No: 201705209
IN THE COURT OF APPEAL
CRIMINAL DIVISION
[2018] EWCA Crim 2961

Royal Courts of Justice
Strand
London, WC2A 2LL

Tuesday, 18 December 2018

B e f o r e:

LORD JUSTICE GROSS

MRS JUSTICE CUTTS DBE

HIS HONOUR JUDGE LUCRAFT QC
(Sitting as a judge of the Court of Appeal Criminal Division)

R E G I N A

v

EK

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If this transcript is to be reported or published, there is a requirement to ensure that no reporting restriction will be breached. This is particularly important in relation to any case involving a sexual offence, where the victim is guaranteed lifetime anonymity (Sexual Offences (Amendment) Act 1992), or where an order has been made in relation to a young person.

MR B NEWTON appeared on behalf of the **Appellant**
MR B DOUGLAS-JONES QC appeared on behalf of the **Crown**

J U D G M E N T
(As approved)

1. LORD JUSTICE GROSS: In 2011 the applicant, now aged 32, pleaded guilty to a number of offences including conspiracy to control prostitution for gain and money laundering, and following an unsuccessful Newton hearing was sentenced to a total of 30 months' imprisonment. The applicant's basis of plea, rejected in the Newton hearing, was that she was a victim of trafficking and a prostitute working under the same conditions as the complainants. Somewhat tangled immigration proceedings then ensued, culminating in a decision in 2016 by the first tier tribunal in the applicant's favour, allowing her appeal against deportation on asylum and Art.3 grounds. The first tier tribunal also held, to the applicable lower standard of proof, that the applicant was a victim of trafficking (VOT) who was at all times under the control of her co-accused. She was granted asylum.

2. The applicant now seeks an extension of time of some seven years, five months in which to apply for leave to appeal against conviction. Though the applicant has long served her sentence of imprisonment, the outcome of these proceedings may at some time in the future have an impact on her immigration status, not to mention her employment prospects. The applicant seeks to adduce fresh evidence in support of her application and appeal. The sole ground of appeal is that the applicant, being a VOT, the prosecution ought not to have proceeded with the case against her, or that case should have been stayed as an abuse of process. The Crown accept that the applicant was a VOT but submit that the decision to prosecute remains justified; leave to appeal ought to be refused and in any event the applicant's conviction is safe.

3. In a little more detail we now turn to trace the history. On 2 June 2011, in the Crown Court at Southwark the applicant pleaded guilty on a basis of plea to the offences to which we shall come in a moment. The basis was that she was a prostitute working under the same conditions as the complainants. She asserted that she was subordinate to her co-defendant and worked under his instructions. The basis of plea was not acceptable to the prosecution and was the subject, as we have mentioned, of a Newton hearing in September 2011 - over some ten days - with judgment being handed down immediately prior to sentence on 10 October 2011. The judge rejected the basis of plea and ruled that while the applicant had previously been a VOT for sexual exploitation, he did not accept that she continued to be one in the United Kingdom. In no way did the judge find the applicant to be a victim.

4. The applicant was then sentenced as follows: Count 3, conspiracy to control prostitution for gain, 30 months' imprisonment; counts 5, 6 and 8, possession of false identity documents, 12 months' imprisonment on each, concurrent; count 13, removing criminal property under s.327(1)(e) Proceeds of Crime Act 2002, 18 months' imprisonment, concurrent, a total sentence of 30 months' imprisonment.

5. The co-accused was Sergey Konart, who pleaded guilty to counts 1 and 2, conspiracy to traffic into and within the United Kingdom; count 3, conspiracy to control prostitution for gain; counts 9 and 10, possessing criminal property, and 12, removing criminal property. He also pleaded guilty upon the basis which was the subject of the Newton hearing. The judge rejected his basis and sentenced him to 10 years' imprisonment.

6. The applicant, as we have recorded, applies for an extension of time (EOT), seven years and five months, in which to apply for leave to appeal against conviction and there is also an application for leave to adduce fresh evidence pursuant to s.23 of the Criminal Appeal Act 1968. Both these applications have been referred to the full court by the registrar. The matter was previously the subject of a hearing for directions before a constitution of this court of which Gross LJ was a member. We need not elaborate on the rulings and directions at that hearing.

7. The provisions of the Sexual Offences (Amendment) Act 1992 apply to this offence. Under those provisions, where a sexual offence has been committed against a person, no matter relating to that person shall during that person's lifetime be included in any publication if it is likely to lead members of the public to identify that person as a victim of that offence. This prohibition applies unless waived or lifted in accordance with s.3 of the Act.

8. As to the reasons for the EOT, the applicant relies on the protracted immigration proceedings and an application to the Criminal Cases Review Commission (CCRC) at a stage when it was thought that that might be the route to follow.

9. A brief chronology of key dates is as follows: on 10 October 2011 the applicant was sentenced at the Crown Court. On 6 February 2012, the National Referral Mechanism (NRM) found the applicant had not been a victim of trafficking. On 7 June 2012, an application for asylum was refused and an order for deportation made. On 22 July 2013, an appeal to the Upper Tribunal was dismissed. On 25 October 2013, the applicant was deported. On 10 September 2015, thus, nearly two years later, the High Court ruled that the decision to certify had been unlawful. On 18 September 2015 the applicant re-entered the United Kingdom. In November 2015 an application was made to the CCRC. Nearly a year later, on 10 October 2016, the CCRC advised that the applicant should first apply to the Court of Appeal and, on 6 November 2016, the first tier tribunal allowed the appeal against the deportation order on asylum and Art.3 grounds.

10. Three miscellaneous points arise at this stage. The first is the application for an EOT. Though extensions of time can never be taken for granted, on the facts of the present case, we do not think that the fate of the application and any appeal ought to turn on the need for an EOT. Accordingly, we grant the EOT and will determine the application and any appeal on the merits.

11. Secondly, waiver of privilege. We note that there has been a waiver of privilege. However, nothing turns on it, as criticism of the applicant's previous legal representatives quite rightly forms no part of the applicant's case as now advanced.

12. Thirdly, there is an application for anonymity. We note that the immigration proceedings were conducted anonymously but we also note that the hearings in the Crown Court were not covered by any order for anonymity. Mr Newton, who now appears for the applicant, invited us to deal with any question of anonymity once the outcome of this application is known and we shall do that.

13. Turning briefly to the facts, the case arose out of a covert police investigation into controlling prostitution for gain, human trafficking and money laundering. The investigation was initiated in June 2009 when a young woman, complainant IZ, flagged down a police car and told the police that she had escaped from a violent pimp. She provided the police with an account that she had been trafficked from Russia to the United Kingdom in October 2007 where she was met by Konart, who introduced her to the applicant Konart and advised her that like the applicant she would be working as a prostitute. She said that she was told that she owed £80,000 to those who assisted in getting her into the country and that family would be in danger if she did not follow instructions. She described being forced to work, physically assaulted and raped and having to give all income to Konart. She described being forced to take drugs by Konart and having a termination after becoming pregnant by one of her clients.

14. She said that the applicant and Konart were in a relationship and the applicant was complicit in Konart's work.

15. A further complainant, IN, was identified during the investigation. She gave a similar account to IZ as to the coercion she had endured. She also described the role of the applicant as Konart's girlfriend and business partner.

16. Further women were identified during the investigation who had been trafficked into the United Kingdom. They had arrived knowing that they were coming to work in the sex industry. Konart advertised their services, arranged accommodation for them and took 50 per cent of their earnings.

17. Both the applicant and Konart were arrested on 15 December 2010. Significant amounts of cash were found on Konart's person and in a safety deposit box at his address.

18. The prosecution case was that Konart was a linchpin in a European-wide network to traffic women for the purposes of prostitution and that once in the United Kingdom he controlled prostitution for financial gain. He used coercion where necessary with some of the girls. This had been taking place for at least four years prior to his arrest. The applicant was Konart's girlfriend and was involved in controlling the girls' work, including telling them about their appointments and collecting money from them. While she too had worked as a prostitute to begin with, it was clear from police observations she had ceased this work but continued to enjoy a cash rich lifestyle with Konart.

19. The prosecution relied upon the evidence of the complainants and other identified girls working for the defendant; properties rented out by either of the defendants used to accommodate the girls; websites advertising the girls and information from computers seized from the defendants, detailing travel arrangements; the use of false documents; the amounts of money in the defendant's bank account and phone evidence, including text messages from the applicant's phone providing the girls with information about their bookings.

20. The applicant pleaded guilty upon a basis which set out that she too was a prostitute working under the same conditions as the other girls. She asserted that she was subordinate to Konart and worked under his instruction. Her specific role was to assist the girls with their hair, nails and make-up. She had limited involvement in their money, save for occasionally collecting it and passing it on. She was not paid for her role and her only status was as Konart's girlfriend. She did not threaten or coerce the other girls and that aspect of the basis of plea was accepted by the Crown. It was specifically pleaded that she was a victim of the sex trade herself.

21. Konart also pleaded guilty upon a basis that no coercion was involved and that all the girls volunteered their services. He agreed that the applicant's role was subordinate to him. The bases of the plea of both the plea and Konart were not accepted, hence the Newton hearing.

22. During that hearing evidence was heard from IZ and IN and from both defendants whose evidence was in line with their bases of plea. They asserted that none of the girls were coerced into prostitution.

23. During closing submissions, the defence asserted that the applicant was a victim of human trafficking from a young age and that she was a prostitute on her arrival in the United Kingdom from 2007 until at least the end of 2008. Although the applicant gave clear instructions that her co-accused was not involved with her trafficking, nor did he control her prostitution, that did not undermine the fact that she had endured a violent upbringing and had been trafficked herself from a young age.

24. It was submitted that all parties had a duty to keep such cases involving VOTs under review and that the applicant had as at the date of sentence agreed to be referred to the NRM for assessment as to her status. In the circumstances, the defence invited the judge to pass an absolute discharge or a sentence commensurate with the 10 months spent on remand.

25. The judge ruled that he was sure the two complainants, that is IZ and IN, were telling the truth about their experiences and that the applicant and co-defendant were not. The judge was in no doubt that they were working as a team with the applicant at the lower end of their team. The judge accepted that the applicant had previously been a VOT for sexual exploitation but he did not accept that she continued to be one in the United Kingdom. In no way did the judge find the applicant to be a victim.

26. We have already summarised the essence of the ground of appeal. It will be recollected that it is now said that the prosecution ought not to have proceeded or should have been stayed as an abuse of process on the grounds that the applicant was a VOT. The investigation into the applicant's status was not completed before the judge made his findings that she was not a VOT while she was in the United Kingdom. That finding was incorrect on the basis of fresh evidence obtained during the course of immigration proceedings, culminating in the first tier tribunal judgment of 7 November 2016, which ruled that the applicant was trafficked into the United Kingdom and that her claims under Art.3 and for asylum were allowed.

27. As to the fresh evidence which the applicant seeks to adduce, it is comprised of the following: (1) An email from a Ms Carter at the Salvation Army to Goldman Bailey Solicitors dated 11 October 2011, which sets out the process for the applicant to be assessed as the victim of trafficking. (2) Four statements of the applicant dated 2014, 2015 and 2017 which set out her account. (3) A report of a "human trafficking expert", Ms Stepnitz, dated 25 May 2013. Ms Stepnitz concluded that the applicant had been trafficked multiple times, most recently in the United Kingdom. (4) A report and addendum report of "complex trauma specialist", Lucy Kralj, dated 24 April 2014 and 16 December 2014. Ms Kralj concluded that the applicant suffers from a complex and enduring form of post-traumatic stress syndrome. (5) Five, NRM interview dated 17 November 2011. (6) NRM decision and Competent Authority Minute dated 6 February 2012. (7) Reasonable Grounds decision, dated 6 February 2012.

28. The Crown and the applicant's legal representatives have, if we may say so, reached a very sensible agreement in relation to the evidence from Ms Stepnitz and Ms Kralj which the applicant seeks to have adduced before us as fresh evidence. That agreement is in these terms:

> "(1) The Applicant will only seek to rely on those passages of Abigail Stepnitz's report in which she provides expert evidence in relation to the generic topics of Uzbekistan (paragraphs 30-61) and trafficking experiences in the United Kingdom (paragraph 188-200).
>
> (2) The report of Lucy Kralj is admitted subject to the following concessions:
>
> (a) She is not able to specify the factual cause of the Applicant's complex Post-Traumatic Stress Disorder and/or Major Depressive Disorder from within the experiences she has suffered.
>
> (b) The nature and degree of control of the Applicant by Sergey Konart as described by the Applicant to Ms Kralj is not accepted by the Respondent. The parties agree that it is not necessary for Ms Kralj to attend Court for this evidence to be tested through her. The parties agree that the topic can properly be developed in submissions in light of the transcripts of the evidence given below, and/or if the Applicant is called to give evidence.
>
> (c) The freeze response that potentially explains the Applicant's inability to escape from situations of abuse and danger would not of itself fully explain her not removing herself from her association from Sergei Konart.
>
> (3) Consequently, neither expert is required to attend for cross-examination."

29. We also take the view, *de bene esse*, that whatever the strict evidential position, the central conclusions of the first tier tribunal in its decision of 7 November 2016 should

be considered by us. Those are found at paras. 146 to 148 of the tribunal's judgment and, in so far as principally material, read as follows:

> "146. On the whole having considered the totality of the expert evidence we find that to the lower standard the Appellant was trafficked to the United Kingdom. She was brought here on false expectation of employment. She was under the control of SK who used her for his own gratification and for prostitution. Whilst the Appellant may have come to see herself as his 'girlfriend' the expert evidence points to factors where this would come about because of the exploitive nature of this relationship. The Appellant was able to escape prostitution and learn a new skill but the evidence again undisputed is that when there was need for money she had to again resort to prostitution. It is not true that SK financed her training. The training therefore did not come without cost to the Appellant as has been assumed by the Respondent.
>
> 147. The evidence to the lower standard shows that the Appellant at all times was under the control of SK who used her as a prostitute and subsequently used her to assist in expanding his business [...]
>
> 148. To the lower standard we find that the appellant was at all times under the control of SK and that her experiences have left her in a vulnerable psychological state."

It may be noted that the appellant did it not give oral evidence before the first tier tribunal, unlike the position at the Newton hearing.

30. The grounds of opposition were set out in writing on behalf of the Crown and acknowledged that the applicant was at all material times a VOT. However, the offences were serious. The level of dominant force or compulsion needed to reduce her criminality to a level below which the applicant should not have been prosecuted, should be significant. The nature of the applicant's offending was such that it cannot be said that culpability or criminality was diminished or extinguished.

31. The applicant was represented at the Newton hearing by experienced and respected counsel who was acutely aware of the CPS guidance on the non-prosecution of VOT's. The parties have acknowledged the limitations of the expert evidence of Ms Stepnitz and Ms Kralj. The judge who heard the Newton hearing and passed sentence, HHJ Price, was able to compare the applicant's evidence with that of the victims IN and IZ, and rejected the applicant's evidence. The respondent concedes that had the judge had the benefit of the expert evidence he may have found the applicant to have been a VOT at the time of offending. The applicant had sufficient autonomy to work as a nail technician and had not taken repeated opportunities to remove herself from her trafficking situation. There is insufficient nexus between the trafficking and the offending to have extinguished or reduced the applicant's culpability or criminality. Had the Crown had the fresh evidence at the point of charge or during the proceedings below, it would not have resulted in a decision not to prosecute the applicant.

32. We are very grateful to both Mr Newton who appeared for the applicant before us, and Mr Douglas-Jones who appeared for the Crown, for their submissions, both written and oral. Orally, Mr Newton developed his submissions elegantly along the following lines. First, there had been the worst of all possible worlds. Instead of the NRM process proceeding to the Newton hearing, it had been the other way around. The topic of trafficking had only effectively surfaced towards the tail end of the Newton hearing and it was only after the judge had reached his conclusion that the matter went to the NRM for decision.

33. Secondly, at the centre of this case was the nature of the controlling relationship between Konart and the applicant. That explained the applicant's actions at the time and her inaction in failing to get away from him. It also explained the evidence which she gave at the Newton hearing falsely supporting him.

34. Thirdly, so far as concerned Ms Stepnitz, Mr Newton did not realistically press her evidence before us. He accepted that she was a country expert on Uzbekistan but that was not an issue in these proceedings - and he also accepted, realistically, that the most she could give was generic evidence on other aspects of the case.

35. Fourthly, Mr Newton did, however, press for the admission of Miss Kralj's evidence. As Mr Newton put it, this psychological evidence could serve to explain what was otherwise inexplicable and flowed from the controlling relationship between Konart and the applicant.

36. Fifthly, against the background outlined in his earlier submissions, Mr Newton contended that this was a case where, knowing what we know now, the prosecution should not have been brought or continued. If need be it should have been stayed; we should give leave and allow the appeal.

37. For the Crown Mr Douglas-Jones submitted that the nexus and level of compulsion were a long way from extinguishing the applicant's culpability. She was involved in very significant money laundering. She was involved in the business of Mr Konart. She was also and significantly involved in the exploitation of Irene Z. Irene Z was the complainant who was in effect forced to take drugs to render her more compliant. Moreover, the applicant had given evidence at the Newton hearing which was disbelieved, not least a false account as to only meeting Irene N twice. There was a telling observation by the applicant with regard to Irene N. When Irene N claimed that she had never expected to arrive in this country to work as a prostitute, the applicant said that Irene N had been a fool if she had thought otherwise. This was significant as to the applicant's state of knowledge by the stage in question and also as to her involvement in the business.

38. Mr Douglas-Jones underlined that the applicant had stopped working to complete two nail courses and, while she did so, Irene Z had continued to be exploited and abused. Mr Douglas-Jones also reminded us that the applicant made two trips away from Konart to Uzbekistan, the second trip in 2010 or thereabouts, for some six months' duration. In Mr Douglas-Jones' submission, the prosecution at the time was justified and nothing we have since learned calls it into question.

39. Discussion

Legal framework

The legal framework is now well travelled territory. Most recently, the context and relevant principles were summarised by Gross LJ in *R v S(G)* [2018] EWCA Crim 1824; [2019] 1 Cr App R 7, at [1], [75] – [76], and subject to obvious qualification (as the present case is not a "change of law" case), there is no dispute before us that those principles are applicable here. We set out those paragraphs accordingly as providing a summary of the relevant law:

> "1. Huge strides have been made, domestically and internationally, in recognising the evil of human trafficking, in protecting victims of trafficking ("VOTs") and, where appropriate, shielding VOTs from prosecution or penalties. However, as repeatedly made clear, where crimes have been committed by VOTs, even arising from their own trafficking, there is no blanket immunity. Decisions are necessarily fact sensitive, taking into account the public interest both in prosecuting alleged offenders and in protecting VOTs. The present application gives rise to such considerations, made somewhat more complex by (put neutrally for the moment) material developments in the law and practice since the time of the original trial and the very lengthy Extension of Time ("EOT") sought."
>
> "75.(1) The legal framework: The starting point is to clear the decks. First, as is plain, this is a case where there was no credible common law defence of duress (or necessity). Secondly, this is not a case concerning a defendant under 18 years of age. Thirdly, the defence provided by s.45 of the 2015 Act is inapplicable. Fourthly, this is a case where the FTT and CA have concluded that the Applicant is a VOT.
>
> 76. Against this background, we venture to summarise below the relevant principles (for present purposes) in the light of the decisions and guidance of this Court in *R v M(L) and others* [2010] EWCA Crim 2327; [2011] 1 Cr App R 12; *R v N(A) and others* [2012] EWCA Crim 189; [2012] 1 Cr App R 35; *R v L(C) and others* [2013] EWCA Crim 991; [2013] 2 Cr App R 23; *R v Joseph (Verna) and others* [2017] EWCA Crim 36; [2017] 1 Cr App R 33.
>
> i) Neither Art. 26 of ECAT nor Art. 8 of the Directive confers a blanket immunity from prosecution on VOTs.
>
> ii) Instead, the UK's international obligations require the careful and fact sensitive exercise by prosecutors of their discretion as to whether it is in the public interest to prosecute a VOT. That discretion is vested in the prosecutor, not the Court.
>
> iii) The decisions of the FTT and CA as to whether an individual is a

VOT do not bind prosecutors or the Court but will be respected (subject to submissions as to their basis or limitations) unless there is a good reason not to follow them.

iv) There is no closed list of factors bearing on the prosecutor's discretion to proceed against a VOT. Generalisation is best avoided. That said, factors obviously impacting on the discretion to prosecute go to the nexus between the crime committed by the defendant and the trafficking. If there is no reasonable nexus between the offence and the trafficking then, generally, there is no reason why (on trafficking grounds) the prosecution should not proceed. If there is a nexus, in some cases the levels of compulsion will be such that it will not be in the public interest for the prosecution to proceed. In other cases, it will be necessary to consider whether the compulsion was continuing and what, if any, reasonable alternatives were available to the VOT. There will be cases where a decision to prosecute will be justified but due allowance can be made for mitigating factors at the sentencing stage. The matter was most helpfully summarised by Lord Judge CJ, in LC, at [33], as follows:

' …the distinct question for decision, once it is found that the defendant is a victim of trafficking is the extent to which the offences with which he is charged, or of which he has been found guilty are integral to or consequent on the exploitation of which he was the victim. We cannot be prescriptive. In some cases the facts will indeed show that he was under levels of compulsion which mean that, in reality, culpability was extinguished. If so, when such cases are prosecuted, an abuse of process submission is likely to succeed…… In other cases….culpability may be diminished but nevertheless be significant. For these individuals prosecution may well be appropriate, with due allowance to be made in the sentencing decision for their diminished culpability. In yet other cases, the fact that the defendant was a victim of trafficking will provide no more than a colourable excuse for criminality which is unconnected to and does provide no more than a colourable excuse for criminality which is unconnected to and does not arise from their victimisation. In such cases an abuse of process submission would fail.'

v) As always, the question for this Court goes to the safety of the conviction. However, in the present context, that inquiry translates into a question of whether in the light of the law as it now is (this being a rare change in law case) and the facts now known as to the Applicant (having regard to the admission of fresh evidence) the trial court should have stayed the proceedings as an abuse of process had an application been made. This question can be formulated indistinguishably in one of two ways which emerge from the authorities: was this a case where either: (1) the dominant force of compulsion, in the context of a very serious offence, was sufficient to reduce the Applicant's criminality or culpability to or below a point where it was not in the Public Interest for her to be prosecuted? or (2) the Applicant would or might well not have been

> prosecuted in the Public Interest? If yes, then the proper course would be to quash the conviction. As explained in *Joseph (Verna*) at [20 iii)], the Court's power to stay is 'a power to ensure that the State complied with its international obligations and properly applied its mind to the possibility of not imposing penalties on victims.'"

40. Only brief additional observations are called for. First, the United Kingdom's international obligations in this area are not confined to cases where a common law defence of duress or necessity is available. In the case of VOTs it may well be in the public interest not to prosecute even where no such common law defence is available.

41. Secondly, the role of this court is in effect one of review - a review of the decision reached by the prosecutor to proceed*: R v M(L)* [2010] EWCA Crim 2327; [2011] 1 Cr App R 12 at [19].

42. Thirdly, scepticism has consistently been expressed as to the value of expert evidence in cases such as this: Lord Judge CJ at *R v N* and *R v Le* [2012] EWCA Crim 189; [2012] 1 Cr App R 35 at [86C]; Lord Thomas CJ in *R v Joseph (Verna*) [2017] EWCA Crim 36; [2017] 1 Cr App R 33, especially at [87] and following; *R v S(G)* at [70] and following. When it comes to the credibility of accounts given by an applicant or appellant, it is for a jury or this court to evaluate them. It is not the function of experts to do so. When it comes to the correctness of a decision to prosecute, expert evidence is ordinarily unlikely to assist.

43. Applying the law to the facts

We turn to apply the law to the facts. We are prepared to go this far with the applicant and Mr Newton's submissions: we do give leave to appeal. First, because of the unfortunate chronological order of events from 2011 to 2012. Secondly, because at the Newton hearing the defence position was essentially to mitigate, the plea of guilty already having been entered, rather than to seek a stay. Thirdly, because the Crown's position at the time was that the applicant was only a VOT at the outset, a position to which it no longer adheres. Fourthly, because of the first tier tribunal 2016 decision, which should properly be taken into account.

44. Accordingly, we give leave; but what of the appeal? It is unfortunate, though more explicable in 2011 than it would be now, that the court proceedings proceeded rather than followed the NRM decision, Competent Authority Minute and the UK Border Authority Reasonable Grounds Decision. Thus, the court proceedings took place in September and October 2011. The remaining decisions emerged in February 2012. It would obviously have been preferable had the order been the other way around, certainly once the issue of trafficking had arisen - so that the decision to prosecute would have been informed by the NRM and other decisions as to the applicant's VOT status, rather than the court's views informing those decision makers. That said, the court, certainly by the conclusion of the Newton hearing, was very much alive to the question of whether the applicant had been a VOT. This is anything but a case where that issue had gone by default.

45. As to the fresh evidence, we are content to admit under s.23 of the Criminal Appeal Act 1968 all the items sought to be introduced, including the first tier tribunal decision of 7 November 2016, save for the two expert reports which require more considered reflection.

46. As to the report of the human trafficking expert Ms Stepnitz, we decline to admit it into evidence. In fairness to Mr Newton, he did not enthusiastically press for its introduction today.

47. There is no issue before us as to conditions in Uzbekistan. It is common ground that the applicant was previously trafficked and that at all material times the applicant was a VOT. Generalised evidence at paragraphs 188 and following of the report, "Analysis of trafficking experience in the UK: Control methods and types of abuse experienced", does not provide any material assistance to us in considering the specific facts of the case. It is purely generic. It does not, therefore, afford any ground for allowing any appeal. There is, moreover, no good reason why such evidence could not have been obtained for use at the time of the Newton hearing.

48. As to the psychological evidence of Ms Kralj, once the limitations agreed between the parties are taken into account, there is again no good reason for admitting the evidence. *De bene esse* we are prepared to accept by reference to this evidence that the applicant was suffering from a "freeze response", as far as that goes, which may not be very far, but beyond that we are not persuaded that this 96-page report affords any ground for allowing any appeal. Once again, there is in any event no good reason why such a report was not obtained for the purposes of the 2011 criminal proceedings. We say that in the full knowledge of the controlling relationship between Konart and the appellant. We do not, however, regard that as a good ground for only seeking to adduce this expert evidence at this stage.

49. In our judgment, knowing what we know and even accepting, as we do, that the applicant was a VOT at all material times and that she suffered from a freeze response, we are quite unable to conclude that the decision to prosecute the applicant was flawed.

(i) 50. The offences in question, in particular, conspiracy to control prostitution for gain and the money laundering offences were serious. The applicant's culpability was significant.

(ii) 51. It follows that a very high level of compulsion would be necessary to extinguish the appellant's culpability or diminish it to a point where it would not have been in the public interest to proceed with the prosecution.

(iii) 52. The judge, by the time he came to his conclusion was well aware of the VOT issue, formed a view of the appellant's role in the operation, and concluded that the appellant and her co-accused comprised a team. In that regard he had the advantage over the first tier tribunal in so far as he heard the appellant give evidence. Having done so, he was unimpressed.

(iv) 53. We cannot begin to say that the judge's conclusion in this regard was unsafe, notwithstanding the change in both the nature of the appellant's application and the Crown's case since then. On the position taken by the appellant and the Crown at the time, it was entirely open to him to have reached a far more favourable conclusion as to the appellant, had he thought it right to do so. Though the appellant has sought to resile from the evidence she gave at the time, nothing in the more recent evidence casts doubt on the evidence of IZ and IN which the judge accepted and which contributed significantly to his decision.

(v) 54. We bear in mind that though a VOT and under the control of her co-accused, the appellant had reasonable opportunities to extricate herself. This conclusion bears on the relevant nexus. Notably, she travelled to Uzbekistan twice some three years apart in 2007 and 2010, and on the latter occasion was away for months on end. Moreover, she had sufficient autonomy to cease working as a prostitute for a time at least and to study and work as a nail technician.

(vi) 55. In all the circumstances, this is a case where the appellant's misfortunes, and they were misfortunes, as a VOT, were and are properly to be reflected by way of mitigation of sentence. Thus, we are entirely satisfied that the appellant's culpability was reduced, that she played a subservient or junior role in the conspiracy, and accordingly, merited a reduction in sentence which she received. Her culpability was not, however, extinguished or so diminished as to cast doubt on the decision to prosecute.

(vii) 56. It is, unfortunately, not infrequent that those convicted of criminal offences have been subjected to a malign, sometimes controlling influence. Ordinarily, that does not absolve them from criminal responsibility, a decision not lightly taken, though it may well be reflected in a reduction of the sentence passed. In the VOT context it is important that the law is not devoid of sympathy or understanding -the evils of human trafficking are now well understood; but it is also necessary in the public interest that there neither is, nor ought to be, any blanket immunity. Unfortunately for the appellant, she fell and falls on the wrong side of that line.

57. For the reasons given we dismiss the appeal. We entertain no doubt as to the correctness of the decision to prosecute, and consequently, as to the safety of the conviction.

58. Mr Newton, do you still want to address us on anonymity?

59. MR NEWTON: Yes. Thank you, my Lord. I am very grateful that you have allowed me to do it at this stage. Obviously, I can address you on the basis on which this appeal was decided. The first observation I would respectfully make is of course it is right that the applicant did not have anonymity in the crown court, but of course, in my submission, in cases of this nature -- and one need only look at the authorities that are in the agreed bundle -- it is hard to foresee circumstances where an applicant or appellant in a case of this nature would have had anonymity in the crown court. It is really rather par for the course that they do not.

60. LORD JUSTICE GROSS: Horses and stable doors come to mind.

61. MR NEWTON: I appreciate that, my Lord.

62. I think my point really is that if that were to be a defining point of the decision then it would really make it extremely difficult for any appellant, even a successful appellant in a case of this nature, to seek anonymity, because of course anyone who has been through crown court will have not had anonymity in the crown court. It is virtually unheard of, and the only circumstances I can think of -- I say this with due respect to the court I appear before who may have greater experience of it -- but the only experience I have is where the publication of the defendant's name would reveal the identity of another party. For instance, if the complainant in the case was their child, for instance. Other than that, it is almost unheard of to have anonymity in the crown court.

63. The point in these types of cases is of course that the appeal is brought on the basis that someone should not be prosecuted. I would say with a view to the future that where an appellant was successful in a case such as this, I would submit that there would still be an extremely strong argument, bearing in mind that they ought not to have been convicted in the first place, to not allow the fact the fact that their conviction was public and did not have the benefit of anonymity.

64. LORD JUSTICE GROSS: But now the appeal has been decided.

65. MR NEWTON: I appreciate that. I mention it really as a point of principle rather than something that Miss Kolesnikova can avail of. In her case I think the strongest point I can make is this: within the accepted facts of this case is the starting point that she was initially a controlled prostitute, and of course, she effectively transcended to a position of being a controller of prostitutes.

66. LORD JUSTICE GROSS: Yes.

67. MR NEWTON: In my respectful submission, there is within the facts of this case still an element of her having been a victim of controlled prostitution by Konart before she entered into a conspiracy with Konart to control others and cross that line, and in that sense it would be entirely appropriate, in my submission, to accord her anonymity so that it is not in the public domain that she was a controlled prostitute in the way that IZ and IN were, albeit at a point in time and not throughout the indictment period.

68. One only has to look at the facts that the court has fairly summarised in this judgment to see the enormous difficulty and prejudice it would cause her in the future for it to be known that she had come to this country as a prostitute, practised as a prostitute and in fact was a victim of the same offence as IZ and IN, albeit for a more defined period, and in my submission that is a wholly proper reason----

69. LORD JUSTICE GROSS: Future prejudice is not normally a ground for anonymity.

70. MR NEWTON: No. I appreciate that. It was probably a slightly unfortunate choice of words on my part. I put it on the basis that she is a victim of a sexual offence, in

that she was a controlled prostitute in hands of Konart before she became a co-conspirator, and on that basis she should be afforded anonymity. That is the basis on which I put my application.

71. LORD JUSTICE GROSS: Have you had any contact with the media?

72. MR NEWTON: No.

73. LORD JUSTICE GROSS: They do not know about this at all?

74. MR NEWTON: No. I am not aware of any media interest at all.

75. If I could add -- and again, this is within the court's knowledge -- there is a background of her having been a victim of a physical attack at an early stage. She is fearful of reprisals. There is of course also the fact that we know nothing of the whereabouts of Sergey Konart himself. He will have served his sentence and been released by now. She does have legitimate reason to fear reprisals of what has been----

76. LORD JUSTICE GROSS: There is no evidence of that.

77. MR NEWTON: There is no evidence of it, no. I think my stronger point is the first point, which is why I put this second.

78. LORD JUSTICE GROSS: Mr Douglas-Jones, should we depart from the usual rule of open justice?

79. MR DOUGLAS-JONES: Not in this case, in my respectful submission. Anonymity, as opposed to the restriction on reporting should not be granted unless it is strictly necessary. There are three things to which I would invite the attention of the court in this case. First of all, the nature and degree of control at the time, and the absence of violence effected by SK on the applicant. In that context the violence which was effected on her came from the three Lithuanians, which was unrelated to him. Secondly, the passage of time now. It is now eight years since her arrest, and thirdly, the judgment in my respectful submission, is sufficiently nuanced that there is no suggestion from the way in which SK is dealt with within the judgment that an inference could be drawn from the judgment which would give rise to the engaging of Articles 2, 3 or 4, and in those circumstances I respectfully suggest that anonymity should not be granted in this case.

80. LORD JUSTICE GROSS: Anything else, Mr Newton?

81. MR NEWTON: No, thank you, my Lord.

(Short break)

82. LORD JUSTICE GROSS: Thank you, Mr Newton. No.

83. The reasons are very brief. One, the normal rule is open justice. Anonymisation is only granted where necessary.

84. Two, although it is fair to say that the appellant was herself a victim, matters moved on from there and she committed the serious offences which we have described. However, the judgment makes it clear that she herself suffered misfortunes as a VOT, so anyone reading it will appreciate that. Future embarrassment cannot be a ground for anonymisation. That flows from the commission of crime.

85. Three, in so far as any reliance is placed on physical risks to the appellant, (a) there is no evidence to that effect; (b) nothing whatever said in the present judgment would give rise to or amplify those risks; (c) there has been a considerable passage of time, so there is no reason to suppose that any factors which led to the assault back in 2010 are still applicable.

86. Thank you very much.

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

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