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Neutral Citation No. [2024] EWCA Crim 755

IN THE COURT OF APPEAL
CRIMINAL DIVISION



CASE NO: 2023 02552/00902 B3

Royal Courts of Justice
Strand
London
WC2A 2LL

Tuesday 25 June 2024

Before:

LORD JUSTICE DINGEMANS

MR JUSTICE HOLGATE

MR JUSTICE HILLIARD

REX

v

ZHOLIA ALEMI

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MR FRANCIS FITZGIBBON KC appeared on behalf of the Applicant

J U D G M E N T
Approved

LORD JUSTICE DINGEMANS:

Introduction

1. This is the hearing of a renewed application for an extension of time of 135 days for leave to appeal against conviction, a renewed application for leave to appeal against conviction, and a renewed application for leave to appeal against sentence. All of the applications have been refused by the Single Judge.
2. The applicant, acting in person, had drafted the Grounds of Appeal for leave to appeal against conviction and renewed those grounds together with the application for an extension of time. The applicant had the benefit of legal representation and counsel had drafted the application for leave to appeal against sentence. The applicant had renewed that application representing herself and had asked for leave to appear by CVP herself, but that was refused because the applicant was in prison and had the right to obtain legal representation.

Mr FitzGibbon KC has appeared on behalf of the applicant on the hearing of the renewed application for leave to appeal against sentence only and on a *pro bono* basis. We are very grateful to him and for his junior for all the assistance that they have given us.
3. On 15 February 2023, in the Crown Court at Manchester, the applicant (who was then aged 60) was convicted of forgery, using a false instrument, obtaining a pecuniary advantage by deception and fraud. On 28 February 2023 (some 13 days later) she was sentenced on count 8 (which was taken as the lead count) to a term of imprisonment of 7 years; on counts 1 to 4 and 9 to 20 she was sentenced to concurrent terms of imprisonment of 7 years; and on counts 5 to 7 she was sentenced to concurrent terms of imprisonment of 4 years. Half of the days spent on qualifying curfew were ordered to count towards the sentence. So the aggregate sentence was 7 years less time on qualifying curfew.

Background

4. The background to this is that in September 1995 the applicant had submitted an application to the General Medical Council for provisional registration as a doctor in the United Kingdom. Her application was supported by Bachelor of Medicine and Bachelor of Surgery

degree certificates from the University of Auckland in New Zealand and a Verification Letter from the University of Auckland (the "Verification Letter"). She was registered by the GMC and after completing a provisional registration period began to practice as a doctor. The applicant went on to practice more or less continuously over the next 20 years, in a large number of posts, both within the NHS and for private providers. She eventually became a Consultant Psychiatrist and a Member of the Royal College of Psychiatrists.

5. However, in October 2018 the applicant stood trial and was convicted at Carlisle Crown Court for the offence of attempted possession of an article for use in fraud and making an article for use in fraud and theft. She was sentenced to 5 years' imprisonment for those offences. That case related to the applicant taking advantage of an elderly vulnerable patient by forging their will and other documents in order to benefit financially. The applicant renewed an application for leave to appeal against that conviction and that was refused on 26 March 2021 by the Full Court.
6. At the time of the Carlisle case, everyone was working on the basis that the applicant was a consultant psychiatrist, but the Carlisle case had been followed and reported upon by a journalist in Cumbria, Mr Philip Coleman. Following the applicant's convictions he decided to investigate (something the GMC had not done - as Mr FitzGibbon had pointed out to us in submissions this morning) back in New Zealand. It was as a result of his journalism that the present matters came to light. He reported his findings to the GMC and the police. On 18 June 2019, while the applicant was serving her sentence for the Carlisle matter, the police searched her property in Northern Ireland and found a large number of incriminating documents and other items, which included the Verification Letter sent to the GMC in 1995, degree certificates, and what was described in the evidence as a 'forger's kit' of dry transfer letters.

These criminal proceedings

7. The prosecution case at trial was that everything was forged and that the applicant had never completed her medical studies and had never been awarded the relevant medical degree, and

that she had therefore practiced without the relevant qualifications. In order to support that case, the prosecution called evidence from a number of persons from New Zealand. That showed, according to the prosecution, that the applicant had failed after her first year, had managed to re-sit to complete half of the course, and only completed the Bachelor of Human Biology, which was awarded on 5th May 1992; and when she failed the second year of the second half of the course, she was then refused permission to re-sit and her time at university came to an end. It might be noted that the applicant in her correspondence has referred to *a* medical degree in her documents.

8. The applicant arrived in the United Kingdom in April 1995 and then began her work. A conservative estimate of the net receipts as a result of the fraud were between £1.1 million and £1.3 million in terms of her earnings, but the applicant complains that she had paid out agency fees varying between 15 and 35 per cent from those sums and it is unfair to take the full figures.
9. At trial it was agreed between the parties that if the applicant had forged the relevant documents, and therefore was not qualified, then it followed that she would be guilty of counts 5 to 20. The applicant has complained of this agreement in her written submissions, and complained that there should have been a full direction on the relevant test for dishonesty in the summing up.
10. The applicant gave evidence at the trial and explained in the course of her evidence how high-functioning autism had affected her and how she had gone to New Zealand after suffering torture in Iran. She said she had worked as a voluntary research assistant at the University of Auckland. She had started formal lectures in 1988 and did not fail any elements of the course. That, of course, had been contradicted by the prosecution evidence. The defence also relied on the fact that she had managed to practice for some 20 years as evidence of the fact that she plainly was capable of completing the exams and qualifications in New Zealand.

The sentence

11. So far as sentencing was concerned, the judge produced a sentencing document and took count 8 as the lead offence to reflect the overall gravity of all the offending. The judge found that the culpability was high because there was an abuse of a position of trust, a fraudulent activity conducted over a long period of time, and the significant feature of deliberate forgery of documents in order to enable the fraud on the large number of victims, NHS Trusts and other healthcare providers. In relation to harm, the correct category was high impact. This was because there was a prolonged and serious financial impact on NHS Trusts, and the offences had led to a loss of confidence in the NHS, and patients reading about the case might well have developed a concern about the medical profession in whose care they were asked to place their trust. The judge specifically identified as potential harm that an unqualified person was treating vulnerable patients and was able to prescribe powerful and dangerous drugs and impose curbs on the liberty of those patients.
12. The judge treated the Carlisle offences as an aggravating feature and the fact that the applicant had abused the position she had falsely and dishonestly attained to manipulate and steal from a vulnerable patient. In mitigation, the judge said that she would have regard to the applicant's autism and to the additional difficulties she would face in prison. The judge took account of the principles of totality and noted that if the applicant had been sentenced at the same time for all the offences (namely the Carlisle and the forgery in relation to registration in 1995 and continuing frauds) the sentences would have been consecutive. The judge then imposed the sentences set out above.

Grounds of appeal against conviction

13. There were some 43 pages of documents and then further documents that were submitted by the applicant. It has been difficult to follow them all, but doing the best we can, the applicant complained that at first instance she had been denied bundles and an anonymity order; that no reference had been made to her proper diagnosis of autism and she has also referred to a diagnosis of Asperger's. She complained that she had been blocked access to

prosecution cases and had limited access to printing. She said that her distrust of her legal team had caused her to develop paranoia; and that she had spent substantial sums on representation, and representatives had not acted as they should have done. She complains that applications for expert evidence had not been considered, and she made extensive references to the Medical Act and what she said was the proper interpretation of that. She drew parallels with her treatment and the *Post Office* case and complained about infringement of human rights.

14. The Single Judge went through all of the complaints in detail and referred at some length to the Respondent's Notice, where there had been answers to the points. It is sufficient for us to say that having looked at all the material with considerable care, we have been unable to identify any arguable grounds of appeal against conviction and in our judgment the conviction is safe.

Grounds of appeal against sentence

15. As already indicated, we are very grateful to Mr FitzGibbon for his oral submissions. There are effectively three points that were made both in writing and today. The first was that the judge did not adequately reflect the totality principle because the resulting combined sentence of 12 years was higher than the statutory maximum sentence for fraud. The second was that the judge has incorrectly increased the sentence by treating the Carlisle matter as an aggravating factor when the applicant had already been sentenced for that, and that was double counting in some respects of the worst sort. The third was a point that was raised in the submissions this morning which related to whether or not the judge had imposed the sentence on these matters consecutive to the sentence for the Carlisle matter, which would have been impermissible under s.225 Sentencing Act 2020, which (picking up earlier legislation) requires the sentence to start on the day on which it is imposed.
16. We can deal with the last matter first. We well understand the point that Mr FitzGibbon helpfully drew to our attention; and I have to say when I first read paragraph 11 of the sentencing remarks I did check through the records. It does however seem from the order

for imprisonment that was made that the judge did impose the sentence in the proper way and that it had effect from the day that it was imposed. What the judge was addressing in paragraph 11 of the sentencing remarks was the issue of totality, which brings us back to the first ground of appeal, which is whether or not the judge adequately reflected totality.

17. In that respect there had been a sentence of 5 years for the Carlisle matters and the judge said that she would have imposed consecutive sentences if the Carlisle matters had been sentenced at the same time as these matters. In our judgment, that was a perfectly permissible approach to take. Although Mr FitzGibbon is right that there were some similarities in the way in which the offending occurred, this was separate criminal offending, against a separate victim, which caused separate harm, and in those circumstances consecutive sentences would have been perfectly appropriate.
18. That then brings us to the question of whether or not the overall sentence of 12 years was simply too long. The judge had, when taking count 8 as the lead offence, aggregated all of the criminality involved in these matters and come to a sentence which was permissible having regard to the particular features.
19. So far as the issue of the Carlisle matter being treated as an aggravating factor is concerned, the single judge had noted that the judge's approach did not involve re-sentencing for the Carlisle offences:

"When sentencing, a court is always entitled to look at the consequences of the offence committed, and these may aggravate the offending."

The judge was entitled to have regard to the fact that the applicant had used the obtaining of her qualification as a doctor by fraud to take advantage of a vulnerable person towards the end of their life and forged their will. In any event, if one looks at the figures and tries to deconstruct them, it was not apparent that it did have that much effect on the sentence.

20. The other matters to which reference were made was that there were points of mitigation in relation to mental health difficulties, the age the applicant is and the fact that that will make imprisonment more difficult. Those were factors which the judge took into account,

although the discount given is impossible to calculate.

21. A further point is that it was submitted that the applicant was not one hundred per cent responsible for the failures and the harm that was caused by her practice because the GMC had not picked up obvious errors in the original application. The judge was critical of the GMC's failure to identify obvious errors in the Verification Letter, but that does not mean that the applicant was not herself fully responsible for the consequences of her fraud. It may be that someone else might have been responsible in part in other ways, but that does not in any sense mitigate her actions. For all those reasons, we can still find no arguable grounds for appeal against sentence.
22. We will therefore refuse the renewed application for an extension of time, the renewed application for leave to appeal against conviction and the renewed application for leave to appeal 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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