IN THE COURT OF APPEAL

CRIMINAL DIVISION

CASE NO 201902936/B1

[2020] EWCA Crim 1611

Royal Courts of Justice

Strand

London

WC2A 2LL

Wednesday 18 November 2020

Before:

LORD JUSTICE FLAUX

MR JUSTICE GARNHAM

MR JUSTICE FOXON

REGINA

V

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MR R ROSSER appeared on behalf of the Applicant.

MR C MAY appeared on behalf of the Crown.

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J U D G M E N T

(Approved)

LORD JUSTICE FLAUX:

1. On 18 December 2017, in the Crown Court at Bournemouth, following a Goodyear indication, this applicant (then aged 17) changed his plea to one of guilty to two counts of possession of Class A drugs with intent to supply. An additional count of money laundering was ordered to lie on the file in the usual way. On 26 January 2018, at the same Crown Court, he was sentenced by HHJ Crabtree to a 12-month youth rehabilitation order.

2. His application for permission to appeal against conviction, together with an application for an extension of time of 568 days, has been referred to the Full Court by the single judge.

3. The facts of these offences can be summarised as follows. On 30 July 2017 police officers attended at an address in Canterbury Close, Weymouth, to check on the welfare of a vulnerable male named Mark Henderson. The officers noted that he was acting in an unusual manner and were concerned that there were individuals inside the address that presented a risk to Mr Henderson. When they entered the address the officers found the applicant and two other men inside. The applicant was sitting on a sofa and packaging what appeared to be drugs. He was arrested and searched. Police officers found a wrap inside his pocket and seized £800 in cash which was in his possession. They also seized seven mobile phones from the address (two phones were in the applicant's possession) and the wraps that were on the table which were found, on forensic examination, to consist of 42 wraps of cocaine and 22 wraps of heroin.

4. In interview the applicant denied any involvement in the possession of or supply of the drugs. He stated that he had only been in the address for about 10 minutes prior to the arrival of the police. He had met Mr Henderson the day before when he went

swimming. He had been planning to camp and was intending to buy a tent which explained the cash in his possession. He had seen the wraps on the table and he thought that they were weed. He picked one up and unwrapped it but panicked when the police arrived and put it into his pocket.

5. The applicant pleaded guilty on what would have been the first day of the trial, on a written basis of plea, in which he claimed that he had been asked to deal drugs. He had been attacked by a group of five men who followed him out of a party in Plumstead on 1 April 2017 and stabbed him eight times. He spent three days in hospital. He had been asked to identify them in an identity procedure but had been too scared to identify them. His family were moved for their own safety to Gravesend but he was attacked again. One of the men ("Dan"), whom he thought was the man who had stabbed him, approached him in the McDonalds in Gravesend on 5 July 2017,. He was scared that the man would stab him again. The man gave him a "burner" phone which rang the following night. He went outside and Dan was in his car. Dan drove him to Weymouth. Some time later, on 30 July, Dan picked him up with two other men he did not know. He was dropped off and told to meet at the crematorium. He was given a pack of drugs which they said was worth £700. Mark collected them from the crematorium and took them back to his flat where they were arrested. The £800 found on him was not money from dealing drugs but from playing the drums. He had gone with Dan because he was scared and he had lied to the police in interview because he was scared.

6. On 21 July 2018 the applicant was arrested and charged with further offences of being concerned in the supply of Class A drugs and modern slavery offences. That case was fixed for trial at Woolwich Crown Court. The applicant served a defence case statement

on 10 January 2019, raising a defence under section 45 of the Modern Slavery Act 2015 that he had been forced to deal drugs and felt that he had no choice. This asked for a referral under the National Referral Mechanism, which was made later in January 2019.

7. On 9 May 2019 the single Competent Authority made a positive Conclusive Grounds decision on that referral. The information on which that decision was based included a witness statement from the applicant and Local Authority records. It referred to the fact that in January 2019 the applicant claimed to have been recently taken to woods and tortured for 2 hours by someone he identified to the police as "Big Reeks".

8. The decision concluded as follows:

> "After having read all the information in the file, it is clear that you are involved in criminality. You had the ability to withhold the wages of someone underneath you, demonstrating that you are a significant part of the drug dealing enterprise.
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> Enquiries made during the NRM process have raised questions over the true identity of 'Big Reeks', someone you have blamed for your participation in criminality. It is yourself and Bhandal that make reference to 'Big Reeks' whereas another potential victim has identified the subject by another name. Police research into 'Big Reeks' has not been able to identify anyone of that name linked to this case. There have been no phone logs recorded between you and 'Big Reeks'. In addition, witness statements have contradicted the account that 'Big Reeks' put female victims of criminal exploitation in a taxi, CCTV also contradicts this.
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> The reason you have received a positive conclusive grounds decision refers back to you being forced to run a drug line in Bournemouth. You have also been subject to a large amount of violence since 2017 - although it is unclear whether this has been part of a gang culture or it was in order to force you to deal drugs - either way, it shows that there must be gang affiliation or it is reasonable to expect that you would seek safety within a gang as a result of these attacks.
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> **Although, on the balance of probabilities, it is acknowledged that you were recruited for the purposes of forced labour - criminality in 2017, it is down to the courts to determine at what point you went from a victim of exploitation to a key member of the gang."**

9. The decision summary stated:

> "Applying the standard of proof 'on the balance of probabilities', it is accepted [that] PV was a victim of modern slavery in the UK for the specific purposes of Forced Labour - Criminality."

10. The applicant gave evidence at his trial at Woolwich Crown Court in August 2019 and was cross-examined extensively by Mr May on behalf of the Crown. His evidence was that the person who had stabbed him when he left the party on 1 April 2017 was Big Reeks and it was Big Reeks and another man, nicknamed "Ruthless", who drove him to Weymouth and dropped him off at a train station. He said that he was set up dealing drugs there by Big Reeks and he did it to pay off debts. He had been beaten up by people who took the drugs from him and later he was made to go back to Weymouth by Big Reeks. He said that when he was arrested he was not cutting up drugs but counting how much money he had left. He also admitted carrying on dealing drugs after the Referral Order was made.
11. The full detail of the evidence he gave need not be set out in this judgment but what is clear is that, as Mr May said in opposing this application, the evidence which the applicant gave in the witness box at the trial was a significantly different version of events at the time he was stabbed in April 2017 and of events in Weymouth which led to his drug dealing from the version set out in his basis of plea before the Crown Court at Bournemouth, and the version he gave to the single Competent Authority as set out in the Conclusive Grounds decision. On any view, that cast doubt over the credibility of the applicant.

12. Furthermore, although in the written basis of plea the applicant said that he had been too scared to identify the person who stabbed him in the identification procedure, this was not true. It was an agreed fact at the trial in Woolwich Crown Court that: "Police records state that following [A] being the victim of a stabbing on the night of 1/2 April 2017 [A] made a positive identification during an identification procedure which was carried out on 6 April 2017".

13. We have reached that conclusion about the differing accounts that the applicant has given and their effect on his credibility on the written material before the Court without the need to consider whether or not to admit in evidence the statements from the police officers involved in investigating the stabbing incident which the prosecution sought permission to adduce as fresh evidence.

14. Both the applicant and his co-defendant were convicted by the jury of some of the drug offences. The applicant was acquitted on counts 1 and 2 (being concerned in the supply of cocaine and diamorphine) between the 24 June 2018 and 10 July 2018 but was convicted by the jury on counts 5 and 6 (being concerned in the supply of cocaine and diamorphine) between 11 July 2018 and 20 July 2018. The modern slavery offences were the subject of a successful application of 'no case to answer'.

15. On behalf of the applicant, Mr Rosser seeks permission to advance the single ground of appeal that the conviction in the Crown Court at Bournemouth was unsafe due to the fresh evidence which has emerged in the Conclusive Grounds decision not available at the time of that conviction. He contends that the evidence demonstrates that the applicant had a defence available to him at law under section 45 of the Modern Slavery Act of which he was unaware at that time. He also contends that, if the decision had been available at the time, it would have impacted upon the decision of the Crown

Prosecution Service whether to prosecute. He referred in detail to the four-stage approach set out in the CPS Guidance on Human Trafficking, Smuggling and Slavery:

(a) Is there reason to believe that the person is a victim of trafficking or slavery?

(b) Is there clear evidence of duress?

(c) Is there clear evidence of a section 45 defence?

(d) Is it in the public interest to prosecute?

16. He submitted that the NRM decision clearly satisfied (a) and (c) and he relied upon the material in the Youth Offending and Social Services records as demonstrating clear evidence of duress. He submitted that if the decision had been available at the time it would not have been in the public interest to prosecute the applicant. He relied upon the fact that the applicant was acquitted of two of the drug offences in relation to the earlier period of time as demonstrating that the jury must have accepted, at least in part, the applicant's explanation for what had occurred.

17. Attractively though these submissions were presented we cannot accept them. The critical starting point, which the applicant's case essentially overlooks, is that this is a case in which the applicant pleaded guilty. This Court has emphasised many times that where a plea of guilty, as it is as in the present case, is unambiguous and intentional, it is only in exceptional circumstances that this Court will permit an applicant to go behind a plea of guilty.

18. Most recently in R v S [2020] EWCA Crim 765, Singh LJ, giving the judgment of the Court, said at paragraph 23:

> "23. In *R v Asiedu* [2015] EWCA Crim 714; [2015] 2 Cr App R 8, at paras. 19-25 (Lord Hughes), this Court re-affirmed the principles on which a defendant may be permitted to go behind a plea of guilty. At para. 32, this Court emphasised that the trial process is not a 'tactical game'. A defendant

> who has admitted facts which constitute an offence by an unambiguous and deliberately intended plea of guilty cannot ordinarily appeal against conviction, since there is nothing unsafe about a conviction based on his own voluntary confession in open court. The Court said that, leaving aside pleas which are equivocal or unintended, there are two principal exceptions to this. The first is where the plea was compelled as a matter of law by an adverse ruling by the trial judge which left no arguable defence to be put before the jury. The second is where, even if on the admitted or assumed facts the defendant was guilty, there was a legal obstacle to his being tried for the offence. This would apply where his prosecution would be stayed on the ground that it was offensive to justice to bring him to trial."

19. We note that neither of those principled exceptions would apply here. Singh LJ went on to indicate that whilst the circumstances where this Court would allow someone to go behind the plea of guilty were not limited to those exceptions, it is only in the most exceptional circumstances that the Court would allow that where a defence had been overlooked, although it had power to do so where satisfied that a conviction was unsafe, referring to what the Court said in R v Boal [1992] QB 591. He also referred to the words of warning given in Boal:

> "This decision must not be taken as a licence to appeal by anyone who discovers that following conviction (still less where there has been a plea of guilty) some possible line of defence has been overlooked. Only most exceptionally will this court be prepared to intervene in such a situation. Only, in short, where it believes the defence would quite probably have succeeded and concludes, therefore, that a clear injustice has been done. That is this case. It will not happen often."

20. The prosecution accepts that in an appropriate case, where there is a subsequent positive NRM decision, this Court may grant leave to appeal against conviction if it considers that the conviction is arguably unsafe, even if the applicant has pleaded guilty - see R v C [2014] EWCA Crim 1483, although, as this Court recently confirmed in R v DS [2020] EWCA Crim 2845, a positive NRM decision is not conclusive of an issue in criminal

proceedings.

21. However, in our judgment, the present case is not a case in which the conviction arising out of the applicant's plea of guilty was arguably unsafe. The decision is based upon a version of events advanced by the applicant to the Authority, to Social Services and to Youth Offending which was not given on oath or tested by cross-examination and which differs significantly from the version of events which he did advance when subsequently cross-examined at the Woolwich trial. Furthermore, that evidence at the trial also differs significantly from the basis of plea upon the basis of which he pleaded guilty in 2017, all of which casts doubt upon his credibility.

22. His then counsel has produced a note in answer to the waiver of privilege which addresses events before the judge in Bournemouth but is completely silent as to whether he was aware of the availability of a defence under section 45 of the Modern Slavery Act or whether he gave any advice to the applicant in relation to the availability of such a defence. However, whether that defence was raised with the applicant or not, one thing is clear on the material before the Court, that it cannot be said that if such a defence had been raised it would quite probably have succeeded to use the words of the Court in Boal.

23 The elaborate defence argument that if the decision had been made earlier it would have led the Crown Prosecution Service to conclude that it was not in the public interest to prosecute, seems to us conveniently to ignore the fact that the version of events which was presented by the applicant to the Authority differs significantly from the version upon which he relied in evidence at the Woolwich trial. We consider that if that evidence, and the further evidence of its inconsistency with his basis of plea at Bournemouth had been available to the Authority, there must be considerable doubt that it would have reached a positive decision. It certainly could not have concluded, as it did, that there were "no

significant credibility issues". In any event, given the differing accounts and the subsequent conviction at Woolwich, we consider there is no basis for concluding that the CPS should have determined that it was not in the public interest to prosecute.

24. In all the circumstances, we do not consider that this is one of those exceptional cases where this Court should permit the applicant to go behind his plea of guilty. This application for leave to appeal and for an extension of time is dismissed.

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

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