

85/9  
Her Majesty's Attorney General

- v -

Martyn Eldon Gibaut

DEPUTY BAILIFF: The principles followed by this Court in deciding whether to grant leave to appeal out of time have been clearly set out in two cases, in Fossey in 1982, and in the case of La Solitude Farm and the Attorney General last year. They are very clear; if a person doesn't exercise his right within the prescribed period then the right to have an appeal is lost and what he or she in fact does in coming to this Court is to seek to persuade us that we should reinstate the right of appeal. To that end one has to look at the matters surrounding the case itself and the circumstances under which the right to appeal was lost. It has been said to us that the appellant, or would be appellant, was not told of the time within which he should appeal and, in any case, on that occasion it didn't matter because he was minded not to appeal. We were told that subsequently circumstances changed which were, I think in the main, that he had become reconciled with the woman who was the victim of the assault in part, and third he had a job to go to, and fourth we were told that the sentence was wrong and there would have been a reasonable chance had the appeal been heard, of the sentence being reduced, and some part of the appeal succeeding. We do not agree, we could<sup>not</sup>/find, should we allow the appeal to proceed, we would find it hard to find that, on the totality principle, although we might have altered the actual sentence, but not the totality, but the detailed sentences imposed by the Magistrate, but we cannot find that they were in total wrong; although we might have changed them somewhat, internally so to speak, but the net result would have been the same. In all the circumstances we are not satisfied that the burden which lies upon the applicant has been discharged to satisfy us that it would be right to reinstate the right of appeal and therefore the application is refused. Legal aid costs.