he had indeed surrendered a passport to the police. However, unbeknownst to them or to his then legal representatives, he had lied to the passport office. He had told them, untruthfully, that his British passport had been stolen and had procured a duplicate, which was the passport that he surrendered. He used his original passport on the Friday to travel to Pakistan. His disappearance was discovered when the trial resumed on the following Monday. The trial then continued in his absence. He was convicted and received a lengthy prison sentence.
4. Subsequently, an application was made for his extradition from Pakistan. That was successful. He was kept in custody pending the extradition for a considerable period of time. When he returned, he was charged with the Bail Act offence under section 6 and pleaded guilty to it. HHJ Potter passed a sentence of 8 months' imprisonment to run consecutively to the term of 19 years imposed on him in 2016, which he had not yet begun to serve.
5. At that stage the appellant was unaware that he might have had an arguable point in relation to the length of his sentence, because none of the time that he had spent in custody in Pakistan had been counted towards the term of imprisonment imposed by the judge, which was one of eight months. In fact, he had been in custody for longer than that, and so if the judge had exercised the discretion open to him to count the time spent awaiting extradition towards that sentence, he would have been released immediately. On the face of it there appeared to be no reason why that time should not have been counted towards his sentence.
6. However, it transpired that there was a more serious problem because the conditions of section 151A of the Extradition Act 2003 were not met in relation to the Bail Act offence. The offence was not one for which extradition was either sought or granted. In accordance with the decisions of this court in *R v Seddon* [2009] EWCA Crim 483, and *R v Shepherd* [2019] EWCA Crim 1062; [2019] 2 Cr App R 26, the effect of that is that there was no jurisdiction in the Crown Court to deal with the appellant for the offence of failing to

surrender to bail.

7. Despite the fact that he pleaded guilty, therefore, his conviction was a nullity. The Crown has conceded that the Bail Act offence was not mentioned in the extradition request which was submitted to the authorities in Pakistan, and that the State's consent was not sought for a prosecution for that offence, and therefore that the conviction is liable to be quashed.
8. Against that background, therefore, it appears to us to be appropriate not only to grant the lengthy extension of time which is required, but to allow the appellant to vacate his plea of guilty and to quash his conviction on the basis that it was a nullity. In those circumstances there is no need to proceed with the appeal against sentence, although for the reasons already explained, that appeal would have been successful also.
9. We note that there does not appear to have been a representation order granted by the Registrar for the Appellant's counsel and solicitors to have advised on the appeal and settled the Advice and Grounds of Appeal, which have succeeded in the conviction appeal. For the avoidance of any doubt, and to make sure that there is due payment for the work that was done, we will grant a representation order for solicitors and counsel for that work.

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

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