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IN THE COURT OF APPEAL  
CRIMINAL DIVISION  
ON APPEAL FROM THE CROWN COURT  
AT WOOD GREEN  
HIS HONOUR JUDGE LUCAS T20157416

CASE NO: 2023 01568 B2

Royal Courts of Justice  
Strand  
London  
WC2A 2LL

Thursday 18 July 2024

Before:

LORD JUSTICE WILLIAM DAVIS

MRS JUSTICE THORNTON

SIR ROBIN SPENCER

REX

v

KIRK DANIELS

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**JUDGMENT**

SIR ROBIN SPENCER:

1. This is a renewed application for a very lengthy extension of time in which to apply for leave to appeal against conviction following refusal by the single judge. The extension required is some 6 ½ years. We can see no good reason whatsoever for this long delay but, like the single judge, we have nevertheless considered the merits of the proposed appeal.
2. The applicant (now aged 39) was convicted of possessing a bladed instrument, attempted wounding with intent to do grievous bodily harm, and section 18 causing grievous bodily harm with intent. He was convicted of the first of these offences after a trial in the Crown Court at Wood Green on 21 April 2016. There were other counts on the indictment. He was acquitted of a count of attempted murder. The jury were unable to reach verdicts on the remaining counts.
3. At the retrial of those counts the applicant was convicted on 13 September 2016 of attempted section 18 wounding (count 1) and section 18 causing grievous bodily harm (count 2). Those offences related to different victims in the same incident. He was acquitted on other counts which arose from the same incident alleging offences of wounding and assault on another person present.
4. The applicant was sentenced on 26 November 2016 by the trial judge, His Honour Judge Lucas KC, to an extended sentence of 18 years' imprisonment, comprising a custodial term of 15 years and an extension period of 3 years.
5. Trial counsel advised in favour of an appeal against sentence. That appeal was dismissed by this court on 23 January 2018: see [2018] EWCA Crim 112.

6. There was no appeal against conviction at that stage. We are confident that the applicant must have been advised by trial counsel that there was no merit in such an appeal. The applicant, acting in person, did not lodge the present appeal until 24 April 2023, more than 5 years later.
  
7. The applicant's grounds of appeal in short are:
  - (1) His lawyers failed to represent him properly. They withheld and tampered with witness statements and gave information to the prosecution.
  - (2) There were issues in relation to disclosure. Statements were not disclosed which were vital to his defence.
  - (3) There is “new evidence”, although the applicant has declined to specify what it is without a visit to him in prison.
  
8. In view of the nature of these grounds it is unnecessary to recite the facts of the offences in any great detail. They are set out in the judgment of this court on the sentence appeal cited above. The following summary will suffice for present purposes.

**The facts**

9. The victim of the section 18 wounding in count 2, Aaron Crockett, was returning to his aunt's home on an estate in Hackney in the early hours of 5 September 2015. He and the applicant knew each other from the estate but were not friends. They met and spoke. The applicant then went to attack Crockett, and a fight ensued. The victim of the attempted wounding in count 1, Ako Dray, was a passer-by who intervened. The prosecution case was that the applicant then went upstairs to his flat and returned with a large kitchen knife which he used to attack and stab Crockett. When Dray again intervened, the applicant repeatedly stabbed at him too. That was count 1.

10. In his police interview the applicant denied being the aggressor or having a knife. He said that he had stumbled upon someone else's fight and had been injured himself. Because he had consumed alcohol and cocaine he had little recollection of the events, but this had not affected his behaviour. He had no problems with anyone and did not cause trouble. He had been knocked to the floor by other people and had been found there by the police. He had not returned to his flat for a knife.
11. This account formed the basis of his defence at trial. The applicant did not give evidence.

**The proposed grounds of appeal**

12. In view of the criticisms of his trial counsel the applicant was invited to waive privilege and did so. We have the benefit of a full response from counsel who represented him at the retrial. The applicant had been represented by different counsel and solicitors at the first trial but he had dispensed with their services part way through that trial and represented himself for the remainder of that first trial.
13. We also have the benefit of a respondent's notice settled by counsel who appeared for the prosecution at both trials. With his grounds of appeal the applicant lodged various documents which we have considered.
14. In response to the first ground of appeal his trial counsel comprehensively refutes the applicant's suggestion that he was "not represented at all". For example, counsel lists the conferences he had with the applicant well in advance of the trial, both at court and at the prison where he was remanded. Counsel obtained clear instructions and took further instructions during the trial at the start of each court day. The prosecution witnesses were appropriately cross-examined and the applicant's case was put. It was the applicant's decision not to give evidence. No OFFICIAL pressure was put upon him. He refused to sign the

customary endorsement presented to him by counsel. Indeed, he refused to sign any document presented to him by counsel throughout the trial. The applicant often commented that counsel was not acting in his best interests and was working with the government to ensure he was convicted. The applicant regularly said he did not wish counsel to represent him any longer but, in the best traditions of the Bar, counsel won him round and stuck to his task. Counsel in his response deals with other issues now raised by the applicant: for example, in relation to DNA and fingerprints - points which plainly have no substance.

15. We are quite satisfied that there is no merit whatsoever in this first ground of appeal. We agree with the single judge that clearly the applicant was represented properly; indeed, some acquittals were secured. As the single judge said, the assertion that the applicant's lawyers tampered with evidence or colluded with the prosecution is merely "unevidenced abuse".

16. The second ground of appeal is that there were "issues with disclosure" and that vital evidence or information for his trial was not disclosed. This broad complaint is not particularised. The applicant's trial counsel confirms in his response that there were no issues with disclosure. The required schedule of unused material was provided and the unused material was considered with care. Appropriate applications for disclosure were made. Counsel confirms that items highlighted in a letter from the Crown Prosecution Service in the documents lodged by the applicant in support of this appeal were in fact duly served by the prosecution. There is no merit whatsoever in this second ground of appeal.

17. The third ground of appeal is cryptically expressed:

"There is important new evidence. This requires a legal visit to myself due to sensitivity and privacy of this new vital evidence".

18. Trial counsel assumes that this is a reference to a man called Parrish. The judge granted a witness summons in relation to this potential witness but he could not be found. He had

never made a witness statement to the police. Such evidence as he might have been able to give was referred to in a police crime report. The details are set out in the respondent's notice. We agree with the view expressed by trial counsel, both defence and prosecution, that the information was double edged and arguably favoured the prosecution more than the defence. Had the witness been found he could have been interviewed at court by the defence and a statement taken, but it is pure speculation to suggest that his evidence could have assisted the applicant's case.

19. Even if Parrish is the applicant's "important new evidence" there is no merit whatsoever in this ground of appeal. If the applicant is referring to some other "new evidence" it is unidentified and unspecified and cannot support an arguable ground of appeal.
20. Having concluded that there is no arguable merit in the proposed appeal we refuse the extension of time and refuse leave to appeal. There is even an issue as to whether the renewal to this court was out of time, but we need not resolve that.
21. In his reasons for refusing the application the single judge specifically drew the applicant's attention to the fact that he had initialled the box warning the applicant that if he renewed the application to the full court, which was wholly without merit, he would be at risk of a loss of time order.
22. Despite being warned of the power of the court to make a loss of time order, the applicant chose to pursue these totally unmeritorious applications which have wasted the time of the court. Such applications hamper the court's ability to process meritorious applications in a timely fashion.
23. We consider that these applications were so totally lacking in merit that we should make a loss of time order. We direct that 28 days of the time he has served shall not count

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towards his sentence.

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