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IN THE COURT OF APPEAL

CRIMINAL DIVISION

ON APPEAL FROM THE CROWN COURT AT CARDIFF

HIS HONOUR JUDGE JAMES T20217172

Neutral Citation Number:

[2024] EWCA Crim 782

CASE NO 202303590/B2

Royal Courts of Justice

Strand

London

WC2A 2LL

Tuesday, 2 July 2024

Before:

LORD JUSTICE POPPLEWELL
MR JUSTICE HILLIARD
HIS HONOUR JUDGE DEAN KC
RECORDER OF MANCHESTER
(Sitting as a Judge of the CACD)

REX

V

OMER MOHAMED

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NON-COUNSEL APPLICATION

J U D G M E N T

1. MR JUSTICE HILLIARD: On 21 July 2023, in the Crown Court at Cardiff, the applicant was convicted of nine counts involving the supply of class A drugs, one count of being concerned in the production of a controlled drug and one count of possessing criminal property. On 21 September 2023, he was sentenced to a total of seven-and-a-half years' imprisonment. The co-accused, Yaser Mohamed, the applicant's brother, was convicted of four of the offences and sentenced to three-and-a-half years' imprisonment.
2. The applicant now renews his application for an extension of time of 56 days in which to seek leave to appeal against conviction and for a representation order after refusal by the single judge.
3. It was alleged that the applicant and his brother had supplied class A drugs (heroin and crack cocaine). The applicant was found in possession of controlled drugs and the police found £22,343.94 in cash and evidence of the production of crack cocaine at his flat.
4. The applicant's defence was that he was a victim of Modern Slavery. The applicant said he was told by a drug dealer that the applicant's brother owed him money and both brothers would have to sell drugs to pay off the debt. He said that he was threatened with violence if he did not comply.
5. The trial of the applicant and his brother had reached the stage where the applicant was giving evidence. At one point in his evidence he said that he did not wish to answer any further questions. The reason for this is not apparent. The transcript records the applicant saying: "They just seem like they was working together." The judge said: "They were not working together. They were trying to work out what your answer was in terms of clarifying what was being said." It is possible that this is a reference to some

communication between the applicant's counsel and someone else.

6. The judge said there would be a break. In the absence of the jury, he said that he would have to give the applicant a warning that if he refused without good cause to answer any questions, an adverse inference could be drawn from that. But he said that such a warning would have to be given in the presence of the jury.
7. However, the judge then decided to give the warning to the applicant in the absence of the jury but before allowing him an opportunity to see his counsel. The applicant said that he understood the warning but did not feel he could carry on with his current barrister. The judge said that they would continue with the trial and he would have to represent himself, although it was better for him if he was represented.
8. The court then adjourned for lunch. The applicant's counsel told the judge that the applicant wished to sack him and his solicitor and possibly represent himself. The judge said he would give the applicant a note in which he had set out the benefits of being represented and of what the applicant would be expected to do if he represented himself. The judge said that the case had proceeded for over a week and that the case had been outstanding for a considerable period of time. He gave the applicant time to read the document and to consider his position.
9. On his return to court, the applicant said that he wanted time to find a new barrister and solicitor. The judge said that the trial would be proceeding. It had been running for a week and only a small part of it remained. The judge said he could have his old lawyers back or do it himself. The applicant said he wanted to find someone else and was not confident in representing himself but if he had to represent himself then he would do that.
10. The jury returned. The judge told them that the applicant was representing himself, as he was entitled to do, and that it had no bearing on the verdicts. The judge warned the

applicant about the possible consequences of not answering questions. In the event, the applicant did answer questions. The trial then continued with him representing himself. In due course, he was convicted by the jury.

11. The applicant now advances his own written grounds of appeal which we appreciate will not have been easy for him to do. He says that the judge should have discharged the jury, ordered a retrial and allowed him to instruct a new legal team. He says there was a conflict in the evidence about where some drugs were found and that interviews were not heard during the trial - although it is not clear which interviews he is referring to.
12. We have carefully considered the points which have been made. It is clear that a judge has a discretion whether or not to continue a trial in the circumstances which arose here and whether or not to allow a defendant new representation: see for example Stovell [2006] EWCA Crim. 27. The applicant had been represented throughout the prosecution case. The judge made the options very clear to him. The trial had advanced to a late stage. It was open to the judge to conclude that the trial should continue rather than incur the delay and expense of a retrial. The earliest offences dated back to the later part of 2019. There would have been further delay if there was to be a retrial. The case was not a complex one. We note that the applicant's case was the same as his brothers. His brother continued to be represented and his counsel would inevitably have covered much of the ground which concerned the applicant. The summing-up was a fair one and the legal directions were sufficient. The applicant's defence was set out. There was ample opportunity during the trial for any points about where drugs were found to be explored and for questions to be asked about interviews. The applicant has not explained why these points could matter.
13. Having taken an overall view of the matter, we are satisfied that there are no arguable

grounds for saying that any of the applicant's convictions is unsafe. In these circumstances, there is no purpose to be served in granting the extension of time. Accordingly all these applications must be refused.

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

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