

ENGLAND AND WALES / JUDGMENT

R v Tinh Van Nguyen

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Neutral Citation Number: [2026] EWCA Crim 388 IN THE COURT OF APPEAL (CRIMINAL DIVISION) ON APPEAL FROM the Crown Court at Bradford His Honour Judge Rose T2020 0232 And ON APPEAL FROM the Crown Court at Wolverhampton His Honour Judge Chambers KC T2021 0483 Case No: 202500328 B2 Case No: 202500325 B2 Royal Courts of Justice Strand, London, WC2A 2LL Date: 27/03/2026 Before : LADY JUSTICE YIP MR JUSTICE BENNATHAN and HIS HONOUR JUDGE MENARY KC RECORDER OF LIVERPOOL

- ----- Between : Rex

- and - Tinh Van Nguyen

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- ----- P. Ahluwalia (instructed by P. Southwell of Southwell and Partners) for the Appellant D Bunting (instructed by Crown Prosecution Service) for the Respondent Hearing dates : 05 March 2026

- ----- Approved Judgment This judgment was handed down remotely at 10.30am on 27 March 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives. Lady Justice Yip : 1. 2. 3. 4. The applicant seeks to appeal two convictions following guilty pleas entered in two separate Crown Court proceedings, namely his conviction at Bradford Crown Court on 1 December 2021 for failing to surrender to custody contrary to section 6(1) of the Bail Act 1976, and his conviction at Wolverhampton Crown Court on 9 March 2022 for production of a Class B controlled drug, namely cannabis. In the first case he was sentenced to four weeks' imprisonment; in the second to twelve months' imprisonment. Both appeals were lodged approximately three years out of time. In relation to both convictions, the central contention advanced on the applicant's behalf is that, at the material times, he was a victim of trafficking and exploitation. In the Bradford matter, it is submitted that the statutory defence under section 45 of the Modern Slavery Act 2015 ("MSA 2015") would, had it been pursued, quite probably have succeeded and further that he had reasonable cause for failing to surrender. It is said that his guilty plea in Bradford was entered without proper appreciation of those matters and was equivocal, and that the conviction is therefore unsafe. Although the applicant accepts he was advised about the availability of the statutory defence in the Wolverhampton proceedings, it is argued that the prosecution was an abuse of process. It is further argued that both convictions offend against the applicant's rights under Article 4 of the ECHR. Applications before the Court 5. 6. 7. In relation to the Bradford

matter, an appeal against conviction existed as of right under s.13 of the Administration of Justice Act 1960, such that had the applicant lodged an appeal in time, no leave would have been required. However, the applicant now requires a significant extension of time in order to pursue his appeal. The registrar has referred the application for an extension of time to bring his appeal in the Bradford matter, together with the application for an extension of time and for leave to appeal in the Wolverhampton matter to the full court. Determining the extension of time applications in both cases necessarily involves consideration of the merits of the underlying appeals. The applicant also seeks to adduce fresh evidence pursuant to section 23 of the Criminal Appeal Act 1968, relying on a statement he made in August 2025 dealing with the circumstances in which he entered his guilty pleas, his engagement with the authorities and the reasons for the delay in bringing the appeals. The respondent contended that if this evidence was admitted, there should be an opportunity to cross-examine the applicant. He attended the hearing with the benefit of an interpreter. However, having heard the parties' submissions and after considering the applicant's witness statement *de bene esse* and taking it at its highest, we concluded that we could properly determine the applications without requiring the applicant to be cross-examined. The respondent submitted a bundle consisting of 169 pages accompanied by an application to adduce this as fresh evidence. In reality, most of the bundle does not fall into that category. It includes transcripts of the hearings in the court below and responses from the applicant's former legal advisers in relation to matters raised in the appeal. Insofar as there is any new material, it has been provided by the applicant in the course of this appeal. It is clearly appropriate that we have regard to the material contained in the core bundle, and we have done so.

Legal Framework

8. 9. It is well established that a voluntary and unequivocal guilty plea is a strong indicator that the resulting conviction is safe. The Court will not lightly permit a defendant, years after entering such a plea, to reopen factual issues that were not pursued at trial. However, as recognised in *R v Tredget* [2022] EWCA Crim 108, there are circumstances when, notwithstanding an admission of guilt, an appellant is entitled to submit that his or her conviction is unsafe. Such circumstances include cases where the plea was equivocal, where it was entered in ignorance of a viable defence which would quite probably have succeeded, or where there was a legal obstacle to prosecution amounting to abuse of process. In all cases, the focus of the Court's attention is on the single question of whether the conviction is unsafe. The circumstances relied on by an appellant need to be established by him or her. Section 45 of the Modern Slavery Act 2015 provides a defence for a person aged 18 or over who does an act constituting an offence because he is compelled to do so, where the compulsion is attributable to slavery or relevant exploitation and where a reasonable person in the same situation and having the same relevant characteristics would have had no realistic alternative but to commit the offence. It is important to emphasise that the defence is not engaged merely because a defendant has at some stage been trafficked. Nor does a

positive Conclusive Grounds decision under the National Referral Mechanism (NRM) determine the criminal issue. The defence is engaged where the relevant compulsion is linked to the specific offending and applying the objective “no realistic alternative” test. Where the defence is raised, it is for the Crown to disprove it to the usual criminal standard (R v MK [2018] EWCA Crim 667). 10. The respondent initially submitted in the Respondent’s Notice relating to the Bradford appeal that the section 45 defence could not apply to the Bail Act offence since the commission of the offence involved an omission (the failure to attend court) rather than a positive act. That is incorrect in law, as now sensibly conceded by the respondent. Confirmation that the defence can apply to an offence of omission such as failure to attend court is to be found in section 45(6) which provides simply: “In this section references to an act include an omission.”

11. Where reliance is placed on section 45 for the first time on appeal following a guilty plea, this Court must be satisfied that the defence ‘would quite probably have succeeded’. (See BTE [2022] EWCA Crim 1597) 12. The principles applicable in a case involving a guilty plea where the section 45 defence was considered at the time were comprehensively reviewed in R v AFU

- [2023] EWCA Crim 23. Even where the plea is not vitiated on the grounds of erroneous or inadequate legal advice, the conviction on the guilty plea may still be unsafe if the proceedings were an abuse of process. This may be so where the prosecuting authorities have failed to comply with their duty pursuant to Article 4 of the European Convention of Human Rights to properly investigate indicators of trafficking. The decision to maintain the prosecution is to be reviewed by the Court on grounds “corresponding to public law grounds.” Factual Background 13. The relevant facts may be stated shortly. In July 2019 the applicant was arrested at a cannabis factory in Wolverhampton. He was referred into the NRM and ultimately received a positive Conclusive Grounds decision. In January 2020 the prosecution offered no evidence. Thereafter he was released from custody. It appears that for a period in early 2020 he worked in a restaurant in Birmingham as a dishwasher and cleaner. According to the Single Competent Authority (“SCA”) disclosure, he worked six days a week for long hours and was paid modest sums totalling approximately £500 over some two and a half months. He was also, at another stage, engaged in nail salon work and, on one account, was paid around £100 per week for approximately a month. Although the conditions described were precarious and the remuneration low, those episodes are of some significance in demonstrating that there were periods during which he was not confined within a cannabis factory but was working in other environments. 14. In June 2020 the applicant was arrested at a cannabis factory in Halifax. He gave an account of re-trafficking. A positive Reasonable Grounds decision was made in July
2020. He was granted bail in December 2020 and a condition required him to provide details of his address. He failed to attend for trial on 18 March 2021. A warrant was issued. In November 2021 he was discovered at another cannabis factory in 15. 16. Wolverhampton after police were called to reports of disorder at the address. He was seen running from the

property and was apprehended following a pursuit. On 1 December 2021 the applicant appeared at Bradford Crown Court. The prosecution offered no evidence on the substantive production count. When the Bail Act offence was put (at the instigation of the court), the applicant initially indicated, in terms, that he had not known about the trial date. After speaking to his barrister with the assistance of an interpreter, he pleaded guilty. In mitigation it was said that he had been re-exploited and had feared the gang. Defence counsel's attendance note for that hearing records that the applicant said he wished to return to Vietnam and would prefer to remain in custody until he could do so. The judge accepted the applicant's account on the balance of probabilities, but made clear that he must deal with him on the basis that he had wilfully failed to attend court. A sentence of four weeks' imprisonment was imposed. On 9 March 2022 at Wolverhampton Crown Court, the applicant pleaded guilty to production of cannabis. The sentencing remarks describe a significant commercial operation. In opening the case, the prosecution told the judge that a referral to the NRM had been made on the applicant's behalf but that he had withdrawn his support for it, stating simply the desire to return to Vietnam. In mitigation, Counsel for the applicant said that his instructions "borderline on a Modern Slavery Act defence" but that "the conclusion we came to was that it did not amount to that defence. Nevertheless, he was under some duress." The judge observed that although the applicant was under the direction of others, the clear inference was that he worked to his advantage. After allowing credit for plea, the judge imposed a sentence of twelve months' imprisonment. The applicant's fresh evidence 17. In his statement dated 4 August 2025, the applicant asserts that he was not advised about the availability of a section 45 defence, that he did not understand the implications of withdrawing from the NRM process, and that he was frightened and wished to go home to Vietnam. He claimed that he thought that if he did not plead guilty to the Wolverhampton matter he would have to remain in custody awaiting trial for two years. He said that he had received no support and assistance from the authorities despite his disclosure that he was a victim of modern slavery. He said it was not until 2024 that he became aware he could bring these appeals through a solicitor advising him in relation to his asylum claim. He then promptly contacted his current solicitors and steps were taken to bring the appeals Approach to the fresh evidence and to the applications before the Court 18. In *R v AAD* [2022] EWCA Crim 106, [2022] 1 Cr App R 19, Fulford LJ giving the judgment of the court said that this court will need to determine how best to resolve the merits of any application or appeal in a case in which a section 45 defence has not been investigated properly or at all. He described this as "a highly fact-sensitive judgment" and said that it would be unhelpful to attempt to lay down guidance as to when the court would attempt to resolve the application or appeal solely on the basis of written materials and conversely when it will require oral evidence. The decision as to whether to hear oral evidence is solely a matter for the court although the views of the parties are to be taken into account.

19. We considered the applicant's statement without hearing oral evidence from him. In doing so, we took his evidence at its highest and considered whether such evidence, viewed against the other material available to us, might reasonably persuade us to allow either or both appeals against conviction. 20. The merits of the proposed appeals are highly relevant to the determination of the applications for extension of time. We have therefore begun by considering the merits on the basis of the written materials. Analysis of the applicant's witness statement and the other available material 21. 22. 23. 24. 25. 26. The applicant was not unfamiliar with the criminal justice process. By 2021 he had already faced prosecution, been referred into the NRM, received a positive Conclusive Grounds decision, and benefited from a prosecution being discontinued. The materials also show that in December 2021 the applicant signed a formal withdrawal from the NRM process. His present claim that he did not understand the significance of that step is difficult to reconcile with his earlier engagement with the NRM, including the positive Conclusive Grounds decision. The applicant was legally represented in both sets of proceedings. The transcript of the Bradford proceedings shows that his initial explanation for failing to surrender at Bradford was that he did not know about the trial date. Despite the fact that the applicant had previously volunteered that he had been a victim of trafficking and having previously been through the NRM process, he did not make any claim at the time that he was prevented from attending court by traffickers. Indeed, there is a complete absence of evidence to that effect even now. It is notable that the applicant's appeal focuses heavily upon the law and the theoretical availability of a section 45 defence. There is little real engagement with the facts and the evidence. The applicant's August 2025 statement does not assert that traffickers prevented his attendance at court on 18 March 2021, restrained him, or issued contemporaneous threats contingent upon his attendance. Neither does a statement made by the applicant on 15 August 2022 in the context of his asylum claim make that claim. Both statements are short on detail but do not provide any support for a claim that the applicant was in the grip of traffickers in March 2021. Indeed, the statement in the asylum claim positively suggests that he was not. On his own account, he spent time wandering the street and asking for help at nail bars. He does not claim to have been re-captured until October 2021, seven months after he failed to attend court. The latest Conclusive Grounds decision dated 20 August 2024 found that during the period 8 December 2020 to an unknown date in 2021, while the applicant claimed to be working at a nail salon, he was not subject to forced labour and was not during that time a victim of modern slavery. In short, even taking the applicant's evidence at its highest, there is no evidential basis to support a contention that he was being held in conditions that prevented his attendance at court in March 2021. The applicant does assert that he had been re-trafficked in October 2021 and was a victim of modern slavery at the time of his involvement in the Wolverhampton matter. The Conclusive Grounds decision accepts that he was a victim of modern slavery 27. 28. 29. 30. 31. from an unknown date in 2021 until his arrest by the police on 21 November 2021. There is therefore an evidential basis for making the claim that the applicant was the victim of modern slavery at the time of his participation in the cannabis grow which was the subject of the Wolverhampton proceedings. Further, the authorities establish that, although not binding, the court must

respect the finding of the SCA unless there is evidence to contradict it, or significant evidence that has not been considered. However, a decision of the SCA does not in itself determine the outcome of an appeal. In looking at the merits of an appeal, the Court must consider all the circumstances, including the circumstances in which a guilty plea has been entered and the reasons why a section 45 defence was not pursued in the Crown Court. Here, there is clear evidence, and it is accepted, that the applicant was positively advised about a possible section 45 defence before he entered his plea at Wolverhampton. Had he not pleaded guilty having received that advice, the defence could and would have been tested before a jury. Counsel who represented him at Wolverhampton expressed some “professional scepticism” about the case, albeit making it clear he exerted no pressure to plead guilty. There are discrepancies in the accounts given by the applicant at various times. For example, when arrested, he told the police that he had “no idea” that the plants were cannabis. In itself, that would be difficult to believe given his history which included being the subject of previous criminal proceedings for cultivating cannabis. It is wholly inconsistent with what he told the SCA, namely that he was driven to a house in Wolverhampton and that when he smelled cannabis, he tried to get away but was beaten and trapped inside. He appears to have told the SCA that he was watched 24 hours a day, presumably to justify not calling the police despite having access to a phone. On another occasion (as recorded by Counsel), he had said that he did not know the 999 emergency number. We note that is despite having had periods living in the country when he was free. The evidence provided in the August 2022 statement and that prepared in the course of these proceedings is vague. The account of events leading up to 21 August 2021 contained in the August 2022 statement is very brief: “I came to know that the house is a cannabis farm and was forced to work until 21st November 2021, the gangsters raided the house to hide from something and soon the police came to rescue me.” This account is inconsistent with the police evidence which clearly demonstrates that the cannabis farm was burgled by armed men seeking to steal the cannabis. The applicant was not “rescued”. Rather he attempted to flee the premises and was detained with the assistance of a police dog who bit him. The account in his statement presents a very different picture from the reality. The applicant gave the SCA yet another account of his detention saying that he escaped and was hiding from the criminals when he was bitten by the dog. The SCA found that the applicant was a victim of modern slavery between March and June 2020. In considering that period, the decision notes that there were discrepancies in the evidence, including in relation to messages found on the applicant’s mobile phone. Those discrepancies were tested and the applicant’s explanation was accepted. In relation to the relevant time period, the SCA accepted that the applicant was a victim of modern slavery for the same reasons as given in relation to the March to June 2020 period. However, the discrepancies in the evidence relating to this period do not appear to have been subjected to the same testing as was the case for the earlier period. 32. Further, the SCA did not have access to the other material we now have including the transcript of the hearing in Wolverhampton and Counsel’s response. 33. It is against this background that we consider the merits of each proposed appeal. The Bradford appeal (Failing to surrender) 34. 35. 36. 37. 38. 39. Turning to the Bradford

conviction, there is no evidence that the plea was equivocal. After clarification and a conference with his counsel, the applicant admitted the offence. The statutory defence under section 45 would have required evidence that he was compelled not to attend court, that the failure to attend was a direct consequence of exploitation, and that a reasonable person in his position would have had no realistic alternative. There is simply no evidence that traffickers prevented his attendance on 18 March 2021, or indeed that the applicant was being held in modern slavery at that time. The judge's acceptance that he had been exploited was mitigation; it was not a finding of compulsion at the material time. On the material before us, even viewed in a way that is most favourable to the applicant, we are not satisfied that there is any evidential basis for contending that a section 45 defence to the failure to surrender would quite probably have succeeded. On the contrary, it seems clear that it would not have done. For substantially the same reasons, the proposed defence of "reasonable cause" under section 6(3) of the Bail Act 1976 cannot succeed. The duty to surrender to bail is a fundamental obligation, central to the proper administration of justice. The statutory question is whether the defendant had a reasonable cause for failing to attend at the appointed time and place. That requires an objective assessment of the circumstances said to excuse non-attendance. There is no material demonstrating that the applicant was restrained, monitored, or otherwise prevented from presenting himself at court on the relevant date, nor that he took any steps to alert his legal representatives or the authorities to an inability to attend. The evidence before this Court falls well short of establishing a reasonable excuse within the meaning of the statute. It is unnecessary for us to consider any potential argument as to whether abuse of process may be claimed in respect of proceedings for breach of bail instigated by the court or indeed to look at the matter through the lens of Article 4. On the facts of this case as we have set out, such arguments simply do not arise. In those circumstances, even if we were persuaded to grant the very substantial extension of time sought, we consider that there is no prospect of this appeal succeeding.

Notwithstanding that an appeal brought in time would not have required leave, there is no purpose in granting an extension of time where the inevitable outcome is that we would dismiss the appeal. The Wolverhampton Appeal (production of cannabis) 40. 41. 42. Turning to the Wolverhampton offence, we are not persuaded that the defence under section 45 would quite probably have succeeded. We consider that a jury is likely to have shared the scepticism identified by Counsel. Looking at the totality of the available evidence, we do not consider that hearing from the applicant would have altered this conclusion. The material before us does provide some support for the statutory defence. It is right that the SCA accepted the applicant's account that he was the victim of modern slavery at the relevant time. However, the evidential basis for the decision came from the applicant's own account as relayed to the SCA. There is no independent and/or contemporaneous evidence to support a nexus of compulsion; and no indication that, despite his previous engagement with the police and the criminal justice system, he sought assistance or protection prior to his arrest. The fact that the applicant had received a positive Conclusive Grounds decision in 2019 is plainly relevant to his history and personal circumstances. However, it is a factor that cuts both ways. The fact that he had been through referral to the NRM and had thereafter

been the beneficiary of a decision not to proceed with earlier criminal proceedings for cultivation of cannabis makes it more difficult to maintain his professed ignorance of the statutory defence. Further, the applicant's initial account to the police that he "had no idea" the plants were cannabis was a significant factor undermining his credibility, particularly in the context of the history.

43. We have arrived at the conclusion that it cannot be said that the section 45 defence would quite probably have succeeded notwithstanding that we afford due respect to the Conclusive Grounds decision. That decision was made some time after the events in question, largely on the basis of the applicant's account in the context of pursuing an asylum claim. The decision-maker did not have the transcript of the hearing at Wolverhampton which we have seen and so was not able to assess what was being said contemporaneously. 44. 45. The Wolverhampton grounds of appeal do not contend that the guilty plea was equivocal or entered in ignorance of the law. In his statement, the applicant says that he would not have pleaded guilty had he received proper support and protection. The fact is that the applicant was properly advised about the potential to rely on the section 45 defence. He had been through that process before, the outcome being that similar proceedings were discontinued. He decided that, notwithstanding the availability of the defence, he wished to plead guilty. He says that is because he otherwise anticipated remaining in custody for two years awaiting a trial. However, there is no suggestion he raised that concern with counsel who could and would have reassured him otherwise. Further, he had previously been released from custody because of the expiry of custody time limits. That decision will have been explained to him through an interpreter. There is no proper basis for the applicant to assert that he believed he would have remained in custody awaiting trial for two years. The decision to plead guilty was an informed and rational one. The decision not to pursue the section 45 defence before a jury was made after discussion with counsel. The transcript records the outcome of that discussion as being the conclusion that while the applicant was in fear of the gang he was working for, the circumstances did not amount to the statutory defence. The applicant was sentenced on that basis and was also afforded credit for his guilty plea. At the time of the Wolverhampton hearing, the applicant had formally withdrawn from the NRM process. He had indicated a desire to return to Vietnam as soon as possible. His mitigation was directed towards achieving that aim. It appears that at some point thereafter, the applicant decided that he no longer wishes to return to Vietnam and wishes instead to claim asylum in this country. The evidence placed before this Court provides no explanation for that change of mind. 46. 47. Abuse of process and the Article 4 arguments 48. 49. 50. It is submitted on behalf of the applicant that the proceedings amounted to an abuse of process, by reason of suggested failures on the part of the police and the Crown Prosecution Service to comply with their positive obligations under Article 4 and with published guidance relating to victims of trafficking and modern slavery. It is said that there was a failure properly to investigate the circumstances of alleged re-exploitation and to review the decision to prosecute in light of the material available prior to arraignment. Further, having regard to the material now available, in particular the 2024 Conclusive Grounds decision, it is argued

that a proper investigation of the applicant's circumstances would have demonstrated that it was not in the public interest for the prosecution to proceed. The applicable principles are well established. Where credible material arises suggesting that a defendant may have been a victim of trafficking, the prosecution is required to give careful consideration to whether proceedings should be instituted or continued, and to review that decision in light of any subsequent developments. In an appropriate case, a failure to do so may render the prosecution an abuse of process. The Court's task on appeal, however, is not to determine that question afresh, but to assess whether the decision to prosecute or to continue proceedings was one that was properly open to the Crown, applying an approach analogous to that adopted in public law. In the present case, we accept that the material before the prosecuting authorities included indicators of trafficking, and that a positive Conclusive Grounds decision had been made in relation to earlier events. That material plainly required careful consideration. However, as we have identified, there were matters which called the applicant's credibility into question. The applicant places reliance on the fact that, when sentencing for the Bradford matter, HHJ Rose accepted his account, on the balance of probabilities,. However, this was not a detailed ruling made after consideration of all relevant material.

51. We accept that the fact that the applicant had withdrawn from the NRM process does not itself absolve the prosecuting authorities of their duties under Article 4. Nevertheless, in considering whether it was an abuse of process to proceed with the Wolverhampton matter it is relevant that a referral had been made to the NRM, that cooperation had then been withdrawn and that the legally represented applicant made an informed decision to plead guilty after discussion of the statutory defence with his counsel. The fact that the applicant had previously been found to be a victim of trafficking and that there were indicators of re-trafficking did not afford him blanket immunity from prosecution. In the circumstances existing on 9 March 2022, it is hard 52. 53. 54. 55. to see why it would be considered an abuse of process for the matter to proceed and for a plea to be taken. There is nothing in the material before this Court to demonstrate that the prosecution was pursued in disregard of the applicant's Article 4 rights or in a manner falling below the standards required by the relevant guidance. The Respondent's position is that the decision to maintain the prosecution was a proper one, and in our judgment that conclusion was open on the material available. In reaching that conclusion, it is important to emphasise that the existence of a Conclusive Grounds decision, while significant and to be afforded respect, is not determinative of criminal liability. The question remained whether, in relation to the specific offence charged, there was a realistic basis upon which a defence under section 45 of the Modern Slavery Act 2015 would succeed. There were, on the material available, a number of features capable of bearing upon that assessment, including inconsistencies between aspects of the applicant's various accounts and the objective circumstances of his apprehension, and the absence of independent evidence supporting compulsion at the material time. These were matters which the prosecution was entitled to take into account in deciding to proceed. Nor is this a case in which it is necessary for this Court to resolve

disputed factual issues by hearing oral evidence. The question is whether, in light of the material available at the time, including the trafficking decisions, it was properly open to the prosecution to maintain the proceedings. On that footing, we are satisfied that the threshold for abuse of process is not met. In any event, even if it were arguable that aspects of the investigation or review could be criticised, nothing identified comes close to the high threshold required to render a prosecution an abuse of process. Accordingly, this ground of appeal is not made out.

Conclusion

56. In those circumstances, we are not satisfied that the proposed fresh evidence is of sufficient credibility or weight to justify its admission, nor that it would provide a proper basis for allowing either appeal. The substance of the material amounts to a retrospective account by the applicant of the advice he says he received and of his understanding at the time he entered his pleas. It is unsupported by independent evidence and, in material respects, is difficult to reconcile with the contemporaneous record. We therefore decline the invitation to receive this evidence.
57. We have taken account of the 2024 Conclusive Grounds decision and have given it due weight. However, having assessed it in the context of the other material, including the contemporaneous evidence of what occurred at the relevant hearings, we are not satisfied that it could properly form the foundation for a successful appeal on any of the grounds advanced in either case. 58. In those circumstances, it is unnecessary for us to go on to examine the reasons for the delay in bringing these appeals. Since the appeals have no prospect of success, there is no benefit in extending time in either case. 59. Accordingly, we dismiss these applications.

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