



JUDICIARY OF
ENGLAND AND WALES

L, HVN, THN, TVR

COURT OF APPEAL (CRIMINAL DIVISION)

21 JUNE 2013

SUMMARY TO ASSIST THE MEDIA

The Court of Appeal (Lord Chief Justice, Lord Justice Moses and Mrs Justice Thirlwall) has today issued guidance to courts about how the interests of those who are or may be victims of human trafficking and who become involved in criminal activities should be approached in criminal proceedings. The guidance is provided in a judgment dealing with four separate appeals against conviction.

Introduction

Lord Judge, the Lord Chief Justice, on behalf of the Court said:

“In these appeals we are dealing with the problems raised by four otherwise unconnected cases in which three children and one adult who were trafficked by criminals for their own purposes have been prosecuted and convicted. Unfortunately the criminals who trafficked them have escaped justice.

“This vile trade in people has different manifestations. Women and children, usually girls, are trafficked into prostitution: others, usually teenage boys, but sometimes young adults, are trafficked into cannabis farming: yet others are trafficked to commit a wide range of further offences. Sometimes they are trafficked into this country from the other side of the world: sometimes they enter into this country unlawfully, and are trafficked after their arrival: sometimes they are trafficked within the towns or cities in this country where they live. Whether trafficked from home or overseas, they are all victims of crime. That is how they must be treated and, in the vast majority of cases they are: but not always. For convenience in this judgment we shall refer to the victim as he or him, although as we have made clear, women and girls as well as men and boys are the victims of trafficking.

“We understand that the Director of Public Prosecutions is shortly to reconsider his present guidance on the exercise of the prosecutorial discretion in relation to victims of trafficking. The form to be taken by prosecutorial guidance is ultimately his responsibility. Despite suggestions in the submissions to the contrary, the court cannot become involved either in the investigation of the case or the prosecutorial decision whether it is in the public interest for the prosecution to proceed. Nevertheless we propose to offer guidance to courts (not, we emphasise, to the Director of Public Prosecutions) about how the interests of those who are or may be victims of human trafficking, and in particular child victims, who become enmeshed in criminal activities in consequence, should be approached after criminal proceedings against them have begun.” (paras 1 – 3)

Discussion

Lord Judge, on behalf of the Court, said:

“... It has not, however, and could not have been argued that if and when victims of trafficking participate or become involved in criminal activities, a trafficked individual should be given some kind of immunity from prosecution, just because he or she was or has been trafficked, nor for that reason alone, that a substantive defence to a criminal charge is available to a victim of trafficking. What, however, is clearly established, and numerous different papers, reports and decided cases have demonstrated, is that when there is evidence that victims of trafficking have been involved in criminal activities, the investigation and the decision whether there should be a prosecution, and, if so, any subsequent proceedings require to be approached with the greatest sensitivity. The reasoning is not always spelled out, and perhaps we should do so now. The criminality, or putting it another way, the culpability, of any victim of trafficking may be significantly diminished, and in some cases effectively extinguished, not merely because of age (always a relevant factor in the case of a child defendant) but because no realistic alternative was available to the exploited victim but to comply with the dominant force of another individual, or group of individuals.” (para 13)

He went on to say:

“ ... [What] is required in the context of the prosecutorial decision to proceed is a level of protection from prosecution or punishment for trafficked victims who have been compelled to commit criminal offences. These arrangements should follow the “basic principles” of our legal system. In this jurisdiction that protection is provided by the exercise by the “abuse of process” jurisdiction.” (para 14)

“... In any case, where it is necessary to do so, whether issues of trafficking or other questions arise, the court reviews the decision to prosecute through the exercise of the jurisdiction to stay. The court protects the rights of a victim of trafficking by overseeing the decision of the prosecutor and refusing to countenance any prosecution which fails to acknowledge and address the victim’s subservient situation, and the international obligations to which the United Kingdom is a party. The role of the court replicates its role in relation to *agents provocateurs*. It stands between the prosecution and the victim of trafficking where the crimes are committed as an aspect of the victim’s exploitation.” (para 16)

“... In the context of an abuse of process argument on behalf of an alleged victim of trafficking, the court will reach its own decision on the basis of the material advanced in support and against the continuation of the prosecution. Where a court considers issues relevant to age, trafficking and exploitation, the prosecution will be stayed if the court disagrees with the decision to prosecute. The fears that the exercise of the jurisdiction to stay will be inadequate are groundless.” (para 17)

Evidential Issues

The Court discusses the evidential issues for courts to consider in paragraphs 19 – 33.

Lord Judge, on behalf of the Court, concludes:

“As we have already explained the distinct question for decision once it is found that the defendant is a victim of trafficking is the extent to which the offences of which he is charged, or of which he has been found guilty are integral to or consequent on the exploitation of which he was the victim. We cannot be prescriptive. In some cases the facts will indeed show that he was under

levels of compulsion which mean that in reality culpability was extinguished. If so when such cases are prosecuted, an abuse of process submission is likely to succeed. That is the test we have applied in these appeals. In other cases, more likely in the case of a defendant who is no longer a child, culpability may be diminished but nevertheless be significant. For these individuals prosecution may well be appropriate, with due allowance to be made in the sentencing decision for their diminished culpability. In yet other cases, the fact that the defendant was a victim of trafficking will provide no more than a colourable excuse for criminality which is unconnected to and does not arise from their victimisation. In such cases an abuse of process submission would fail.” (para 33)

Appeals:

The Court went on to consider the four separate appeals before it and makes fact specific decisions. Lord Judge said: “Our approach does however provide some broad guidance about the kind of case in which, following a proper investigation of the facts, a prosecution would have been unlikely, and if undertaken, would have culminated in a successful abuse of process argument. What they do, however, underline, is that the investigating and prosecuting authorities, the legal professions, and the courts must be alert to the potential difficulties to which cases involving victims of trafficking can give rise.” (para 34)

THN

The case of THN is considered in paragraphs 35 – 45. THN had pleaded guilty to producing a controlled drug, Class B. **In quashing THN’s conviction, Lord Judge said on behalf of the Court:**

“... We agree that there is now powerful evidence that the appellant was a trafficked child and that his criminal activities were integral to the circumstances in which he was a victim. On the basis of the evidence now available, if the appellant had been prosecuted, an abuse of process argument would have been likely to succeed. Accordingly this conviction will be quashed.”
(para 45)

T

The case of T is considered in paragraphs 46 – 55. T was convicted of the offence of cultivating cannabis. **The Court quashed T’s conviction saying:**

“ ... On the basis of the evidence which was not then available, the Crown accepts that had these facts been known at the time when the decision to prosecute was made, the appellant would not have been prosecuted. To that we should add that if he had been prosecuted, on the basis now available, an abuse of process argument would have been likely to succeed. This appeal will be allowed.” (para 55)

HVN

The case of HVN is considered in paragraphs 56 – 67. HVN had pleaded guilty to producing a controlled drug, Class B. **The Court quashed HVN’s conviction saying:**

“... On the basis of the evidence now available it is clear, that the appellant would not have been prosecuted, and that if the prosecution had proceeded and the Crown Court was fully informed of the facts now available, the case would have been stopped as an abuse of process. Accordingly the appeal against conviction will be allowed.” (para 67)

L

The case of L is considered in paragraphs 68 - 74. L, a woman in her mid thirties, pleaded guilty to possession of a false identity document. **The Court quashed L’s conviction saying:**

“Given the appellant’s prolonged exposure to involuntary prostitution and enforced control, the offence she actually committed appears to us to have arisen as a result of her being a victim of trafficking who was provided with a forged passport for her to use as if it were genuine, and the use of it represented a step in a process by which she would escape. On the basis of the facts which are now known, if this appellant had been prosecuted, an abuse of process argument would have been advanced with a realistic prospect of success. The appeal will therefore be allowed.” (para 74)

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This summary is provided to assist in understanding the Court’s decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document.