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**IN THE COURT OF APPEAL**

**CRIMINAL DIVISION**

Neutral Citation Number: [2024] EWCA Crim 83

Case No: 2022/03802/B3, 2022/0380/B3

Royal Courts of Justice

The Strand

London

WC2A 2LL

Friday 19<sup>th</sup> January 2024

**B e f o r e:**

**LORD JUSTICE COULSON**

**MRS JUSTICE FOSTER DBE**

**MR JUSTICE HILLIARD**

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**R E X**

**- v -**

**MARTIN HARVEY**

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Computer Aided Transcription of Epiq Europe Ltd,

Lower Ground Floor, 46 Chancery Lane, London WC2A 1JE

Tel No: 020 7404 1400; Email: rcj@epiqglobal.co.uk (Official Shorthand Writers to the Court)

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Non-Counsel Application

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

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Friday 19<sup>th</sup> January 2024

**LORD JUSTICE COULSON:** I shall ask Mr Justice Hilliard to give the judgment of the court in these two linked renewed applications.

**MR JUSTICE HILLIARD:**

**CAO Reference 2022/03804/B3**

1.

The provisions of the [Sexual Offences \(Amendment\) Act 1992](#) apply to this case. 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 public to identify that person as the victim of the offence. This prohibition applies unless waived or lifted in accordance with [section 3](#) of [the Act](#).

2.

On 7<sup>th</sup> February 2002, in the Crown Court at Blackfriars, the applicant (then aged 15, now aged 37) was convicted of indecent assault, contrary to [section 14\(1\)](#) of the [Sexual Offences Act 1956](#), and rape, contrary to [section 1\(1\)](#) of the same Act.

3.

On 21<sup>st</sup> March 2002, he was sentenced, according to the court record, to three years and nine months' detention in a young offender institution.

4.

A co-accused, aged 14, pleaded guilty to attempted rape, indecent assault and perverting the course of justice. He was sentenced, according to the court record, to a total of three years and six months' detention in a young offender institution.

5.

The applicant now applies for an extension of time (approximately 20 years and nine months) in which to renew his application for leave to appeal against conviction and for a representation order, following refusal by the single judge.

6.

The applicant has explained that he was told at the time that he had no grounds of appeal. At the age of 15, he lacked understanding. He says that as he came to greater understanding, the prison governor blocked his mail.

7.

In the proposed grounds of appeal, the applicant appears to say that the victim had mistakenly identified him as her attacker; that a forensic report said that there were no signs of tears or lacerations and that the victim was sexually active; that there were inconsistencies in the victim's account; and that his barrister at trial told him to tell a lie about how old he believed the victim was and to say that he thought she was 18.

8.

The applicant waived legal professional privilege so that his barrister's comments could be sought. Sadly, the barrister has died.

9.

Owing to the passage of time, there are no papers available about the facts of the case. Nor are transcripts of the proceedings available. As a result, it is impossible to investigate the evidence given and issues raised at trial. However, the applicant was represented at trial and was told that there were no grounds of appeal. There is nothing from the applicant which causes us to doubt the safety of the convictions. No doubt the correctness or otherwise of the victim's identification and any inconsistencies in her evidence were explored at trial. Experience shows that sexual assault does not necessarily result in physical trauma. There was nothing to support the suggestion that the applicant was told to lie about the victim's age. In any event, he says that he said he thought she was 15 and not 18.

10.

We cannot see that there are any arguable grounds of appeal, although we have considered everything that the applicant has said. In any event, he requires a very substantial extension of time and has come nowhere near providing any sufficient explanation for the delay. As a result of that delay, only very limited information is available about the case. Although the applicant was indeed 15 years old when convicted, he has had many years in which to pursue an appeal after he reached adulthood, and he has not taken that opportunity.

11.

In those circumstances, all the applications must be refused.

12.

The applicant was warned that if he renewed the application, the full court would consider making a loss of time order. The application is wholly without merit. Such unmeritorious applications slow up the work of the court which has to consider them when they are renewed. This is the only means that we have of discouraging unmeritorious applications.

13.

Accordingly, we make a loss of time order in this case of 14 days.

### **CAO Reference 2022/03802/B3**

14.

On 21<sup>st</sup> February 2022, following a trial in the Crown Court at Snaresbrook, the applicant was convicted of five counts of sending an indecent or grossly offensive article with intent to cause distress or anxiety, contrary to [section 1\(1\)\(b\)](#) of the [Malicious Communications Act 1988](#) (counts 1 to 5) and one count of damaging property, contrary to [section 1\(1\)](#) of the [Criminal Damage Act 1971](#) (count 6).

15.

On 9<sup>th</sup> June 2022, the applicant was sentenced to concurrent terms of two years' imprisonment on counts 1, 2, 3 and 5; 12 months' imprisonment on count 4, to run consecutively; and to a concurrent term of three months' imprisonment on count 6. Thus, for these six offences he was sentenced to a total of three years' imprisonment. In addition, he was sentenced to a consecutive term of nine months' imprisonment for an offence of contempt of court, which was charged on a separate indictment.

16.

He now renews his application for an extension of time (267 days) in which to apply for leave to appeal against conviction and for a representation order, after refusal by the single judge.

17.

The applicant has explained that he contacted the Criminal Cases Review Commission on the day he was convicted. We infer that he is saying that this has in some way held up his application for leave to appeal against conviction.

18.

The applicant has drafted his own grounds of appeal, and we acknowledge that this cannot have been an easy matter for him. We have made every allowance for that. We have considered all the points he has made. If we do not mention a particular point, it is only because it does not add anything of substance.

19.

The applicant lodged a clarifying grounds of appeal form, dated 14<sup>th</sup> February 2023. We shall specifically address the argument advanced there.

20.

The facts of the case are sufficiently set out in the Criminal Appeal Office Summary. There is no need for us to set them out in detail.

21.

In short, the applicant was an inmate in HMP Pentonville during the indictment period and was in the Care and Segregation Unit. He passed over letters containing sexual references addressed to female governors.

22.

Count 6 alleged that he had damaged a wall by drawing graffiti on it.

23.

At his trial, the applicant accepted that he wrote the letters and drew the graffiti. His case was that he did not intend to cause any alarm or distress by the letters, and that he had a lawful excuse to write on the wall, which was to secure his release from the unit.

24.

No complaint is made about the way the judge summed the case up to the jury.

25.

The single judge summarised the applicant's grounds of appeal before providing his response to them. It is convenient to set out what he said:

"1.

You complain about being given punishment in prison.

2.

You received an adjudication for disrespecting a member of staff, when you were professing your love for her. The matter was not referred to the police, but Governor Poynton then called the police. You allege that amounted to double jeopardy. You also allege that you have already received an adjudication for your behaviour and the case should have been dismissed on the grounds of double jeopardy.

3.

When you told Governor Poynton that you were going to appeal against conviction, she asked who your barrister was and then had [your] mail blocked.

4.

Your case should have been dismissed due to discontinuity of evidence. Governor McFarlane said that you spoke of child sodomy and sacrifice as though it was your fetish, when your letter stated his distaste for what he had read in *The Biggest Secret* by David Icke. In addition, nine pages were missing from your 54 page letter. The missing pages included your complaints about staff from the time when you were recalled up until the point you were said to have acted sexually inappropriately.

5.

Complaints regarding representatives: You say that Marianna Pasteris informed you that the missing papers amounted to discontinuity of evidence. However, she would not apply to dismiss the case because she did not like how you spoke to her.

Ms Pasteris then returned your case to Bonnie Compton, who took up your case mid-trial, so that Ms Pasteris could start another trial.

6.

Governor McFarlane did not submit her letter to the police. Instead, she handed a letter to Governor Poynton and then removed pages, which consisted of a letter addressed to you from your ex-girlfriend setting out how you had suffered from the onset of your recall such as being unregistered for visits for six weeks.

7.

You say that the Governor encouraged you to write erotic literature after making a sexual innuendo and then used Governor Poynton to illegally detain you."

26.

The single judge then dealt with each ground in turn. We set out his response:

"1.

The fact, if it be the case, that you have received punishment in prison does not amount to a ground for challenging your conviction in the Crown Court.

2.

The fact of prison adjudications does not provide grounds for appealing your conviction, nor does it found an argument that you were subject to double jeopardy in the Crown Court.

3.

This is not a ground of appeal against an appeal that pre-dated the event you describe.

4 & 5. There was sufficient evidence placed before the jury to enable them to be sure of your guilt. The suggested missing material (or suggested 'discontinuity of evidence') could not conceivably support a contention that your conviction was unsafe.

6.

This is not a ground of appeal.

7.

The fact, were it to be established, that someone else had encouraged you to write the material which was the subject matter of the indictment does not provide you with a ground of appeal against conviction.

In those circumstances permission to appeal is refused, bail is refused and legal assistance is refused.

Had there been any merit in your grounds, which there is not, I would have been prepared to consider your application for an extension of time. But since there is not, I also refuse you an extension."

27.

We have considered the case and the proposed grounds of appeal for ourselves. We find ourselves in complete agreement with the single judge and for the reasons he gave.

28.

In those circumstances, these renewed applications must be refused.

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

Lower Ground, 18-22 Fumival Street, London EC4A 1JS

Tel No: 020 7404 1400

Email: rcj@epiqglobal.co.uk

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