

ENGLAND AND WALES / JUDGMENT

R v Saqub Asif Malik

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Neutral citation number: [2025] EWCA Crim 1420 IN THE COURT OF APPEAL CRIMINAL DIVISION ON APPEAL FROM THE CROWN COURT AT BRISTOL (HIS HONOUR JUDGE LAMBERT) (T20177380 52SB0022917) CASE NO: 202302028 B5 Royal Courts of Justice Strand London WC2A 2LL Wednesday 15 October 2025 Before: LORD JUSTICE DINGEMANS MR JUSTICE SAINI MS JUSTICE NORTON REX v SAQUB ASIF MALIK

Computer Aided Transcript of Epiq Europe Ltd, Lower Ground, 46 Chancery Lane, London WC2A 1JE Tel No: 020 7404 1400; Email: rcj@epiqglobal.co.uk (Official Shorthand Writers to the Court)

MS MARK HEYWOOD KC appeared on behalf of the APPLICANT

J U D G M E N T MS JUSTICE NORTON:

1. On 30 October 2018, following a trial at the Bristol Crown Court, the applicant was convicted of conspiracy to convert criminal property. The applicant thereafter left the jurisdiction and a warrant was issued for his arrest. On 28 November 2018 the applicant was sentenced in absence to four-and-a-half years' imprisonment. On 7 December 2020 a confiscation order was made in the sum of £486,029.50 , to be paid within 3 months; a term of 3 years' imprisonment in default was ordered to run consecutively. The defendant remains out of the jurisdiction and the warrant remains outstanding.
2. On 20 June 2023, as a litigant in person, the applicant lodged an application for an extension of time to appeal his conviction on the basis of grounds drafted with the assistance of counsel (Mr Qureshi). That application was considered and refused by the single judge on 18 December 2023 but notified to the applicant in January of the following year.
3. The applicant is now represented by new counsel Mr Heywood KC on a privately funded basis. Mr Heywood KC appears before us today, and applies for an extension of time of 1,666 days in which to renew the application for leave to appeal. We are grateful to Mr Heywood for his careful submissions made to us this morning. 4. In this case over four-and-a-half years have now elapsed between the date of conviction on 30 October 2018 and the initial application for an extension of time for leave to appeal dated 12 June 2023. An explanation for this extremely long delay has been provided on the applicant's behalf by Mr Heywood,

who refers to difficulties that his solicitors have had in obtaining material from previous solicitors, particularly where that material is not available on the Digital Case System because of its age, and has also referred to personal difficulties suffered by the applicant, namely a period in which he was ill through Covid, as well as a number of family bereavements. Nevertheless, there is limited detail and certainly very limited supporting evidence to explain a delay of such a length of time. Furthermore, as previously noted, the applicant absconded after trial but before sentence and has never returned to the jurisdiction. Whilst this does not preclude the court from considering either the merits of the application to appeal or an application for extension of time, as was stated in *R v Okedare & Others* [2014] EWCA Crim 228 at (40): "If the application to appeal/renew is out of time then the fact that it is being made by a person who has absconded is a matter which the Court can properly take into account (amongst other factors including the reason for its delay and its merits) when deciding whether to extend time to the applicant or not. Such an approach is not disproportionate." We will assess whether or not any of the grounds put forward in this renewed application are arguable, before returning to this application for an extension of time.

5. In January 2011 the applicant with his wife set up a company called Dharna Group LLP and opened a bank account in the name of that company with Barclays Bank. The bank account was structured in such a way that it was possible to pay into it cheques that were not made out to Dharna Group. It was the prosecution case that this bank account was used as a repository for funds obtained through fraud. In February 2015 a large number of stolen cheques were paid into the Dharna Group account, 23 of which cleared to a value of just over £173,000. In relation to these cheques the applicant was subsequently charged with, and indicted for, an offence of conspiracy to commit fraud between 7 February 2015 and 6 March of the same year, to which he pleaded guilty at Birmingham Crown Court on 27 April 2016. The applicant pleaded not guilty to an associated count of possession of criminal property upon which the prosecution offered no evidence, and in due course a not guilty verdict was entered. The applicant was sentenced on 24 August 2017 to a suspended sentence order. In the course of her sentencing remarks the judge noted that: "... you were involved in a criminal agreement to defraud a bank of money ... having acquired cheques made out to companies on cheques to be honoured by that bank. You submitted them into a company account so that you could reap the benefit of the monies paid out in recompense for them. ... Once the money that you had acquired was paid into your company account there were many efforts to dispense with the money over different accounts, you taking the time and trouble to pass it through a number of different accounts so that it might not be detected as having been fraudulently acquired."

6. Parallel with the investigations being carried out by the West Midlands Police into the stolen cheques in the Dharna Group account which resulted in the proceedings before the Birmingham Crown Court, a separate investigation was carried out by the Avon and Somerset Police into the disposal of those funds amongst others. That investigation established that once the cheques had cleared, the money was diverted through multiple other accounts that could be connected to the applicant or his co-defendants and used to

purchase gold, silver or other precious metals that were then sold to precious metal dealers. The money from the sale of these commodities was then paid into other accounts opened for the purpose of receiving these funds and was thereafter transferred again into accounts including accounts in the Middle East, thereby disguising the illegal origin of the funds. In order to carry out this process it was alleged that the applicant recruited others, including his co-accused and others unknown, to assist by creating shell companies with bank accounts through which money could be laundered, and by buying and selling gold and other precious metals. At trial it was the prosecution case that in excess of £500,000 worth of criminal money, including but not limited to the cheques that were paid into the Dharna Group account subject of the Birmingham proceedings, was laundered in this way.

7. Proceedings against the applicant commenced by postal requisition in September 2017, and in due course the applicant was tried at Bristol Crown Court on an indictment charging him together with his three co-accused with conspiracy to convert criminal property between 24 March 2015 and 18 June 2015. To prove that these funds were criminal property the prosecution relied upon the applicant's guilty plea at Birmingham Crown Court. The prosecution submitted that the evidence had to do with the facts of the offence with which the applicant was charged in the Bristol proceedings and thus fell within section 98 of the Criminal Justice Act 2003; alternatively, that it was relevant to an issue in the case, namely the criminal source of the property and the applicant's knowledge of it, and therefore admissible under section 101(1) (d) of the same Act. The defence argued that there was insufficient evidence to show that funds that came from the Dharna Group account were used to purchase gold and other commodities and that until any such nexus could be established any application to adduce the evidence of the conviction was premature. The judge ruled that the evidence the subject of the application was "fundamental". He stated that "access to a very large pool of cash, secured apparently by fraud, may constitute direct or indirect evidence that property later dealt with was criminal property", that it was evidence that had to do with the facts of the offence and was thus admissible under section 98. The defendant was in due course convicted and sentenced. The Grounds
8. The application for leave to appeal conviction is made on two principal grounds. First, it is contended that it was an abuse of process for the applicant to be prosecuted for an offence when it is clear that the facts giving rise to the Bristol offence were known to the prosecution and formed part of the evidence against him in earlier proceedings at Birmingham Crown Court. Whilst Mr Heywood confirms that it is not contended that these circumstances give rise to a plea in bar of autrefois convict, it is argued that by the way in which the proceedings in Birmingham were dealt with, and in particular the decision to offer no evidence on the count of possession of criminal property, the applicant had a legitimate expectation that he would not be prosecuted for any matters concerned with money laundering arising from the fraud. It is argued that, in these circumstances, to proceed with a further separate prosecution amounts to an abuse of process.

9. Secondly, it is argued in the written application that the admission in evidence in the Bristol proceedings of the applicant's conviction for conspiracy to commit fraud in the Birmingham proceedings was unfair and itself an abuse of process and that the judge should have been referred to section 78. Ground 1
 - Abuse
10. Dealing with the first ground, it is well established that where proceedings arise out of the same or substantially the same facts as earlier proceedings that have concluded then those latter proceedings will generally be an abuse of process in the absence of special circumstances: see *Connelly v DPP* [1964] AC 1254; *R v Beedie* (1997) 2 Cr App R 167; *R v Phipps* [2005] EWCA Crim 33; *R v Dwyer* [2012] EWCA Crim 10; *R v Wangige* (2021) 1 Cr App R 6; and *R v Bihe (Nuh)* [2022] EWCA Crim 939.
11. In *Dwyer* at (25) the court held that: "... the principle which underlies the court's special discretion to stay proceedings save in the presence of special circumstances, when the second set of proceedings is founded upon the same or substantially the same facts as the first, is that the obligation is upon the prosecutor to lay all the charges which it wishes to bring arising out of the same incident. ... In our judgment, the words 'the same or substantially the same facts' and 'the same incident' refer to the relevant state of affairs as they existed to the knowledge of the prosecutor at the date the proceedings were concluded. At any time up to that date the prosecutor may lay the charges it wishes for the purpose of capturing the offender's known culpability. If that culpability embraces further offences committed on other occasions which are not charged, ordinarily they should be charged or taken into consideration.."
12. In the more recent case of *Bihe*) the court held that it was an abuse of process to proceed to prosecute a defendant for conspiracy to supply Class A drugs where he had previously been prosecuted, convicted and sentenced for the possession of Class A drugs with intent to supply; where the majority of the evidence relied upon in latter proceedings had been known to the prosecutors in the earlier ones; and where in any event the defendant in those earlier proceedings had admitted and was sentenced on the basis that he held a leading role in a large-scale drug-dealing operation that encompassed the majority of the activity that was alleged in the later proceedings. In such circumstances, where the latter proceedings arose out of substantially the same facts as the former, and where the defendant could therefore legitimately assume that he had been sentenced for everything, it was an abuse to proceed against him with a subsequent prosecution in the absence of special circumstances. At paragraph (34) of *Bihe*, Edis LJ, having given the substantive judgment on the appeal, observed that: "This outcome should serve to encourage prosecutors to try to bring everything capable of being alleged against a defendant before the same sentencing judge at the same hearing. Where for good reason that cannot be done or should not be done, the prosecutor should ensure that the court and defence are informed of the position, unless there is some reason why this cannot be done, such as the need to protect on-going investigations. In the absence of a factor of that kind, efficiency and fairness require clarity

of thought and openness of expression."

13. Mr Heywood, in his oral submissions before us today, says very much the same thing. He draws our attention to the overlap between the investigations carried out by the West Midlands and the Somerset and Avon Police, and submits that there is both direct and inferential evidence that the two investigations were run in a coordinated manner with the knowledge of investigators from both areas. To this end he has provided an analysis in writing of the cross service of evidence from one investigation to another. Indeed, in his written submission he puts it in this way, that the "entire effect of the West Midlands' investigation into the applicant was transferred into the Bristol investigation, and then the proceedings, by the service of the West Midlands' evidence". As already stated, he does not argue that this gives rise to an argument of *autrefois*, however, he does submit that the Crown Prosecution Service was clearly in a position to take a fully informed decision on prosecution in respect of the applicant on each investigation and taking account of each. It follows, he argues, that when the prosecution decided to offer no evidence in respect of the count alleging possession of criminal property in the Birmingham proceedings, they (as he put it in writing) "clearly, emphatically and consciously passed up the opportunity to prosecute the applicant for any money laundering offence" based on the evidence relating to that criminal property. His central submission indeed, as expanded before us today, is that the prosecution ought not in those circumstances to have been permitted to offer no evidence in Birmingham and then to prosecute from the same starting point in Bristol. If further proceedings were contemplated, the proper course would have been to invite the court to direct that the count lie on the file or at the very least to make the position clear to the applicant and to the court and to invite any disposal on that count to be adjourned. Acting in the way that they did, Mr Heywood argues, is an affront to the integrity of the criminal justice system and therefore an abuse of process. Furthermore, in his written submissions Mr Heywood contended that when the applicant indicated that he would plead guilty to the conspiracy to commit fraud, he did so on the basis and understanding that the prosecution would not thereafter proceed with the possession count and that he therefore had a legitimate and justifiable explanation that he would not be prosecuted for any further matters concerned with money laundering arising out of the fraud.
14. In our judgment, no abuse arises. Whilst there was undoubtedly overlap between the two investigations and indeed some of the underlying facts, the circumstances of the two sets of proceedings were very far from those that gave rise to successful abuse applications in cases such as *Dwyer* and *Bihe*, in each of which the defendant had been prosecuted upon, and sentenced for, an offence or offences which were factually the same or very nearly the same as the offence subject of the subsequent prosecution. Here, there were very significant differences, in our judgment, in terms of the type of offence, the dates, the participants and, importantly, scope. Whereas the Birmingham proceedings were concerned with the provenance of cheques paid into the Dharna Group account and the applicant's possession, knowledge of and intentions regarding them, by contrast the Bristol proceedings were concerned with what happened to those sums once the cheques had cleared, as well as to

other monies that could inferentially be determined had derived from criminal conduct. This was a much wider and indeed wholly separate conspiracy to that prosecuted in the Birmingham proceedings and was one in which, as the sentencing judge in Bristol found, the applicant played a leading role, organising and involving others, including relatives who worked under his direction. Whilst arguably it would have been better had all matters been dealt with in the course of the same set of proceedings or an explanation provided as to why that was not desirable in accordance with the observations made in Bihe, the failure to do so does not, in the circumstances of this case, render the proceedings an abuse.

15. In so far as a submission that the applicant pleaded guilty to the conspiracy to commit fraud on the assurance (whether implied or direct) that were he to do so the prosecution would offer no evidence on the possession count, as indeed happened, and on an assumption that there would be no further proceedings against him, no material has been identified to show that there was any such promise made either directly or impliedly or that the applicant did in fact have the expectation asserted. There was no basis of plea in the Birmingham proceedings and no assertions to this effect were ever made in Bristol, whether in his Defence Statement or otherwise in submissions to the court. There was a clear overlap between the two Birmingham offences, and it is clear from the sentencing remarks that the possession of the criminal property was part and parcel of the facts of the conspiracy to commit fraud. In those circumstances a separate prosecution and conviction for the possession count alone would have added nothing. There is nothing to suggest that the decision to accept the plea to the fraud conspiracy in satisfaction of the indictment as a whole was anything other than a pragmatic decision on the facts of the case Ground 2 – Bad Character
16. In so far as ground 2 is concerned, namely the admission of the bad character, it is submitted that the admission of the facts of the defendant's conviction for fraud in respect of the cheques in the Dharna Group account was in itself an abuse of the process of the court and unfair in circumstances in which the prosecution had not disclosed in the Bristol proceedings the entirety of the served case or disclosed material in the Birmingham proceedings; where although the certificate of acquittal on the possession count had been served, the effect of that acquittal had not been fully appreciated; and where as a consequence neither those representing the applicant nor the court had considered any argument relating to that acquittal or the effect an acquittal had on the relevance and admissibility of the conviction for the fraud and thus on the application to rely on that conviction, whether under section 98 or section 101(1) Criminal Justice Act 2003. Had they done so, Mr Heywood argues, the court would have considered whether or not it was fair under section 78 to adduce the evidence.
17. We cannot accept the defence argument in this respect. The funds cleared by the cheques that were the subject of the Birmingham proceedings formed part of the monies subsequently alleged to have been part of the conspiracy to convert in the Bristol proceedings. Evidence relating to the conspiracy to commit fraud in respect of those

cheques was therefore clearly evidence to do with the facts of the Bristol case, and was relevant and admissible both to show the criminal nature of the funds in the Dharna Group account and the applicant's awareness of their criminal origins. The learned judge's approach to the admissibility of this evidence was, in our judgment, correct. The fact that the prosecution had not proceeded with the possession count and that a not guilty verdict was entered accordingly does not, in our view, impact upon either the approach to be taken to the admissibility of the evidence or to the conclusions about it. Furthermore, whilst it is said that not all of the Birmingham case material had been disclosed and the circumstances in which a not guilty verdict had been entered were unclear, a certificate of acquittal had been served and clearly the applicant knew what he had been charged with and to what he had pleaded guilty.

Conclusion

18. Had there been arguable grounds to appeal, which, as will be clear, in our judgment there are not, then this court would have had to have considered whether the merits of the case and fairness require that an extension of time should be granted. In this case we are not at all satisfied that there is a sufficient explanation for the extreme delay, and none at all for the applicant's decision to leave the jurisdiction and his failure to return; indeed Mr Heywood does not put before us any explanation for that aspect. Even if there had been arguable grounds of appeal, in accordance with Okedare (to which reference has already been made) the fact that the applicant has absconded is something that we would have been entitled to take into account when assessing whether it was appropriate to grant the necessary extension of time for leave to appeal. However, given that in our judgment no arguable grounds of appeal in fact arise, we do not have to consider what would have been in the event a highly unattractive submission.
19. It follows from all the foregoing that we refuse both applications, both as to leave to appeal but also the application for an extension of time in which to do . Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof. Lower Ground Floor, 46 Chancery Lane, London, WC2A 1JE Tel No: 020 7404 1400 Email: Rcj@epiqglobal.co.uk

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