

2019/01195/C4
IN THE COURT OF APPEAL
CRIMINAL DIVISION

Neutral Citation Number: [2020] EWCA Crim 465

Royal Courts of Justice
The Strand
London
WC2A 2LL

Tuesday 24th March 2020

B e f o r e:

LADY JUSTICE RAFFERTY DBE

MR JUSTICE MARTIN SPENCER

and

THE RECORDER OF SHEFFIELD

(His Honour Judge Jeremy Richardson QC)

(Sitting as a Judge of the Court of Appeal Criminal Division)

REGINA

- v -

KIM JOHN ALLISON

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Non-Counsel Application

JUDGMENT

Tuesday 24th March 2020

LADY JUSTICE RAFFERTY: I shall ask Mr Justice Martin Spencer to give the judgment of the court.

MR JUSTICE MARTIN SPENCER:

1. On 19th February 2019, in the Crown Court at Exeter before His Honour Judge Evans, the applicant was convicted of stalking involving serious alarm or distress, contrary to section 4A(1)(b) of the Protection from Harassment Act 1997 (count 1) and acting in breach of a restraining order, contrary to section 5(5) of the Protection from Harassment Act 1997 (counts 2, 4 and 5). On 22nd March 2019, he was sentenced to five and a half years' imprisonment.

2. The applicant now renews his application for an extension of time in which to apply for leave to appeal against conviction, following refusal by the single judge.

3. The facts are set out in the Criminal Appeal Office Summary and need not be repeated.

4. Six matters have been raised by the applicant as potential grounds of appeal:

1. The judge erred in allowing in bad character evidence in relation to the applicant's previous convictions;

2. The judge erred in summing up the evidence to the jury as he did, not highlighting the weak nature of the prosecution case;

3. The judge erred in allowing the prosecution to rely on extraneous material during their closing speech;

4. The judge should have dismissed the case at the end of the prosecution case because there was no evidence upon which a jury properly directed could convict;

5. The judge allowed the prosecution to rely on evidence of the applicant's internet history and searches, which was not relevant to the allegations; and

6. Disclosure was requested in the Defence Statement, which was provided late or not at all.

5. In refusing leave to appeal, the single judge said:

"You advance no arguable grounds of appeal. You criticise counsel who represented you and have waived privilege. The more I read into your trial, the more it becomes apparent that you were represented professionally and skilfully. The evidence against you was overwhelming and your conviction entirely safe. You can have no complaint about the bad character evidence, which was properly admitted. The judge's direction to the jury concerning the character evidence was exemplary. You say that the judge should not have permitted evidence to be given of your internet history and searches. This is nonsense. This was highly probative evidence. Your complaint about disclosure does not bear proper examination. The summing-up was accurate and to the point and you were properly warned about the consequences of

not giving evidence. There was a minor error in the bad character schedule, but the overall nature of the offending was highly relevant and the safety of your conviction is not affected."

6. We wholly agree with the single judge's reasons. It is unnecessary for us to elaborate on them.

7. In correspondence with the court, the applicant has raised a further matter. He seeks to rely on the paperwork submitted by the complainant in civil proceedings by way of a medical report and claim form which, he says, contradicts the account which she gave during the trial. This appears to relate, for example, to the account given by the complainant about the way the applicant's harassment had affected her ability to go out and play bridge or attend yoga.

8. In our view, there is nothing in this which could potentially affect the safety of the conviction. This new point is equally unmeritorious. The renewed application is accordingly refused.

9. In refusing leave to appeal the single judge stated:

"You should beware of a loss of time order."

Furthermore, he initialled the part of the form indicating that, in the event that the application was renewed before the full court and was unsuccessful, the court will certainly consider a loss of time order.

10. The Vice-President of the Court of Appeal Criminal Division observed in *R v Gray and Others* [2014] EWCA Crim 2372 that:

"The only means the court has of discouraging unmeritorious applications which waste precious time and resources is by using the powers given to us by Parliament in the Criminal Appeal Act 1968 and the Prosecution of Offences Act 1985."

11. Section 29 of the Criminal Appeal Act 1968 provides:

"(1) The time during which an appellant is in custody pending the determination of his appeal shall, subject to any direction which the Court of Appeal may give to the contrary, be reckoned as part of the term of any sentence to which he is for the time being subject."

12. Duly warned, the applicant has, nevertheless, persisted with this renewed application. Because we consider that this application for leave to appeal is wholly without merit, and for the reasons stated in *Gray*, namely the waste of precious time and resources entailed by this application, we make a loss of time order. We order that 28 days of the applicant's time in custody pending his renewed application shall not count towards his sentence.

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

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