IN THE COURT OF APPEAL
CRIMINAL DIVISION

Case No: 2023/01977/B4

Neutral Citation Number: [2024] EWCA Crim 499

Royal Courts of Justice
The Strand
London
WC2A 2LL

Tuesday 30th April 2024

B e f o r e:

LORD JUSTICE LEWIS

MR JUSTICE GOSS

HER HONOUR JUDGE MONTGOMERY KC
(Sitting as a Judge of the Court of Appeal Criminal Division)

R E X

- v -

JUAN RAMON ALONSO CARRASCO

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Mr C Witcher appeared on behalf of the Applicant

Mr J Sirwardena appeared on behalf of the Crown

J U D G M E N T

Thursday 30th April 2024

LORD JUSTICE LEWIS:

1. On 14th April 2023, in the Crown Court at Lewes, the appellant, Juan Ramon Alonso Carrasco (then aged 43) pleaded guilty to three offences, namely: two offences of non-fatal strangulation (counts 1 and 3) and one offence of common assault (count 4). On the same date the appellant was sentenced to 12 months' imprisonment on count 3; to a concurrent term of nine months' imprisonment on count 1; and to a concurrent term of four months' imprisonment on count 4. The total sentence, therefore, was 12 months' imprisonment.

2. One feature of the case is that the appellant is not a British citizen. By virtue of the fact that he has been sentenced to at least 12 months' imprisonment, he is subject to automatic deportation by reason of the provisions of the United Kingdom Borders Act 2007.

3. The issue in this case arises out of the fact that the appellant was incorrectly advised by his counsel that if he pleaded guilty he would only be subject to automatic deportation if he received a sentence of more than 12 months' imprisonment. That advice was wrong. A sentence of 12 months' imprisonment would lead to automatic deportation. Against that background the appellant applied for leave to appeal against conviction out of time. The sole ground of appeal is that:

> "the appellant's pleas were induced by erroneous legal advice upon which he relied, and therefore the pleas were not freely made in circumstances where he had a defence, which quite probably would have succeeded and, as a result, a clear injustice has been done".

4. The application for leave to appeal was referred to the full court by the single judge. At the start of the hearing we granted an extension of time (31 days) and leave to appeal against conviction. We then heard full argument about whether or not the appeal should succeed.

5. The background is this. The appellant was in a relationship with Sinead Schooley. There was a complex procedural history of the appellant being charged with various offences, and various applications were made in relation to those offences. For present purposes it is sufficient to note that, ultimately, on 12th April 2023, he appeared before the Crown Court at Lewes. At that stage he faced four counts. The Recorder agreed that one count (count 2), which charged the appellant with controlling or coercive behaviour, should be dismissed. The other three counts were these.

6. Count 1 was an allegation that the appellant had strangled Miss Schooley on the night of 21st/ 22nd September 2022. The evidence in relation to the allegation included the following. First, a police officer had attended Ms Schooley's home and had observed injuries to her neck and throat. It may well have been that it was, in fact, the appellant who had called the police. Secondly, Miss Schooley gave an account to the police officer which was recorded on the officer's body-worn camera. In that account she said that the appellant had strangled her.

7. Miss Schooley was not available to give evidence. Sadly, on 5th October 2022, about three or four weeks after this incident, she attempted to commit suicide. She was found hanging in her bathroom. She was resuscitated, but suffered brain injury due to a lack of oxygen. She was unable to give evidence or to attend trial. On 13th April 2023, having heard submissions from both counsel for the prosecution and for the appellant, the recorder ruled that the evidence on the body camera would be admitted as hearsay evidence.

8. In relation to count 3, the allegation concerned an incident which took place on 29th September 2022. The evidence in relation to that allegation of non-fatal strangulation was to include oral evidence from Miss Schooley's cousin, Craig Smith, who was at the property at the time. He had given a statement in which he said that he woke up and saw the appellant strangling Miss Schooley from behind and had his foot on her back. There were photographs

of an injury to Miss Schooley's neck.

9. Count 4 charged an assault by beating on Craig Smith. It was proposed that Mr Smith would give evidence. He had, it seems, attended court and was ready to give evidence.

10. The appellant had made a defence statement in which he denied strangling Miss Schooley on either 22nd or 29th September. He said that any force used against her was used in self-defence or to stop her from harming herself. As to the assault, the appellant denied assaulting Mr Smith. He said that any force used was used in self-defence.

11. On 12th April 2023, when the matter was first the subject of discussions at court to consider hearsay applications and other matters, the Recorder had said that the matter was listed for trial before him, but that if the appellant's counsel wanted an indication of likely sentence, he could ask for it.

12. On the following day, 13th April, after discussions relating to the admissibility of the hearsay evidence and confirmation that there would be a trial on counts 1, 3 and 4, the parties returned to court at 3.20 pm. Counsel who appeared for the appellant at trial said that he had been asked by the appellant to ask for a *Goodyear* indication – that is an indication of the likely sentence if the appellant pleaded guilty. There was some discussion, and the Recorder indicated a starting point of nine months' custody and a reduction of ten per cent for a guilty plea. However, the Recorder indicated that he would hear submissions from counsel on that matter on the next day.

13. On 14th April 2023, there were detailed submissions from counsel for the appellant and for the prosecution. The Recorder gave an indication of sentence at 12.29 pm. He indicated that the total sentence would be 14 months' imprisonment, less ten per cent for the guilty

plea. Defence counsel had said early on that the appellant had a particular concern about whether the sentence would be over 12 months in length. Counsel for the prosecution referred to the immigration position if the sentence passed were to be below a certain level. The Recorder indicated that sentencing did not take account of immigration matters. The discussion concluded with the Recorder stating that the sentence he would impose if there was a plea of guilty would be 12 months' imprisonment. The Recorder also made it clear that the appellant was not under any time pressure in relation to responding to the indication. The court then adjourned.

14. The appellant has waived legal professional privilege, and we have the comments of trial counsel and solicitor about what happened. Counsel confirms that it was the appellant who decided finally to ask for an indication as to sentence if he pleaded guilty. Counsel confirms that one of the things in the appellant's mind when he was deciding whether or not to plead guilty was the possibility of automatic deportation. Counsel honestly admits that he advised that sentences of custody of <u>over</u> 12 months would result in deportation. In fairness, that advice was based on one of the leading practitioner books, Blackstone's Criminal Practice, which in the 2023 edition (and indeed still in the 2024 edition) says that sentences <u>over</u> 12 months can lead to automatic deportation. That is wrong. It is sentences of <u>at least</u> 12 months' custody – that is, a sentence of 12 months or more - which can lead to automatic deportation. Counsel also confirms that no pressure was put on the appellant to plead guilty; he was free to continue with a trial if he wished to do so. The appellant also signed an endorsement which confirms that. The endorsement says this:

> "1. I understand that the judge has indicated sentences of 12 months' imprisonment if I plead guilty to the three matters today.
>
> 2. Taking all circumstances into account, I wish to take this offer.

> 3. I will plead guilty to counts [1], 3 and 4 on the indictment.
>
> 4. This is my own choice, based upon a variety of different factors.
>
> 5. This statement has been interpreted into Spanish for me and I am happy with the contents."

The endorsement then bears the appellant's signature.

15. There is also a response from the appellant's instructing solicitor who was present on 14th April 2023. He confirms that the appellant was fully advised as to his options and the potential advantages and disadvantages of each. He confirms that the options included continuing with the trial.

16. In the event, the appellant pleaded guilty to the three offences. He was sentenced to a total of 12 months' imprisonment. As a result, he is subject to automatic deportation as a foreign national criminal.

17. The appellant has been represented today by Mr Witcher (who did not represent him at the Crown Court). We are grateful to Mr Witcher for his clear written and oral submissions. Mr Witcher accepted that where an appellant was fit to plead, and pleaded guilty without equivocation, a court would be cautious about overturning a conviction. However, he submitted that if incorrect legal advice had been given and the facts were so strong as to show that the plea of guilty was not a true acknowledgement of guilt, then a court may quash a conviction. He relied upon the dicta of this court in *R v Tredget* [2022] EWCA Crim 108; [2022] 2 Cr App R 1, at [157]. Mr Witcher further submitted that the court may quash a conviction which is based on erroneous legal advice and which deprived a defendant of a defence which would in all probability have succeeded. He relied on [158] of the judgment in *Tredget* and the cases cited there. He submitted that the appellant had received erroneous

legal advice about the effect of the UK Borders Act. He submitted that the appellant did not enter a free guilty plea; it was not a true acknowledgment of guilt; it was the result of a plea bargain by which the appellant was trying to preserve his immigration status and not be subject to deportation. He submitted that the prospects of success at trial were good. Further, he relied on *R v Whatmore* [1999] Crim LR 87.

18. The starting point is the Court of Appeal's decision in *R v Asiedu* [2015] EWCA Crim 714; [2015] 2 Cr App R 8. In that case the appellant pleaded guilty to conspiracy to cause explosions. He contended that there had been a failure by the prosecution to disclose expert evidence. At [19] the court said this:

> "A defendant who pleads guilty is making a formal admission in open court that he is guilty of the offence. He may of course by a written basis of plea limit his admissions to only some of the facts alleged by the Crown, so long as he is admitting facts which constitute the offence, and Asiedu did so here. But ordinarily, once he has admitted such facts by an unambiguous and deliberately intended plea of guilty, there cannot then be an appeal against his conviction, for the simple reason that there is nothing unsafe about a conviction based on the defendant's own voluntary confession in open court. A defendant will not normally be permitted in this court to say that he has changed his mind and now wishes to deny what he has previously thus admitted in the Crown Court."

19. As the court explained in that case at [30] onwards, whether or not a defendant would be acquitted is a matter of speculation. A defendant always has a difficult choice to make as to whether or not to admit guilt but that does not of itself limit his freedom of choice. As the court said at paragraph 31 a defendant:

> "31. … will always have it made clear to him that a plea of guilty, should he choose to tender it, amounts to a confession. Only he knows the true facts, which usually govern whether he is guilty or not and did so here. If he is guilty, the fact that the choice between admitting the truth and nevertheless denying it

> may be a difficult one does not alter the effect of choosing to admit it. We do not begin to agree that Asiedu had no real choice but to plead guilty. He had a completely free choice. Nor do we agree with the further submission made on his behalf that the conviction of the others in some way altered the climate against him. That would be irrelevant to his freedom of choice, but as a matter of fact the disagreement of the first jury in his case, when he had distanced himself from the hoax defence advanced by those whom it convicted, might if anything have been taken as some encouragement.
>
> 32. Because it is of cardinal importance that a defendant makes up his own mind whether to confess by way of plea of guilty or not, and because only he knows the true facts, it is not open to him to assert that he was led to plead guilty by mistaken overstatement of the evidence against him. As Sir Igor Judge P observed in *R v Hakala* [2002] EWCA Crim 730 at paragraph [81], the trial process is not a tactical game. A defendant knows the true facts; he ought not to admit to facts which are not true, whatever the evidence against him, and this will always be the advice he is given. If he does admit them, the evidence that they are true then comes from himself, whatever may be the other evidence advanced by the Crown."

20. This court has recognised that there are categories of cases where, nevertheless, a conviction based on a guilty plea may not be safe. The various categories of such cases were considered in *R v Tredget*. First, one category of cases is where the defendant has been given incorrect legal advice, as a result of which he has been deprived of relying on a defence available in law: see *Tredget* at [158]. This category of cases was reviewed in *R v PK* [2017] EWCA Crim 486, where the court held that this situation might arise if the person was not advised about the possibility of a defence available in law and the person concerned would have been able to advance such a defence successfully. As the appellant in that case had not been advised that he had a statutory defence to an immigration offence, and where it was probable that the defence would have succeeded, the appeal was allowed. More recently in *R v BRP* [2023] EWCA Crim 40, the defendant was not advised of a defence available in law under section 45 of the Modern Slavery Act 2015, but the defence would not have succeeded in any event. The appeal in that case therefore failed. Another type of case in which an error was found to vitiate a guilty plea was *R v Boal* [1992] QB 591. There the defendant was

advised that he would be treated as a manager of a shop and so he had no defence available to the charge. But, on the facts, that advice was incorrect; he might have had a defence to the charge.

21. A second category of cases said to be recognised by this court in *R v Saik* [2004] EWCA Crim 2936. There the appellant pleaded guilty. He had been given erroneous advice about the consequences of conviction, namely, that if he pleaded guilty there would not be confiscation proceedings and his house would not be at risk. The court said this:

> "57. For an appeal against conviction to succeed on the basis that the plea was tendered following erroneous advice it seems to us that the facts must be so strong as to show that the plea of guilty was not a true acknowledgment of guilt. The advice must go to the heart of the plea, so that as in the cases of *Inns* and *Turner* the plea would not be a free plea and what followed would be a nullity."

22. However, that quotation should be read in context. The two cases referred to were cases in which the defendant had been the subject of improper pressure (in one case by counsel and in the other by the judge) to plead guilty. Moreover, at [55] and [56] the court said:

> "55. There are no doubt many defendants who, although they know they are guilty of the offence alleged against them, nevertheless enter a plea of not guilty in the hope of being acquitted. In making the decision one way or the other many factors may fall to be taken into account. The Bar Council's Code of Conduct makes clear that defence counsel should explain to the accused the advantages and disadvantages of a guilty plea. It goes on that he must make it clear that the client has complete freedom of choice and that the responsibility for the plea is that of the accused. It is common practice, endorsed by paragraph 12.5.1, to tell an accused that he should plead guilty only if he is guilty. In the present case the Bar Council's code was followed to the letter. The appellant deliberated over his plea over the best part of a working week. He was very keen that his counsel should strike the best possible deal with counsel for the prosecution. This involved limiting his involvement in the conspiracy to a minimum. He was under no

> pressure or illusions as to the position he was in. True the advice he was given on sentence and particularly on confiscation was somewhat optimistic but the reality, in our judgment, is that he entered his plea of guilty without any pressure from counsel, the court or anyone else. The only pressure was, like with many defendants, from the situation in which he found himself. In our judgment it cannot be said that the appellant's plea was not a true acknowledgment of guilt and was entered only because of erroneous advice. In so far as the advice he was given fell short of what might reasonably have been expected (and this really only applies to the house) it was in our judgment peripheral to the plea, albeit that the appellant would now have us believe it was not.
>
> 56. There is no doubt that at all times the appellant was fully in command of his faculties. His plea of guilty was tendered after a very great deal of thought and negotiation. He admitted the offence to his lawyers by endorsing a document acknowledging his plea. He then tendered his plea in open court and listened to his counsel mitigating on his behalf without questioning what he said. The evidence against him was extremely strong. His bureau was a concern with a small turnover of less than a £1,000 per week and yet he changed some $U.S 5.8m to £4m. The exchange transactions took place in streets or cars and he received sacks of money, which he exchanged for large denomination notes. The plain inference is that he pleaded guilty because he was guilty."

At [58] and [59] of that case, the court said this:

> "58. It is very difficult to see how erroneous advice as to the length of sentence could ever go to the heart of a plea – except perhaps where the maximum penalty for the offence is understated – for the decision on length of sentence lies with the judge or the Court of Appeal. The appellant knew that in this case. He knew there was no certainty as to the length of sentence the judge would impose upon him. He also knew there was no certainty what would happen to his house following confiscation proceedings.
>
> 59. In our judgment the advice that the appellant received does not invalidate his plea of guilty."

23. The third case on which Mr Witcher relies is *R v Whatmore* [1999] Crim LR 87. The appellant in that case was charged with a number of offences. Two related to sexual assault

against his daughter in the 1970s, and three related to sexual offences in the 1980s. Counsel advised the defendant that the evidence of his daughter on the 1970 offences would be highly prejudicial to his defence in relation to the 1980 offences. Counsel further advised, erroneously, that if the defendant pleaded guilty to the 1970 offences, there was no way that the evidence could be used at the trial for the 1980 offences. The defendant had already served time in prison equivalent to the likely sentence for the 1970 offences. Although he did not admit guilt, he accepted his counsel's advice to plead guilty to the 1970 offences. Counsel's advice about the non-admissibility of that evidence was wrong. The judge subsequently was asked, and agreed, to admit the guilty plea about the 1970 offences as similar fact evidence in the trial for the 1980 offences. He refused the defendant the opportunity to change his plea to the 1970 offences. In the limited extract of the report that we have, it was said that the defendant had not admitted his guilt, but was content to plead guilty on the basis that the 1970 offences would not become part of the trial for the offences in 1980. The extract continues by noting that the guilty pleas would not have been sufficient to use for the purposes of similar fact evidence, and that if the incidents were to be explored at the trial, counsel's advice would also have to come out. In all those circumstances the conviction was not safe; it was quashed and a retrial was ordered.

24. We turn to the present case and the position of the appellant. First, in our judgment, there is no doubt that the appellant was fit to plead. He was advised about all of the options, including continuing the trial. He decided to plead guilty. That in itself is an admission of the facts. Normally, there is nothing unsafe about a conviction based upon the voluntary admission by a defendant that he is guilty of the offences charged.

25. Secondly, there was no element of improper pressure on the part of the Recorder to try to induce the appellant to plead guilty. The Recorder was asked to give an indication as to sentence. He did so. He said that it would be a sentence of 12 months' imprisonment. He

did not make any representation about the consequences of that sentence in immigration terms. Indeed, he correctly made it clear that immigration matters were not relevant to sentencing for the offences. There was no error on the part of the Recorder.

26. Thirdly, counsel did not put pressure on the appellant to plead guilty. He did, however, give erroneous advice about the consequences of sentencing for the appellant's immigration status. However, as the court said it *Saik*, it is very difficult to see how erroneous advice as to the length of sentence would undermine the safety of a conviction based on a guilty plea. In our judgment, it is also difficult to see how erroneous advice about the immigration consequences of a sentence would affect the safety of a conviction.

27. Fourthly, we do not accept that the erroneous advice of counsel in this case deprived the appellant of a defence available in law, in the way that that concept is used in the case law. The advice did not fail to identify any defence available in law and did not give misleading advice as to the non-availability of a defence, as was the case in *R v PK* and *R v Boal* respectively. The advice given did not narrow the defences available to the appellant; nor did it make it more difficult for him to put forward any defence he had to the charges. It was ultimately for the prosecution to prove that the appellant had strangled Miss Schooley on each of the two occasions which formed counts 1 and 3, that he did so unlawfully and not in self-defence or because he was trying to stop her from self-harming. Similarly, it would be for the prosecution to prove that the appellant unlawfully assaulted the complainant on count 4. The advice on the immigration consequences of the sentence did not affect those matters at all.

28. Fifthly, we do not accept that on the material available there is any proper basis for considering that the guilty plea was anything other than a true acknowledgement by the appellant of his guilt of what had been alleged. The appellant had a free choice as to whether

or not to plead guilty. As the court recognised in *Saik*, there may be a number of different factors in play. It was ultimately a matter for the appellant to decide whether to plead guilty or not. He was advised of the potential advantages and disadvantages, and of his possible options, including continuing with a trial. The appellant decided that he would admit what he had done and would plead guilty. As the endorsement signed by the appellant himself says, "taking all circumstances into account" he wished to plead guilty in the light of the Recorder's indication as to sentencing. As the appellant himself said in his endorsement, that was his "own choice based on a variety of different factors". One factor – perhaps even the principal factor – may have been the appellant's concerns about his immigration status. That does not, in our judgment, however, mean that his guilty plea was anything other than a true acknowledgement of his guilt for these offences.

29. Accordingly, for those reasons, this appeal against conviction is dismissed.
