

Neutral Citation Number: [2015] EWCA Crim 123

No: 2014/0986/B5

IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
Strand
London, WC2A 2LL

Friday, 6 February 2015

B e f o r e:
LORD JUSTICE JACKSON
MR JUSTICE MITTING

MR JUSTICE JAY
R E G I N A

v

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Miss M Sikand appeared on behalf of the **Appellant**
Mr B Douglas Jones appeared on behalf of the **Crown**

J U D G M E N T
(Approved)

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1. MR JUSTICE JAY: On 23rd February 2009 at the Woolwich Crown Court the applicant, having pleaded guilty on a single count indictment to possession of a false identity card contrary to section 25 of the Identity Cards Act 2006, was sentenced to 12 months' detention in a young offender institution. The applicant now applies for leave to appeal against the conviction and sentence, to adduce further evidence pursuant to section 23 of the Criminal Appeal Act 1968 and for an extension of time in the region of five years. The Registrar has referred her applications to the full court.
2. Given that they are not opposed by Mr Douglas Jones for the Crown, for whose frank and thorough respondent's notice we are grateful, we may be relatively brief.
3. The applicant was born in Nigeria on 21st December 1989 and came to this country in the spring of 2008. On 7th November 2008 she approached the counter of the Money Shop in Catford and applied for a prepaid cash card in a name other than her own. She sought to support the application by producing a false Nigerian passport, together with a utility bill. It was suspected that the passport was counterfeit and the police were called. The applicant admitted that the passport was fake and said that she had obtained it from a shop keeper in New Cross to whom she now owed £150. Two false French identity documents were also found in her possession.
4. On 14th November 2008 the applicant was advised by her previous solicitors, Mackeseys, that in the circumstances it did not appear that she had a defence to the charge. On 17th November the solicitors wrote to her again and said:

"I understand that you spoke at length with the lawyer at court and informed him of the atrocities that have taken place since you have been residing in the UK. It is with regret that it is unlikely that we will be able to visit you in custody before the next hearing date."

No further investigations were made into the atrocities the applicant was referring to. This was a surprising omission.

5. The applicant was arraigned and pleaded guilty on 15th November 2008. She was sentenced by His Honour Judge Moore on 23rd February 2009. On the facts known to the court at that stage the sentence was not manifestly excessive.
6. The true facts in relation to this applicant took time to emerge. An immense amount of well directed endeavour has been undertaken on her behalf by a range of organisations and legal advisers. Wilsons solicitors have been handling her asylum claim and Birds solicitors have taken over conduct of the criminal proceedings. They are to be commended for the quality and quantity of their endeavours.
7. The applicant's initial claim for asylum was refused but during the course of the making of a fresh claim in 2011, when she was represented by Wilsons, it became clear that the applicant had been the victim of physical and sexual abuse in Nigeria, that she was trafficked to the United Kingdom for the purpose of sexual exploitation, and that once here she was the victim of appalling prolonged and systematic physical and sexual abuse. It is unnecessary to set out the detail. The result of all these experiences is that

the applicant suffers from severe depression with psychosis, PTSD and ongoing suicidal ideation.

8. On 17th November 2011 the Competent Authority under the Council of Europe Convention Against Trafficking in Human Beings 2005, namely UKBA, determined on the balance of probabilities that the applicant had been the victim of human trafficking.
9. The first ground of appeal against conviction is that the conviction is unsafe because the applicant's case engaged Article 26 of the Trafficking Convention. No representations had been made to the CPS by her lawyer that she was the victim of trafficking, but the offence for which she was being tried was directly connected to her trafficking and that had the CPS been aware of her true position they would not have prosecuted her in the public interest. The second ground of appeal is that in the circumstances of this case there was a possible duty on the prosecuting authorities to investigate her case. In short it is argued that there were a number of trafficking indicators present, such that the threshold of credible suspicion was surpassed. In the alternative the applicant submits that the sentence imposed was manifestly excessive in the light of the facts and circumstances now known to this court.
10. Logically, the first application which needs to be addressed is the application for the very considerable extension of time. The delay is explained in the advice on appeal and arises because it took time for the true facts to emerge and for new solicitors to be instructed. Once Birds Solicitors were engaged they have acted with diligence and industry and with appropriate expedition. Privilege has been waived and there were difficulties in obtaining an account from the applicant's previous legal team.
11. The application for an extension of time is of course bound up with the merits of the substantive appeal. In all the circumstances, we grant the necessary extensions, being satisfied that the delay is explicable and it is in the public interest to do so.
12. The next application is that to adduce fresh evidence under section 23 of the Criminal Appeals Act 1968. That too is unopposed. The application covers all the evidence relating to the human trafficking issue, the applicant's appalling experiences and the concomitant medical evidence. We have no hesitation in allowing this application. The evidence in question was not available in 2009.
13. Thirdly, we consider the application for leave to appeal against conviction. The Crown's position is that the conviction application is meritorious, but ultimately the safety of the conviction must be for the court.
14. In our view the conviction is clearly unsafe. The relevant principles touching on the first ground of appeal have been explained by this court in a number of cases, including R v O [2011] EWCA Crim 2226, R v LZ [2012] EWCA Crim. 1867 and R v T(O) [2013] EWCA Crim. 2405.
15. The position is this. Had the true facts been known at the time of the decision to prosecute, it is clear that the Crown would not have deemed it in the public interest to bring or maintain the prosecution. Moreover, the evidence shows an inextricable link

between the trafficking on the one hand and the perpetration of the offence on the other. It was committed to enable the applicant to escape from the trafficking which had resulted in her physical and sexual abuse in this country.

16. In those circumstances, it is unnecessary for us to consider the second ground of appeal against conviction and the appeal against sentence. The first ground has been clearly made out.
17. Accordingly, we grant permission to appeal against conviction. There would be no useful purpose in adjourning the substantive appeal for argument. We allow the appeal and quash the conviction.