



IN THE CAYMAN ISLANDS COURT OF APPEAL

CRIMINAL APPEAL 4/2017

IND 85/2014

SC#04533/2014

BETWEEN:

GEORGE WASHINGTON VAUGHN

Appellant

- and -

Her Majesty the Queen

Respondent

BEFORE:

The Rt. Hon Sir John Goldring, President
The Rt. Hon Sir Bernard Rix, Justice of Appeal
The Rt. Hon Sir Alan Moses, Justice of Appeal

Date of Hearing: 23rd November 2020

Appearances: Mr. Rupert Wheeler of Samson Law for Appellant
Ms. Nicole Petit, Office of the DPP for the Respondent

JUDGMENT

Transcript of oral judgment dated 23rd November 2020 and Approved for Release 9th March 2021

MOSES, JA:

1. This is an application for an extension of time and permission to appeal against a sentence of 14 years passed by Lady Justice Dobbs on the 15th of December 2016. The sentence was passed in respect of this applicant's plea of guilty to one count of attempted murder, contrary to section 194 of the Penal Code, [2013 Revision]. He pleaded guilty sometime before, on the 28th of August 2015.
2. The facts were set out in full in the judge's sentencing judgment. They describe a truly horrific attack on this applicant's wife. The issue in this application, is whether this applicant should have been given the opportunity of giving evidence to rebut the contention advanced on behalf of the

Prosecution that this was a premeditated offence. The suggestion is that the applicant was deprived of that opportunity and, in those circumstances, deprived of a fair and reasonable chance to put forward matters which went to mitigating the sentence.

3. The facts of this case demonstrate the merits of this argument. There had been a history of abuse of his wife by this applicant which had led her to complaining to the police. The incident started after the applicant had been leaving a number of messages, culminating in her request to go to feed the dog whilst he was out. Accordingly, the wife went, sensibly, with some friends and three young children to the former matrimonial home on the 12th of August, in the belief that her husband was not there. She was reinforced in that belief by the fact that the car was not parked in the driveway. But he was there. He attacked her with a machete, chopping and hacking at her, on her body and on her legs. He had provided himself with a poison which he tried to pour down her throat. He then left the house. She was left with horrific wounds both to her neck, her hand, brain injury and she nearly lost both her legs. It was thought that she would not recover and she still suffers from her permanent injuries.
4. There is no dispute but that 14 years after a plea of guilty, a sentence of imprisonment was appropriate but for the fact that it is now contended by Mr. Wheeler, who was not counsel at the sentencing hearing, that there was mitigation which the judge did not allow this applicant to put forward on oath. He wanted to contend that he was stressed, not thinking clearly and that this was a sudden, unprepared attack.
5. The judge dealt with this fully and fairly. She asked a series of questions, giving experienced criminal counsel, Mr. Brady, who then appeared on behalf of this applicant, plenty of opportunity to answer them. First of all, as to the issue as to why the car was not parked in the house but it was parked elsewhere, even though the applicant was in the house; and, secondly, as to the poison with which he had provided himself, and the machete that was in the bedroom. He said he had them for gardening work but had fallen asleep. He said he often parked the car elsewhere.
6. The judge gave a reasoned judgment rejecting those suggestions that this was a spontaneous attack, basing herself upon those facts which powerfully showed that it was premeditated, and designed to get his wife to enter the house so that he could attack her. And, having rejected the suggestion that it was not premeditated, he was sentenced accordingly. Mr. Wheeler says that it was wrong not to

give the applicant the opportunity of giving evidence on oath in a Newton Hearing to support his contention that this was not premeditated.

7. The first observation we have to make is that he was not counsel at the trial, and that we have absolutely no basis for knowing whether he was offered that opportunity or not. It is difficult to see that any competent counsel would have allowed him to aggravate the offence by giving evidence on oath, in the fraught atmosphere of a sentencing hearing to advance that wholly implausible defence.
8. The second observation that we make is that there is ample authority for the proposition that where the case advanced on behalf of a defendant is manifestly false or wholly implausible to use the words of *Hawkins* [1985] 7 Cr App R (S), 351 there is no obligation on the judge to hold a Newton Hearing. Indeed for the reasons we've given, it might be unfair on the defendant to require him to give evidence on oath, since it would only lead to an aggravation, and a reduction of the allowance that might otherwise be given for his plea of guilty. The most recent important authority for that proposition is *R v Khans* [2013] 2 Cr App R (S) 73 at page 478. Further, there are Criminal Practice Directions in the United Kingdom, not directly applicable in these islands particularly at (b .10) which support the view that a judge is under no obligation to offer a Newton Hearing. Mr. Wheeler cited a number of cases where a written Basis of Plea had been put forward that was plainly arguable, for example, as to the role a defendant might have played in an offence involving a number of different defendants, where a Newton Hearing was not only appropriate but the failure to offer it might lead to an injustice and a successful appeal. But, this case is miles away from such examples.
9. In our view, there is no substance in any suggestion that the applicant was treated unfairly or that there was any possibility of him being able to demonstrate that the implausible account, that he offered as to the preparations he clearly made before this horrific attack, might have been accepted. In those circumstances, the application for extension of time and for permission to appeal is refused.