

IN THE COURT OF APPEAL OF THE CAYMAN ISLANDS

Healy
CRIMINAL APPEAL 21/15
(Ind. 68/14)
C#2817/2014

BETWEEN:

HER MAJESTY THE QUEEN

Respondent

- and

Clifford Lyn

Applicant

**Before: The Hon John Martin QC, JA
The Hon Sir George Dennis Newman, JA
The Rt Hon Sir Alan Moses, JA**

Appearances: Jonathon Hughes of Samson & McGrath for an application to come off record. Applicant/appellant did not appear. Greg Walcolm for the DPP.

JUDGMENT

Revised from transcript of oral judgment given on 2 November 2016
and Approved

Released 3 November 2016 to counsel



WEDNESDAY, NOVEMBER 2ND, 2016

UPON COMMENCING AT 10:18 AM

THE CLERK: Criminal Appeal 21 of 2015. Clifford Lyn versus Her Majesty The Queen.

NEWMAN JA: Mr. Walcolm.

MR. WALCOLM: Good morning, My Lord. I appear on behalf of the Crown Respondent in this matter.

The appellant, I understand from the Marshal, was present this morning. He had sight of him. However, at ten o'clock when the calls were made he was not answering. He was in the company of his wife Ms. Webster, I'm so informed. Mr. Hughes is here. He represented him prior to coming off record and he is here at the behest of the court, I understand.

Does the court wish to hear anything further from me at this time?

NEWMAN JA: No, not yet. Thank you. Mr. Hughes, have you got anything to say?

MR. HUGHES: Good morning, My Lord, yes. I'm formally applying to come off record in this matter. I had previously represented Mr. Lyn under -- we filed an appeal under grounds which no longer are applicable in the matter. The new grounds that were proffered by Mr. Lyn in our opinion did not represent suitable grounds to take this matter forward and therefore we apply to come off record. Mr. Lyn did indicate that he wished to take this matter forward in a personal capacity. However, I have not been able to confirm that with him in recent times.

NEWMAN JA: And you haven't seen him yourself this morning?

MR. HUGHES: I haven't seen him this morning.

MOSES JA: But the grounds were just that the conviction was unsafe and the sentence excessive, wasn't it? Were there ever any more detailed grounds?

MR. HUGHES: My Lord, the appeal was taken on the point that at trial certain third party disclosure had not been explored and the trial counsel had not made any efforts to --

MOSES JA: I see, it was the disclosure point.

MR. HUGHES: Yes.

MOSES JA: But now that this court has seen those documents which merely make the case worst against him, that point is gone.

MR. HUGHES: That's correct, My Lord.

MOSES JA: So there are no grounds now.

MR. HUGHES: I do believe Mr. Lyn has new grounds that he wishes to argue.

MOSES JA: I haven't seen anything other than just saying that conviction is unsafe and the sentence excessive, which in my book are not grounds at all. That's just reciting the basis upon which an appeal could be launched.

NEWMAN JA: When you say Mr. Lyn has new grounds have you seen something in writing or do you merely know what he intends to argue?

MR. HUGHES: It's the latter, My Lord. I can

NEWMAN JA: Okay, right. All right. Well, yes, you can have formal leave to come off the record.

MR. HUGHES: Thank you, My Lord.

THE COURT: Thank you for your help. And we will try calling Mr. Lyn again. Is there anybody that can do that?

THE CLERK: Just outside the courtroom?

NEWMAN JA: Well, outside the courtroom and the environs of this building.

THE CLERK: Yes.

THE MARSHAL: I'll check again.

NEWMAN JA: If you want to go, Mr. Hughes, feel free to do so.

MR. HUGHES: Much obliged.

... CHECKS MADE VIA TELEPHONE CALL BY REGISTRAR

THE CLERK: Security on my floor haven't seen him.

... FURTHER CHECKS MADE BY REGISTRAR

THE CLERK: So I've checked with the Registry on the fourth floor, which is where I am. I've checked with security. I've checked with security on my floor. I've checked with security on the Registry on the third floor.

THE MARSHAL: No sign of him in this building.

NEWMAN JA: All right. In that case, we will proceed on the basis that he's not here. Mr. Walcolm, we don't need to trouble you. Thank you very much.

MR. WALCOLM: Very well.

NEWMAN JA: And Justice Moses will give a short judgment.

THEIR LORDSHIPS' RULING

MOSES, JA

This is an application for permission to appeal by the Applicant Clifford Lyn following his conviction on five counts on an indictment, including wounding and cruelty and causing fear of violence against the Applicant's young son. He was due today to prosecute this application, and the court was informed that at one stage he was seen in the building, but he has disappeared and there is no further news of him.

His failure to attend to prosecute this appeal, now his previous counsel has come off the record, would, in our judgment, in any event have justified us dismissing the application to appeal

against both conviction or sentence. But quite apart from that, we wish to dismiss this application on the grounds that there is no possible basis upon which it could be prosecuted.

The application was mounted on the basis that documents that ought to have been disclosed had not been disclosed at trial and that his counsel had failed to ask them. Such documents that deal with the behaviour of his unfortunate son in school and elsewhere following the history of violence against him committed by this applicant would only have made his case worse, as those documents reveal now that we have had the opportunity of reading them.

In any event, what is of particular significance and is most disturbing is the fact that once he had been convicted, following his pleas of not guilty, by a jury, his counsel quite specifically told the judge that his client, this Applicant, had seen the error of his ways and was accepting that the violence had taken place and was seeking to explain why. On that basis, the judge, who declared that he had in mind a sentence of two years, reduced it to 18 months. This lenient approach was the direct result of the Applicant's own admission of the truth of these allegations. This makes this application particularly abusive and serious and underlines that it has no merit whatever. What makes it more serious is that the anxiety that it will have undoubtedly engendered on his son will have been aggravated. On that basis too we refuse this application.

NEWMAN JA: Anything arising?

MR. WALCOLM: No, My Lord. Thank you.

NEWMAN JA: Good. Thank you very much indeed.

MOSES JA: So the application is refused both against the leave to appeal against conviction and sentence.

MR. WALCOLM: Obligated My Lord.

COURT ADJOURNED

