

JERSEY / JUDGMENT

Paul Anthony Hadikin v The Attorney General

COURT

Court of Appeal

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Application for an extension of time within which to appeal conviction.**[2023]JCA132****Court of Appeal****25 July 2023**

Before :

Mr George Bompas, K.C., President;

Ms Helen Mountfield, K.C., and;

Mr James Wolffe, K.C..

Paul Anthony Hadikin

-v-

The Attorney General

The Applicant appeared on his own behalf.

The Crown was not asked to be present.

JUDGMENT

mountfield ja: This is the judgment of the Court.

Background

1. We are considering whether to grant the Applicant, Mr Paul Anthony Hadikin (whom we shall refer to as “the Applicant”), leave to bring an appeal against his conviction for attempted murder, even though he lodged the appeal after the deadline for doing so. 2. On 21 July 2022 the Applicant was convicted of attempted murder after an Assize Trial presided over by the Bailiff. 3. The bare facts are simple. On 5 December 2021, the Applicant and two other men went to a pub where he had several drinks. The Applicant had a dispute with another man at the pub (“the Victim”).. The Victim headbutted the Applicant and knocked him to the floor. The Applicant left the pub, and walked to his flat which was a few minutes’ walk away. At home, he picked up a large knife. He returned to the pub a few minutes later, and went back in, holding the knife in his hand. The Victim was still in the pub. The Applicant stabbed the Victim once with the knife. The stab pierced several inches deep into

the Victim's abdomen. No words were exchanged. The Applicant left the pub and threw away the knife, which was never found. He contacted his children by text message, to tell them that he believed he had killed the Victim. The Victim survived, but with very severe internal injuries. The injuries were life-threatening and life changing. 4. The jury found that the Applicant had intended to kill the Victim. The Applicant told us that he did not intend to kill the Victim, but the jury found beyond reasonable doubt that he did. The application for leave to appeal. 5. Under Article 24 of the Court of Appeal (Jersey) Law 1961 ("the Court of Appeal Law"), a person who has been convicted of a crime has a right to appeal on a point of law alone. He can also appeal on a ground of fact, or a ground of mixed fact and law, or on any other ground "which appears to the Court to be sufficient", but he can only appeal on one of those grounds with the leave of the court. 6. The Applicant was convicted on 21 July 2022. He put in a notice of appeal on 7 October 2022. Since he did not seek leave to appeal on a ground of fact, or mixed law and fact, his appeal was to be only on a question of law. 7. Article 32 of the Court of Appeal Law says that a notice of appeal has to be given within 28 days of conviction. That means the appeal was lodged about seven weeks late. To be on time, the notice of appeal would have had to be given by 18 August 2022, because that was 28 days after 21 July 2022. 8. However, either a single judge of the Court of Appeal or a full Court of Appeal can extend the time to appeal under Rule 22 of the Court of Appeal (Criminal) Rules

1964. The Applicant applied for an extension of time on 17 October 2022. 9. The factors the Court will consider when deciding whether to extend time to appeal are: (i) How long the delay was and any explanation for it; (ii) How likely it is that the grounds of appeal might succeed; (iii) Any prejudice which an appeal might cause.
10. On 24 February 2023 the Deputy Bailiff (MacRae DB) sitting as a single judge of the Court refused the extension of time. He gave his written reasons in a judgment provided on 22 May 2023.
11. The Applicant has renewed his application for an extension of time in a letter sent on 30 May 2023. We considered his application at a hearing on 24 July 2023. Length of delay
12. The delay in appealing was seven weeks, which was not that long, but still made the appeal almost two months late.
13. We considered what the Applicant said to us about why that delay happened. We decided that he did have a reasonable reason for having waited to lodge his grounds of appeal. Immediately after the conviction, the Applicant started to serve his sentence in prison. After he had been convicted, the advocate who had represented him at the trial, Advocate Steenson, gave a written opinion about whether he had grounds for an appeal. Advocate Steenson sent the Applicant his opinion four days after the conviction. He said this recorded advice he had already given the Applicant verbally. The opinion is dated 25 July 2022. The opinion said that Advocate Steenson saw no grounds for an appeal and explained why not. It did not record any advice about the deadline for lodging an appeal.

14. Advocate Steenson told the Applicant that he could get legal aid to seek a second opinion about his prospects of appealing his conviction. On 28 July 2022 the Applicant applied for legal aid for a second opinion. This was granted on 4 August 2022, which was still before the 18 August 2022 deadline for an appeal.
15. Another Advocate was appointed to give a second opinion. He gave his written opinion on 5 October 2022. The second opinion was also that the second Advocate did not think there were grounds for an appeal. In the second opinion the Advocate recorded that the Applicant had said that he had no criticism of his trial counsel, and also that from his review of the papers and discussions with the Applicant and Advocate Steenson he could himself see no criticism of the trial counsel.
16. On 7 October 2022, two days later, the Applicant lodged his notice of appeal. No grounds of appeal were stated. On 17 October 2022 the Applicant lodged a notice asking for the necessary extension of time for his appeal.
17. At the hearing when the Applicant's application for an extension of time was considered by the Deputy Bailiff as a single judge of this Court, the Court was helped by Advocate Boothman. His job was as an 'amicus' which means a friend of the court, whose job was to explain the points which the Applicant wanted the court to consider in his appeal if he was allowed to bring it late.
18. The Deputy Bailiff did not think the Applicant had a good reason for bringing his appeal late, but we do not agree with him on this. We are prepared to accept that the Applicant did not know about the deadline for an appeal, or at least that he did not understand that this applied even when he was waiting for a second opinion. Advocate Steenson's first opinion did not say in writing that an appeal had to be brought by 18 August 2022 even if the second opinion was not through by then.
19. The Applicant lodged his notice of appeal two days after he got his second opinion, which we consider was prompt. We can understand how the Applicant, placed as he was, might have thought it correct to wait to see what a second lawyer thought of his case before putting in an appeal. So, while the Applicant was mistaken and was late in putting in his appeal, we do not place much weight on the delay and do not find that the delay was unacceptably long.
Risk of prejudice
20. A criminal trial is stressful and worrying for everyone involved. This is especially true in the case of a serious crime like attempted murder. It is especially stressful for a complainant who is waiting to give evidence and wants to know if the perpetrator of a crime against him (if the verdict is guilty) will be convicted, and what the sentence will be. The Victim had suffered a very serious, life-threatening and life changing injury caused by the Applicant. He could well be adversely affected by a period of uncertainty during an appeal.

21. Court rules are put in place so that all the people involved in a case know when things have to be done by, which means what the deadline is for putting in grounds of appeal, and when a case is at an end. So it is in the public interest that a court deciding whether to extend time to appeal should consider the damaging effect of extending time to appeal on that public interest, and also the potential effect on the complainant/victim, in this case the Victim.
22. It has to balance the interests of the Applicant of in getting an extension of time to put in his appeal, against the public interest in criminal charges being decided and disposed of as quickly as possible. It also has to balance the Applicant's interests against the interests of anyone harmed by the crime who might be affected by the prospect of a long period of uncertainty while an appeal takes place.
23. We recognize that the victim may be concerned about an appeal and worried by the prospect of the conviction being quashed. On the other hand, the delay was not very long, and we have found the Applicant had an understandable reason for it. And a conviction for attempted murder is very serious and carries a long sentence. So, if there had been a mistake in the trial process, we would have been reluctant to say it could not be corrected because of a slight delay in bringing the appeal.
24. Balancing the Applicant's interests, those of the person most affected by his crime and the general public interest, we consider that if the Applicant had had good grounds for bringing an appeal against his conviction, we would have extended the time within which he could bring his appeal.
25. However, we do not grant leave to the Applicant to extend time to bring an appeal because we do not consider that he has any reasonable grounds for bringing an appeal, as we explain below. In these circumstances, it would not be justified to let him bring the appeal out of time. We will go on to explain why we have decided this. Why the appeal has no reasonable prospect of success.
26. The Applicant represented himself in front of us on his renewed application to the full Court for an extension of time. He had received assistance in writing down his grounds for seeking to challenge his conviction on appeal. He had two grounds on which he sought to challenge his conviction. These were set out in a written submission to us supported by a statement signed by the Applicant on 10 July 2023.
27. We have considered carefully both the grounds on which the Applicant seeks to challenge his conviction. Having done so, we have concluded that neither of them can succeed or be sufficiently arguable that they might succeed.
28. The first ground of appeal was explained under the heading "The Verdict was unreasonable/unsupported by Evidence". The second ground was under the heading "Another ground which led to a miscarriage of justice – Legal Assistance Neither Practical nor Effective".
Ground 1 – The Verdict was unreasonable/unsupported by Evidence.

29. A criminal offence has a factual element and a mental element. It was agreed that the Applicant had held the knife and had stabbed the Victim. That is the factual element. The central issue for the jury at the trial was whether they were satisfied beyond reasonable doubt that the Applicant intended to kill the Victim. That is the mental element.
30. There were three possibilities: (i) that the stabbing was accidental, and that the Applicant had never intended to use the knife to strike the Victim; (ii) that the stabbing was intentional, but the Applicant did not intend to kill the Victim but only to wound him; and (iii) that when the Applicant stabbed the Victim, he intended to kill him.
31. The Applicant told us that he never intended to kill the Victim, but the jury, who at the trial heard all the evidence in the case, concluded that this was what the Applicant intended. That was a matter for them, not for this Court.
32. The Applicant's first point in support of this ground of appeal was that this was not a reasonable verdict if all the evidence had been properly presented to the jury. He complained that key parts of an expert medical report from a Dr Barrett had not been admitted in evidence before the jury, and argued that if that evidence had been admitted, the jury could not reasonably have been sure that he intended to kill the Victim.
33. The defence lawyers had obtained the report from Dr Barrett in advance of the trial, but the Bailiff had decided that his evidence on this point was inadmissible. The question for us was whether it was arguable that this decision by the Bailiff made the trial unfair and the decision that the Applicant had intended to kill the Victim unsafe.
34. We have looked at Dr Barrett's report and are satisfied that it was not unfair that this evidence was not admitted. We also think that if it had been presented during the trial, it would not have made any difference to the verdict.
35. Dr Barrett's report contained his consideration of the evidence of a medical expert witness called Dr Evans who was intended to be called by the Prosecution. The report was Dr Barrett's expert opinion on the clinical, surgical and medical implications of the injury suffered by the Victim as a result of the stabbing.
36. Dr Barrett noted that "understandably there is no forensic analysis of the wound ..." because immediately after the injury, the priority had been to give the Victim emergency medical treatment, so as to save his life. Dr Barrett's report said that he had been instructed to note any discrepancies in Dr Evans' report with which he might disagree and "crucially, to opine whether the injuries sustained by [the Victim] could have been caused other than by a deliberate stabbing".

37. Dr Barrett's report makes it obvious that the knife penetrated deep into the Victim's abdomen. The knife was never found, but Dr Barrett's report shows that it must have been at least 6 or 7 inches long, because either it had penetrated the Victim's body to the full length of the blade or it was stopped from going any further when its tip hit the bony part of the Victim's pelvic wall.
38. Dr Barrett's report records that he was told that the defence case statement was that when the Applicant went to the pub with the knife "he did not intend to injure anyone, let alone kill David Lavery". He also records that the defence case did not offer an explanation as how the Victim had come to be stabbed.
39. The Applicant wanted us to look, in particular, at certain statements in Dr Barrett's report which, the Applicant said, showed that Dr Barrett considered he could not have intended to kill the Victim.
40. What Dr Barrett wrote, so far as material, is as follows: "It is not possible to state intention from a single stab compared with the repeated actions that result in multiple stab wounds, where any argument that such repeated blows were accidental would be difficult to advance. In any incident, where parties are moving, it is possible that the complainant fell or moved onto a blade held in a rigid hand by the defendant".
41. We do not agree that Dr Barrett was saying that the fact that there was a single stab wound was evidence that the Applicant did not intend to kill the Victim. We understand him to be saying only that it is not possible to deduce from a single stab-wound what the perpetrator intended when the wound was inflicted. In contrast, where a person is stabbed many times, it is possible to infer from that fact alone that there was an intention to inflict the wounds. Dr Barrett did not say, and could not say, that a person inflicting a single stab wound could not have done so, or did not do so, with the intention of killing, or harming, the victim. Nor did the report say that the stabbing must have been, or was, altogether unintended.
42. We judge that if this bit of Dr Barrett's report had been put before the jury, it could not properly have been evidence that the Applicant stabbed the Victim without intending to stab him or, for that matter, to kill him. So, it was reasonable that that part of Dr Barrett's report was not put before the jury because it did not contain any relevant evidence.
43. The reason Dr Barrett's statement about intention was not put to the jury was because the trial judge ruled it to be inadmissible. We see this from the explanation in Advocate Steenson's opinion.
44. We have thought about whether it was a mistake of law or unfair for the judge to have excluded this part of Dr Barrett's statement from the jury. But on consideration this ruling cannot be faulted. It was not based on a mistake of law, and it was not unfair, because what Dr Barrett said about a single stab wound could not properly have made any difference.

45. What the Applicant's intention was when he struck the Victim was a factual question for the jury to decide. They were not going to be helped by a medical professional offering an opinion on this. It is not an issue where a medical expert has any particular expertise. The jury knew there was only one stab wound, but they had to decide the question of intention on the basis of all the evidence which they heard, including evidence given by the Applicant, and by witnesses to the stabbing, and the evidence they heard about the events immediately before and after and the incident.
46. The Applicant also argued in his draft grounds of appeal that there was no evidence from which the jury could reasonably conclude that he stabbed the Victim intending to kill him. Before us he said that there was no evidence that he intended to kill the Victim. We do not agree with this. There is rarely specific evidence that an accused has a specific intention in relation to a criminal act. In order to draw conclusions about the intention of an accused person, the jury is entitled to draw inferences from the other evidence about what happened. The jury in this case heard evidence from witnesses to the stabbing whose evidence contradicted the case that the stabbing was accidental.
47. There was evidence upon which it was open to the jury to find that the Applicant intended to stab the Victim in the abdomen with a large knife and not just to threaten him with it. There was also evidence upon which it was open to the jury to find that when he stabbed the Victim, the Applicant intended to kill him and not merely to cause injury. In particular, the evidence that, after the Victim had headbutted the Applicant, the Applicant returned home, collected a knife and returned to the scene, the evidence of the eye witness to the stabbing, and the evidence about the nature of the weapon, the depth of the wound and that the injury nearly took the Victim's life were, taken together, evidence from which the jury could readily conclude that the Applicant intended to kill the Victim, and could reject any contrary evidence which the Applicant himself gave.
48. The jury was therefore entitled to decide that the Applicant did intend to kill the Victim and to convict him of attempted murder. The Court of Appeal cannot interfere with this decision.
Ground 2 – Legal Assistance Neither Practical nor Effective
49. The second ground of appeal involves a complaint about the Applicant's representation by his lawyer at the trial.
50. The Applicant stated to us that he does not believe that Advocate Steenson conducted himself in a manner which one would expect of an Advocate of the Royal Court nor in a manner which might be described as practical and effective so as to give him a fair trial.
51. To support this generalized criticism, the Applicant has made three specific complaints. We have carefully considered each of these three complaints to see if they make out an arguable case, either individually or collectively, that the Applicant did not have adequate legal representation. We do not consider that they do. The three complaints are as follows.
 - (1) Change of advocate

52. The first complaint is that the Applicant's advocate changed. He said that to start with, he was advised by Advocate Miere of Steenson Nicholls LLP, but from 18 January 2022 Advocate Steenson became the lead Advocate. Advocate Steenson represented him at trial.
53. This is not a good ground of appeal. An advocate often changes early in a trial process, and Advocate Steenson then advised until the conclusion of the trial. He advised promptly after the trial finished on the question of an appeal.
- (2) What Advocate Steenson said about sentencing.
54. The second complaint is a claim that in October 2022, when the sentencing proceedings were under way, Advocate Steenson told the Applicant that he thought "18 years is not enough" for what he had done. The Applicant said that this was supported by an entry in a prison log by a prison officer who was present when this was said.
55. We do not think it likely that Advocate Steenson expressed an opinion that eighteen years was too little for the crime the Applicant had committed. We consider it more likely that Advocate Steenson was explaining the process of sentencing to the Applicant and what the Bailiff and jurors sentencing him might think about this. In any case, as we explain below, what was said by Advocate Steenson several months after the trial and about sentencing cannot show that he may have fallen short in some aspect of the conduct of the trial itself.
56. The Applicant was sentenced on 5 December 2022 to 17 years imprisonment. The process of sentencing involves the court identifying a 'starting point' as the appropriate basis for a sentence, depending on the seriousness of the crime in the case and the defendant's previous record. This starting point can then be adjusted down in favour of the defendant to take into account any mitigating factor which there might be. At a sentencing hearing, the defendant's advocate will make a plea in mitigation setting out factors which might be used to reduce the sentence from the court's initial starting point.
57. The basis of the Applicant's complaint in the present case is a note made by a Prison Officer in a movement log of 31 October 2022. The movement log records that at the Royal Court for sentencing "Prisoner Hadikin's lawyer said that the sentencing will be delayed due to the court deciding that an 18-year starting point was too lenient for the severity of the crime committed".
58. This note by the prison officer supports our initial view about what Advocate Steenson was saying. The note records what Advocate Steenson said the court had decided about a starting point for sentencing the Applicant. It was not a statement of what Advocate Steenson said he thought the starting point should be. It is not surprising that Advocate Steenson would have explained this to the Applicant. We have read the sentencing judgment of 5 December 2022. It shows that the sentencing court considered the crime the Applicant was convicted of was a very serious one. The judgment referred to another recent case of attempted murder with a knife in which the court had taken an 18½ year starting point. So, Advocate Steenson was right to warn that the court might be considering 18 years as too low a starting point.

59. We have also seen a letter dated 1 November 2022 which Advocate Steenson wrote to the Applicant to advise him on sentence. He recorded that the Prosecution had asked for a sentence of 17 years (that is, a final sentence after any mitigation). He also pointed out that the sentencing court had not yet heard submissions for the Applicant.
60. In the letter of 1 November 2022 Advocate Steenson explained that the Bailiff had indicated that the court might impose a sentence of longer than the 17 years asked for by the Prosecution. He explained that “Rarely, the Royal Court will conclude that the Prosecution has got it wrong and asked for too little”.
61. In this letter, Advocate Steenson also denied the accusation, which the Applicant must have made to him at the time, that he had said anything to the effect that he thought that 18 years is not enough. The note by a prison officer in the movement log of 31 October 2022 does nothing to undermine this.
62. But the fundamental reason why this is not a good ground of appeal against conviction is that it relates to events in connection with sentencing. By this point the Applicant had already been convicted. Even if (contrary to our view) Advocate Steenson had said what the Applicant alleges, this does not affect the conduct of the trial itself and would not provide a basis for challenging his conviction.
- (3) Allegation of failure to follow instructions to enter a guilty plea
63. The third complaint the Applicant made about his legal representation was a claim that Advocate Steenson had failed to follow instructions to enter a guilty plea to the charge of grave and criminal assault on the basis of recklessness, irrespective of the likelihood or otherwise of the Crown seeking to prove guilt to a higher standard.
64. In support of this submission the Applicant has referred us to three letters written to him by Advocate Steenson, these being dated 18 January, 31 January and 2 February 2022.
65. On 18 January 2022, the Applicant was charged only with attempted murder. Advocate Steenson said that on the instructions given by the Applicant he had a defence to the charge, which was that he did not intend to kill the Victim. But he added that “If you were charged with grave and criminal assault it would be difficult to see how any reasonable defence could arise”.
66. In the second of the three letters, dated 31 January 2022, Advocate Steenson recorded that the Applicant’s instructions remained unchanged in that for the charge of attempted murder he wished to plead not guilty. He said that the key issue for decision now was whether the Applicant should plead guilty to the charge of grave and criminal assault. He advised that “the Crown will not accept a plea” on the basis of “your intending to scare the Victim with a knife, irrespective of whether any physical harm was inflicted”. This is because the Crown’s case was that “you stabbed the Victim and that you did so intentionally”, so that “even if you did not intend to kill him, you intended him to be harmed. That is more than a mere apprehension of physical harm and goes further than your instructions to date”.

67. The letter went on explaining at length and in detail the implications of the Applicant seeking to enter a guilty plea to a charge of grave and criminal assault. Essentially the difficulty was that the Crown would not accept the plea unless put forward on the basis that the Applicant intended to stab and thereby harm the Victim, and that this was contrary to the Applicant's instructions about what happened.
68. In the third letter, of 2 February 2022, Advocate Miere explained that on the basis that the Applicant was saying that he did not intend even to injure the Victim, "Accordingly, either I or Advocate Steenson will enter Not Guilty pleas for you in Royal Court (sic) on Friday". In the letter Advocate Miere set out again what the Applicant was saying about how the stabbing happened, and that the Crown would not accept that the Applicant had not stabbed the Victim intentionally and intending to harm him.
69. On the complaint that the Applicant's advice on plea was inadequate, we do not consider this is a reasonable ground of appeal for three reasons. (i) First, it is for a defendant to decide and give instructions about what plea to enter, not that of an Advocate. (ii) Secondly, we have read Advocate Steenson's and Advocate Miere's advice on plea. We consider they were properly advising the Applicant on the correct plea to make, on the basis of the instruction which the Applicant was giving to them about the factual position at the time. The Applicant's position, which he had given to his lawyers, was that the Applicant did not intend to stab the Victim at all, only to frighten him, and that the Victim 'walked into' the knife by accident. (iii) Thirdly, we do not consider it would have made any difference to the Applicant's trial or conviction for attempted murder if he had pleaded guilty to grave and criminal assault on the basis of recklessness. Advocate Steenson advised the Applicant that the Prosecution was unlikely to accept a plea tendered on the basis that all that was intended was a threat. We do not consider that this advice can reasonably be criticized. As the Deputy Bailiff commented when refusing the requested extension of time, "A guilty plea to a grave and criminal assault would not have prevented a trial".

Conclusion

70. Drawing together the various considerations explained above, we have decided not to grant the extension of time which the Applicant seeks.
71. We are prepared to proceed on the basis that the Applicant had an explanation for bringing the appeal seven weeks out of time. We would not, in these circumstances, have refused leave to appeal out of time in this case simply on the basis of prejudice.
72. We are refusing leave, ultimately, because we have carefully considered the potential grounds of appeal which the Applicant has put forward before us and we have reached the conclusion that none of them is a properly arguable ground for saying that the conviction was wrong in law, or even on a mixed basis of fact and law. We do not consider it can be said, on any of these grounds, that the Applicant received an unfair trial, or that he received inadequate or ineffective legal representation.

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73. On that basis, quite simply, we do not consider that there is any prospect of a successful appeal against the Applicant's conviction. The issues before the jury at the trial in July 2022 were narrow and straightforward. There was evidence on which the jury could properly reach a conclusion that the Applicant was guilty of attempted murder. We have not been given any possible basis for setting aside the conviction.
74. We accordingly dismiss this application for leave to appeal out of time. Authorities Court of Appeal (Jersey) Law 1961. Court of Appeal (Criminal) Rules 1964.
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