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No: 201801337

IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice

Strand

London, WC2A 2LL

Thursday, 16 May 2019

B e f o r e:

LORD JUSTICE COULSON

MR JUSTICE PICKEN

HIS HONOUR JUDGE DICKINSON QC

R E G I N A

v

KAMRAN MALIK

Computer Aided Transcript of the Stenograph Notes of Epiq Europe Ltd 18-22 Farnival Street, London EC4A 1AB, Tel No: 020 7404 1400 Email: rcj@epiqglobal.co.uk (Official Shorthand Writers to the Court)

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Non-Counsel Application

J U D G M E N T

(Approved)

1. MR JUSTICE PICKEN: This is a renewed application for leave to appeal against conviction, together with the hearing of an appeal against sentence brought with leave given by the single judge.
2. On 5 March 2018 at Southwark Crown Court before his Honour Judge Robbins, the offender Kamran Malik changed his plea to guilty to four offences of providing immigration advice and services when not qualified to do so, contrary to Section 91(1) of the Immigration and Asylum Act 1999. This was on the day that he was due to stand trial for those offences, alongside his wife. She was facing similar counts, which following the offender's guilty pleas, were ordered to lie on the file. Subsequently, on 15 May 2018, having by that stage dispensed with the services of his solicitors and counsel, the offender made an application to vacate his guilty pleas. That application was refused, the judge taking the view that the offender knew very well what he was doing when he entered those pleas and was, in making the application to vacate, seeking to "[...] manipulate the process to his own ends".
3. On 25 June 2018 the offender was sentenced by the judge to twelve months' imprisonment, concurrent, on each count. He was also ordered to pay costs amounting to £48,000 and compensation in the sum of 16,700, representing the amounts paid to the offender by the various people to whom the information, advice and services were provided. Another defendant at KM Legal Limited also pleaded guilty to similar offences, receiving a modest fine.
4. The underlying facts giving rise to the offender's prosecution are not material for present purposes. Suffice it to say that the offender took money from people who came to him to provide immigration advice between 2 November 2014 and 29 October 2016 at a time when the offender was operating a business, KM Legal, trading as KM Legal Advisory, which was providing immigration advice and services on a large scale.
5. It should be noted at the outset that the offender has two previous convictions, both on 5 June 2014 and it was only a matter of months before he went on to start committing these further offences for identical offences in 2012 and for which he received two, consecutive twelve-week sentences of imprisonment. It was, accordingly, after the offender's release from prison that the offences for which he was sentenced in 2018 came to be committed.
6. It is convenient to deal first with the offender's renewed application for leave to appeal against conviction. This can be done in short order since there is absolutely no merit in it. On the contrary, as the single judge put it when refusing leave:

"Despite the grounds put forward being many and various ... despite the offender's lengthy further submissions in response to the single judge's refusal, the essential complaint is that the offender was misled by his counsel when she discussed with him whether he should enter guilty pleas and if so on what basis. Indeed, so let down was he by his counsel, the offender suggests that, according to him he had 'no clue' as to what the basis of plea document was that his counsel presented to him to sign."

7. We have read in detail everything that has been put before us in this regard by the offender. We have also read what his counsel has had to say concerning the criticisms which have been levelled against her. We note, in particular, the detailed description of her interactions with her former client. It is quite apparent to us that whatever the offender might now say, he received appropriate advice concerning the issue of plea, and his decision to change his pleas to guilty on a basis which the prosecution ultimately were prepared to accept was a decision that he made knowing full well what he was doing. That, indeed, was the view which was taken by the judge and is underlined by the fact that the offender expressly stated in response to each count when it was put to him that he pleaded guilty on a basis. It is also borne out by the fact that the document which he signed made it clear that he was prepared to plead guilty on the basis there set out and on the understanding that his wife would be not pursued further and that the perverting the course of justice count which he was also facing would be "dropped".
8. We cannot accept in these circumstances that the offender would have been in any doubt as to what he was doing by changing his pleas in the way that he did. Nor can we accept that there was any ambiguity to the pleas which he was then entering, whether to the offender himself or more generally.
9. Furthermore, as the single judge went on to observe, the evidence against the offender was "overwhelming", the more so since the judge had ruled that the offender's previous convictions for identical offences were admissible.
10. In the circumstances we have no hesitation in refusing the renewed application for leave to appeal against conviction, and so we turn to the appeal against sentence. This has as its focus not the twelve months sentence of imprisonment which the offender received but the compensation order in the sum of £16,700.

11. Facts

It is the offender's contention that in making that order the judge erred because he did not consider his ability to comply with it, specifically, as the single judge pointed out when granting leave, section 130 of the Powers of Criminal Courts (Sentencing) Act 2000 which requires the court to take account of a defendant's means when considering whether to make a compensation order and if so in what amount.

12. Thus, this is stated in Subsection 11:

"(11) In determining whether to make a compensation order against any person, and in determining the amount to be paid by any person under such an order, the court shall have regard to his means so far as they appear or are known to the court."

13. In the present case it appears that the only evidence before the judge as to the offender's means was that provided by counsel who acted for him at the sentencing hearing, not the same counsel as had previously appeared when the offender entered his guilty pleas. He told the judge that he had taken instructions from the offender concerning his means

and that a costs order obtained against him in certain civil proceedings had been secured by way of a charging order in respect of the offender's home which "realistically", as he put it, was not going to be paid off, "So he stands to lose his home in any event".

14. He went on to his having various documents from HMRC, Job Centre Plus, the Department for Work and Pensions, "[...] confirming the tax code, Disability Living Allowance and Employment and Support Allowance", which he offered to show the judge but which it does not seem the judge actually looked at. His counsel then explained that since the offender had stopped working through KM Legal Limited, "All the income he has and the family has has come from social security benefits", and that he had no savings, and credit card had debts amounting to some £7,000.
15. The judge in his sentencing remarks did not refer to these matters when telling the offender that in addition to costs in the sum of £48,000 and the twelve months sentence of imprisonment he would have to pay compensation amounting to £16,700. He said nothing about the offender's means and so his ability to pay any particular level of compensation, or for that matter, costs.
16. Although we consider it unlikely that the judge can have failed to have regard to the topic of means altogether, it is not possible to discern what his view was concerning the offender's ability to pay compensation, or we say, for that matter, costs.
17. We feel unable to conclude merely based on the fact that a compensation order in the sum of £16,700 was made or that a costs order was made, that it was the judge's assessment that the offender had the means to pay that amount or the amount provided for by way of costs.
18. In these circumstances, we are driven to the conclusion that the judge failed to do as subsection 130(11) requires him to do as regards the making of a compensation order and so the compensation order which the judge made should not be permitted to stand for that reason. The compensation order is, accordingly, quashed and the appeal against sentence is allowed.
19. We consider, however, that it would be inappropriate without further and proper inquiry to order that there should be no compensation awarded at all. We bear in mind in this respect that any compensation is payable not to the state but to individuals who have lost money as a result of the offender's criminal activities. It is only right, therefore, that compensation should be paid provided that section 130(11) has been complied with and it has been ascertained accordingly that the offender has the means to pay.
20. We therefore consider it right that the question of whether a compensation order should be made and if so in what sum is remitted to the crown court to be decided by a different judge.
21. We add that although the offender has not sought expressly, at least, to challenge the making of the costs order in the sum of £48,000 which was also made against him, it

seems to us logically to follow that his ability to meet that order or any costs order in a lesser amount should also be considered by the crown court. We have in mind in this regard that section 18 of the Prosecution of Offences Act 1985 requires a costs order to which the court "[...] considers just and reasonable". Accordingly, as acknowledged in Archbold at paragraph 6—29, means are relevant, not only for the purposes of compensation but also for the purposes of any costs order also.

22. As a result, we consider it appropriate to quash the costs order in addition to the compensation order and to remit the costs issue also. In the circumstances, we consider it appropriate, in addition, to make a financial circumstances order pursuant to section 162 of the Criminal Justice Act 2003 requiring the offender to give the court within 28 days a statement of his assets and liabilities together with a statement setting out his income and outgoings.
23. LORD JUSTICE COULSON: Thank you very much.
- 24.

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

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