

No: 201604175/C2

IN THE COURT OF APPEAL

CRIMINAL DIVISION

Royal Courts of Justice

Strand

London, WC2A 2LL

6 June 2019

Before:

Mr Justice Spencer  
HIS HONOUR JUDGE Picton  
(Sitting as a Judge of the CACD)

**Regina  
and  
Joseph Waite**

**The Applicant appeared in person**

Picton

JUDGE On 21 July 2016 in the Crown Court at Swansea, before His Honour Judge Thomas QC, the applicant was convicted of fraud by false representation, contrary to section 1 of the Fraud Act 2006 (counts 1 to 7). On the same date he was sentenced to 30 months' imprisonment on each count concurrent. He was ordered to pay a victim surcharge of £120 and was also disqualified from acting as a company director under section 2 of the Company Directors Disqualification Act 1986 for five years. This is an application for an extension of time of approximately one year and ten and a half months in which to renew his application for an extension of time of 26 days to apply for leave to appeal against conviction and for a representation order after refusal by the single judge. His application for leave to appeal sentence was refused by the same single judge and has not been renewed.

The facts of this case are set out in the Court of Appeal Office summary and are well-known to the applicant who has attended here today in person to speak on his own behalf. We have allowed him a little time in which to address the court. Further, the grounds upon which he seeks to challenge his conviction emerge from the reasons given by the single judge when he refused leave. We cannot improve upon the terms in which he did so and they are as follows:

“You were convicted of seven counts of fraud by false representation and sentenced to two years and six months' imprisonment on each, all to run concurrently. You were also disqualified from acting as a company director for five years.

You delivered seven cheques to Barclaycard totalling over £80,000, each drawn on a company account you knew (as the company's director) to be closed. Barclaycard credited the credit card accounts of the other company of which you were the director with the amount of each cheque. You then utilised the credit so obtained to make credit card payments for each of the cheques was dishonoured, as you knew it would be.

You argue that the judge wrongly refused your submission of no case to answer. You contend that you were not making a representation to Barclaycard, but merely transferring monies from one of your companies to another. That was and remains a

hopeless argument which the judge rightly rejected. In delivering the cheques you undoubtedly represented to the payee (Barclaycard) that the cheques were drawn on valid accounts and would be honoured on presentation. You knew that those representations were not true and you intended Barclaycard to act on those representations by crediting accounts with funds which would not be reimbursed. It was a clear case of fraud, abusing the bank's willingness to permit drawing against uncleared effects. It is irrelevant that you indicated to which account at Barclaycard the funds should be credited: the credit was effected by Barclays on the faith of the cheques being honored. It is also irrelevant that an employee of Barclaycard accepted your mistaken analysis when giving evidence.

Your conviction is entirely safe: your appeal is without any merit. It is according not appropriate to extend your time for appealing.”

The applicant still relies upon the matters that the single judge considered. He also now seeks to argue what he suggests is a new point that was not before the single judge based upon some evidence given in the Proceeds of Crime Act proceedings. The applicant suggested, at least before some more material was received overnight, that in the course of those proceedings the prosecution confirmed that the applicant had been writing cheques from one company to another, something the applicant suggests supports an assertion that his conviction is unsafe.

The court office received a further skeleton argument from the applicant by email at 22.24 last night, along with excerpts of transcripts from the original trial and from the POCA proceedings. The applicant seeks to rely upon the points he makes in that skeleton argument, and on the material which emerges from the transcripts, in order to support the position that he still seeks to adopt in respect of his conviction. He also addressed us today and whilst perhaps acknowledging some technical fault on his part, asserted that he had not been dishonest in the way in which he managed the card credits to which the single judge referred, and which is covered in the evidence we have read.

In relation to the additional material we have had time to read that today before this hearing commenced and we have taken account of all that is set out there. We have carefully considered the applicant's further skeleton argument.

We regret to inform the applicant that the points he seeks to make remain utterly misconceived and they have no impact upon the unassailable reasoning of the single judge when refusing leave. He is, in reality, simply recycling the same point which is one that he does not feel able to accept.

The applicant further argues that the judge misled the jury by suggesting the applicant lied about his previous convictions. There is simply no foundation for that suggestion.

Like the single judge we consider that this application lacks any merit whatsoever. If the applicant was still in custody we would have made a loss of time direction. As it is we will make an order under section 18(6) of the Prosecution of Offences Act 1985 that the applicant pay the sum of £144.10p in respect of the cost of the transcripts that have had to be prepared. The renewed application is dismissed.

Mr Justice Spencer

Mr Waite, you may have 28 days to pay that.

THE APPLICANT: I will try. I have very limited income. I am on benefits and have five children living at home, but I will do what I can.

Mr Justice Spencer

We will allow 56 days. The single judge of course had indicated that the full court should consider making the order for costs and you have made no representations against it.

THE APPLICANT: I was not aware at that point that I would need to.

Mr Justice Spencer

In any event the order is appropriate, so that sum within 56 days.