No. 202100727 B1

IN THE COURT OF APPEAL
CRIMINAL DIVISION

[2021] EWCA Crim 1544

Royal Courts of Justice

Thursday, 14 October 2021

Before:

MR JUSTICE TURNER

HER HONOUR JUDGE KARU

(RECORDER OF SOUTHWARK)

REGINA

V

KAMIL WOJCIECH KALWARSKI

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Non-counsel application

JUDGMENT

MR JUSTICE TURNER:

1
On 20 October last year in the Teesside Crown Court the applicant, Mr Kalwarski, pleaded guilty to a number of offences. They were set out in formal terms in three indictments, and there were two other summary only matters which were associated and which fell within s.51. Mr Kalwarski now renews his application to this court for leave to appeal against conviction, leave having been refused on paper by the single judge. He does not renew a further application for leave to appeal his sentence which had also been refused by the single judge.

2
By way of background, the applicant had been in a relationship with the complainant, Patrycia Kalwarski, for some nine years, over which period they had two daughters. However, this relationship ended in about August 2018, following allegations of abuse. I pass no comment as to whether those applications are well founded or not. I have no evidence in relation to it. Nevertheless, social services became involved. They concluded that the applicant was not engaging to the extent he should have done, and the stage came when he was not allowed contact with the two girls. Things deteriorated to the extent that on 22 March 2019 Mr Kalwarski was issued with a non-molestation order through the Family Court in Middlesborough. That non-molestation order, which we have read, prohibited the applicant, amongst other things, from contacting his former partner and from entering within a designated area in the vicinity of the former family home.

3
We summarise the offences with reference to the indictments in which they are set out. The first indictment was T20200328. The first count on that indictment alleged breach of that non-molestation order. Because of concerns which he had over Mr Kalwarski's movement, his former partner would regularly check his Instagram account by way of monitoring his activities. On 10 September 2019 she again checked his account and noticed that there was there a photograph which had been taken by the applicant of her house from across the road. Added to the picture was a comment in Polish which has been translated as:

"This is the border of the ghetto. This is the border I am forbidden to cross. I do apologise to you, my daughters, that I even listened to anybody about that, and do not come to you, but soon enough we will go for a long walk and I will explain to you."

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The second count on that indictment also related to a similar breach of the terms of the order. On 11 September 2019 the complainant once again checked the applicant's Instagram account. Once more, there was a photograph with a hand pointing at a home address with another comment in Polish which has been translated to as, "Daddy has come to you again just to see you but you are probably at school right now". It transpired that both photographs had been taken from locations that were within the geographical exclusion zone imposed by the non-molestation order.

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On 12 September 2019 the applicant was interviewed in respect of the alleged breaches of the non-molestation order, and during the course of the interview he admitted taking the pictures. He said he

believed he was outside the exclusion zone. This, of course, may have been a factor in mitigation, but it was not a defence.

6
On indictment F20200327 there were seven counts alleging further breaches of the non-molestation order on occasions when the applicant posted a series of messages. These were messages in Polish on the complainant's Facebook page. They were sent in July 2020, and in general, related to the applicant's concern for his children and the alleged parenting shortcomings of his former partner, the last message concluding with the following, "I am even more determined than ever and I am well prepared."

7
The applicant was arrested in respect of these matters on 4 August 2020 and interviewed later that day. In the interview he accepted sending the messages and said that they were meant for his children with whom he had not been in touch for two years. Again, this was a point capable of only going to mitigation and not guilt, because the terms of the non-molestation order were clear that no messages of that sort should be sent.

8
We now come to indictment T20200326. Between 13 July 2020 and 8 August 2020 the applicant sent a series of emails to the Teesside Magistrates' Court. They are reflected in counts 1 to 3 on the indictment which alleged sending an electronic communication with intent to cause distress or anxiety. The emails state the following: count 1, 13 July 2020, that the applicant was going to "set fire to the eyes of the judges"; count 2, 1 August 2020:

"Urgent, if the case is continued based on the wrong application. Repeat the paternity strike if you force me to court based on the error and you will convince me that everything is fine when I did not see the children 16 months. I repeat my protest."

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Count 3, 8 August 2020, the final email made further reference to contact with his children but also concluded with the warning, "This time my protest will take a more dramatic face on Monday".

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On Thursday 16 July 2020 the applicant was due to appear before District Judge Capstick. The court staff were concerned about the potential threat and so were monitoring the applicant's actions. As the day progressed he became increasingly agitated and when his case was called on, two police officers were present at court. When he entered the courtroom, he produced a piece of paper from his pocket, held it above his head in both hands, saying, "This is what it's all about. I'm ending it, right here and now." He then produced a small container containing a flammable liquid, which he poured over his left arm and shoulder and then set light to himself. The applicant then, still ablaze, ran towards the bench, which action was the subject matter of count 5 alleging affray, and knocked over the court clerk, which further action was the subject matter of count 4, alleging assault by beating. He then lost his balance and fell to the floor, and whilst on the floor he was detained by the police and the fire was put out. On his arrest he said, "I told them I would do it and they didn't even stop me."

11
Finally, I deal with the summary offences. The applicant's conduct in the magistrates' court formed the subject matter of a charge under s.4 of the Public Order Act 1986. The second offence of causing intentional harassment, alarm or distress, under s.4A of the Public Order act 1986, related to events

of 12 August 2020. A member of court staff was checking the outside of the magistrates' court building when he noticed the applicant in possession of a jerry can. Fearing that he might set the building on fire, he radioed for the doors of the building to be closed, and that a 999 call should be made. In the event, the applicant made no attempt to enter the building, but was captured on CCTV walking past the doors still carrying the jerry can.

12
Following the applicant's arrest, PC Johnson recovered a black petrol can from the applicant's vehicle which he said contained a quarter cupful of liquid that smelled of petrol, although during the course of the interview the applicant denied that it was.

13
Following his guilty pleas, the applicant was duly sentenced to a total term of imprisonment of 18 months. In grounds drafted by the applicant himself he seeks to challenge his convictions, alleging that it was unfair that the judge had invited the prosecution to lay more charges in relation to setting himself on fire in the courtroom as a result of which the count of affray had been added. The incident related, he said, to a peaceful protest against his mistaken sentence. He went on to contend that it was unfair that he was prosecuted for what amounted to non-criminal behaviour or accidental breach of the order. He said the police had informed him that the order had been cancelled. He said that it was unfair that his explanation or witnesses were not used at the trial and his lawyers did not represent him properly. He said his solicitors were not properly prepared and had not read his case papers, that evidence and witnesses were not called on his behalf. It was also unfair that the judge did not listen to his explanation regarding mediation with his ex-partner.

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Against this background, however, it must be noted that the applicant made a full and unambiguous admission of guilt to the author of the pre-sentence report. The points he made to that author were in mitigation and did not amount to a defence to the allegations raised against him.

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I have no doubt that he felt genuinely aggrieved at the way he thought he had been treated by his former partner, social services, the police, the court and his own legal team. However, none of his points, although they may well be sincerely made, amount to potential defences to the charges to which he pleaded guilty, in respect of which the evidence was and remains, we have to say, overwhelmingly strong.

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In refusing leave the single judge observed:

"You wish to be able to argue that your conviction is unsafe. You pleaded guilty to the counts on which you were convicted and therefore chose not to have a trial to contest these counts. There are limited grounds on which it is possible to argue that a conviction based on a guilty plea is unsafe. I am unable to discern any of them in the proposed grounds you have put forward for consideration.

From the materials before me, it appears that before entering your plea you were fully and accurately advised about the charges you faced, the choices you had about how to plead, and the potential consequences of your choices. You confirmed at the time that you understood all of this clearly. You had time to think about your choices. You made clear and unequivocal decisions to plead. Because the case was adjourned on a number of occasions, you had plenty of opportunity to seek advice and to check on and confirm your decisions. You maintained your guilty pleas throughout.

You were represented, and it would appear, appropriately advised throughout. It appears you wish to be able to complain about the advice you were given and the way you were represented. However, I can find no basis in the materials I have seen on which such complaints could arguably be upheld.

Nor can I see anything that has changed since your convictions to suggest that there is an arguably good reason for permitting you to change your mind about your pleas. In those circumstances," concluded the single judge, "it is not arguable your conviction is unsafe."

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We agree with that conclusion. I am going to add on a more personal note that I do appreciate the efforts which the applicant has made to come down to London and to put his case before us. He has been courteous and restrained and we understand, in the circumstances of the family difficulties he faced, how strongly he feels about his case. However, our job is to apply the law, and in all the circumstances we are unable to find that the conviction was unsafe.

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