

Neutral Citation Number: [2012] EWCA Crim 1550

No: 201201145/A4

IN THE COURT OF APPEAL

CRIMINAL DIVISION

Royal Courts of Justice

Strand

London, WC2A 2LL

Wednesday, 4 July 2012

B e f o r e:

LORD JUSTICE LAWS

MR JUSTICE MITTING

MR JUSTICE EDWARDS-STUART

R E G I N A

v

ALAN FLETCHER

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Mr P Rowlands appeared on behalf of the **Applicant**

J U D G M E N T

(As approved by the Court)

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1. LORD JUSTICE LAWS: We think there is something to argue about here and that you should have the opportunity to obtain a further expert report and contend at a full appeal that that is the right disposal, whatever the result turns out to be.
2. I think our collective understanding is that for a section 41 order the court has to hear the oral testimony of one doctors or two doctors?
3. MR ROWLANDS: Yes. It would be Dr Boer to give evidence and a colleague of his to provide a supplementary report.
4. LORD JUSTICE LAWS: Unless you have any more to say, I shall ask Edwards-Stuart J to give the judgment granting you permission to appeal with a view to an appeal being heard on that basis and we will give directions that you have funding for a further expert report. We anticipate that Dr Boer will have to be available to give oral evidence at the appeal.
5. MR ROWLANDS: Thank you very much. Might I ask for a representation order?
6. LORD JUSTICE LAWS: Yes, when we have had the judgment.

JUDGMENT

7. MR JUSTICE EDWARDS-STUART: On 19 June 2006 in the Crown Court at Wolverhampton the applicant pleaded guilty to destroying property being reckless as to whether life was endangered contrary to section 1(2) of the Criminal Damage Act 1971. On 4 September 2006 he was sentenced to an indeterminate sentence for public protection with a minimum term of two years and 188 days.
8. He renews his application for permission to appeal to this court following the refusal of permission by the single judge. However, our understanding is that the single judge did grant the applicant the appropriate extension of time in order to do so. If for any reason that understanding is wrong, we grant the necessary extension of time today.
9. Very briefly the facts are that the appellant was a tenant of a two storey three-bedroomed mid-terraced house. On the evening of 8 March 2006 when he was very drunk he made four 999 telephone calls to the police threatening to harm people at the premises and saying that he was going to set a fire.
10. At 9.30 pm that evening his lodger smelt smoke and saw a fire. He managed to get out of the house, followed shortly by the applicant. The fire service arrived and had to restrain the applicant from getting back into the house. He was aggressive and abusive. It appeared subsequently that he had set fire to the settee in his sitting room which then spread through the house. The sitting room was destroyed and other parts of the house suffered severe smoke damage.
11. The judge concluded that the applicant was dangerous but decided that he did not have to pass a sentence of life imprisonment.

12. He had before him two psychiatric reports. Those two reports showed that the applicant had personality rather than mental health issues which resulted in there being limited assistance available by way of drugs or treatment. It was evident that the applicant's behaviour was unpredictable especially when he consumed alcohol. The doctors were, therefore, unable to recommend a hospital order.
13. What has prompted this application is a psychiatric report prepared by a Dr Harm Boer in January this year. He is the doctor presently treating the applicant and he considers that the applicant does suffer from a mental disorder within the meaning of the Mental Health Act 1983. He is a consultant forensic psychiatrist who specialises in working with people with learned difficulty of which he says the applicant is one. So the applicant now applies to put in this new report by way of fresh evidence.
14. The grounds of appeal are, very shortly, that the applicant was therefore sentenced on a wrong basis, that he does have a severe mental impairment and it is a condition that is susceptible to treatment. The case for the applicant is, essentially, that his progress through the prison system, and his ability to meet sentence planning targets, is severely limited by his learning difficulties and his concentration span and without appropriate treatment he will never get any further. Therefore it is submitted that the appropriate sentence is, and should have been at the time, a hospital order.
15. We consider that there is force in the submissions made in support of the application and we consider that an appeal is reasonably arguable. We therefore give permission to appeal and to admit the fresh evidence.
16. As my Lord, Laws LJ, has already mentioned, there will have to be a report by a second medical practitioner to justify the proposed order. My Lord has already given directions that a certified medical practitioner will have to give evidence in support of the section 41 restriction. Is there anything else we need to give directions about?
17. MR ROWLANDS: Sorry to have jumped the gun earlier, might I ask for a representation order for today?
18. LORD JUSTICE LAWS: Yes, for today and presumably for the appeal.
19. MR ROWLANDS: If your Lordships would.
20. LORD JUSTICE LAWS: Yes, for one counsel certainly. Is it convenient to give a time estimate? An hour? It is not a long matter.
21. MR ROWLANDS: At the maximum, my Lord. Your Lordships will have the two report. May be half an hour.
22. LORD JUSTICE LAWS: The prosecution may have something to say and we have got the oral testimony. I will say an hour unless either of my Lords disagree.
23. MR JUSTICE MITTING: How is the second report to be obtained?

24. MR ROWLANDS: On reflection could I ask that those who instruct, who have been very diligent in arranging matters with Dr Boer, could they have a representation order limited to obtaining the second report, or left as a general matter, because it would assist me.
25. LORD JUSTICE LAWS: Limited to giving instructions for and obtaining a second medical report.
26. MR ROWLANDS: If your Lordships please.
27. LORD JUSTICE LAWS: Yes, I would have thought that was appropriate.
28. MR ROWLANDS: Thank you very much.
29. LORD JUSTICE LAWS: Thank you.