

Private and Confidential

Mr Martin Glasgow
3 Tansley Court
Highfield Lane
Chesterfield
Derbyshire
S41 7AW

Your ref:
Our ref: 787/2009

16 January 2009

Dear Mr Glasgow

Final decision on your application – Statement of Reasons

The Commission has reached a final decision not to refer your case. The file on this case has now been closed.

On 2 November 2008 you applied to the Commission for a review of your conviction and sentence. We wrote to you on 19 December 2008 letting you know the Commission's provisional view on your application and giving you until 16 January 2009 to make any further submissions to us. You rightly note in your letter of 14 January that this must have been an error and that surely 2009 was intended. The Commission apologises for this error and confirms that the correct deadline for further submissions was 16 January 2009.

The Commission's reasons for its provisional view were as follows:

The Trial

On 16th March 2007 in the Crown Court at Derby (Mr Recorder Barker Q.C.) you were convicted of affray. Your co-defendant, Mr Johal, was acquitted.

On 3rd August 2007 following an adjournment to obtain a Pre-sentence Report and a Psychiatric Report, you were sentenced to 12 months' imprisonment.

The Appeal

You applied for an extension of time for leave to appeal on the following grounds:

Conviction

1. The co-accused, Johal, was the guilty party and should have been convicted. His acquittal should be quashed under the double jeopardy rules as there is compelling new evidence.

2. The police witness statements are inconsistent and contradictory.
3. The applicant was failed by his legal team. Witnesses were prevented by his counsel/legal team from giving evidence which would have been useful to his defence. His defence team actively withheld evidence. He was not able to view a floor plan until the trial stage. His counsel did not object to his sister being called a liar. His legal team erred in not calling character witnesses on his behalf. Complaints were made to the Legal Complaints Service and Bar Council.
4. The statement of John Greaves was in essence written for him by the police as in the statement he used the word 'goading' yet when he gave evidence he did not know what this word meant and had to be told its meaning by the Judge.
5. The co-accused was unlawfully assisted in the preparation of his defence by a relative who is a CPS prosecutor.
6. The Judge misdirected proceedings and erred in discharging the co-accused. The summing up was unfair as too much emphasis was placed on the supposed racial element in this case.
7. The nurse witnesses were wrong in describing the applicant as the aggressor.
8. Hospital records of the incident were not produced at court.
9. The police investigation regarding the co-accused was flawed e.g. he was arrested 19 days after the incident meaning that his supposed injuries could not be verified. Further, his suit which had supposedly been covered in blood was not retained by the police as an exhibit.
10. The applicant wishes to call fresh evidence pursuant to s.23 Criminal Appeal 1968. The evidence is from Adrian Glasgow and Graham Glasgow, the applicant's brothers, who will both say that he was not the aggressor. Kashmir Johal, mother of the co-accused, whose account of the incident is different to that given by other witnesses.

Sentence

1. The Judge was wrong to call the applicant a liar and a racist.
2. The sentence was manifestly excessive and wrong in principle.

In view of the criticisms made of trial counsel and solicitors, you were asked to waive privilege and did so. Your trial solicitors and counsel responded to your criticisms by letter addressed to the Court of Appeal.

On 15 January 2008 the Single Court of Appeal Judge, Mr Justice Teare, refused your applications observing:

"The Grounds of Appeal, despite their length, do not disclose an arguable ground of appeal either against conviction or sentence. There are a great many allegations but no coherent explanation as to why any have a realistic prospect of success.

For that reason leave to extend time is also refused."

You renewed your applications to the Full Court of Appeal. On 29 October 2008 the Full Court refused the applications concluding that there was no merit in them. A copy of their judgment is enclosed for your information.

The application to the Commission

You ask the Commission to review your conviction and sentence. The Commission has obtained the Indictment, transcripts of the Summing-up and Sentencing Remarks, the Notice and Grounds of Appeal, the Single Judge Form, the Court of Appeal Summary and the Judgment of the Full Court.

The position in relation to disclosure of material is set out in Annex B.

The Commission's Powers

The Commission may refer a conviction if the following conditions are met:

1. there is a real possibility that the conviction would be quashed if it were referred, and
2. this real possibility arises from evidence or argument which was not put forward at trial, or any appeal or application for leave to appeal, or
3. there are exceptional circumstances which justify the making of a reference even though there is no new evidence or argument.

The Commission may refer a sentence if the following conditions are met:

1. there is a real possibility that the sentence would be reduced if it were referred, and

2. this real possibility arises from information or argument on a point of law which was not put forward at trial, or any appeal or application for leave to appeal.

The Commission's powers to make a reference under the Criminal Appeal Act 1995 are summarised more fully in the Annex to this letter.

Analysis and reasons

An application to the Commission is not an opportunity to re-run either the trial or the appeal. The Commission is concerned with the question whether or not there is new evidence or argument that could give rise to a real possibility of the Court of Appeal quashing the conviction or reducing the sentence.

Your submissions are set out below followed by the Commission's responses.

1. There is new evidence of which the courts have not considered so far.

The documents enclosed with your application form disclose no new evidence that could persuade the Court of Appeal that your conviction is unsafe. Materials already considered by the Court of Appeal necessarily are not new. The article downloaded from "The Star" titled "Racist brawler loses fight against conviction" is a news report. It contains no new evidence. The list of the Judiciary in England and Wales is not evidence having no bearing whatsoever upon the safety of your conviction.

2. There are exceptional circumstances much more than is listed in my leave to appeal application.

No such exceptional circumstances are identified by you. Those that have already been considered by the Court of Appeal necessarily cannot give rise to a real possibility that the Court would not uphold your conviction if referred to them. The Commission is unable itself to identify any exceptional circumstances that would justify referring your case in the absence of new evidence or argument giving rise to a real possibility that the Court would quash your conviction.

3. You claim you retain a copy of the prosecution/defence papers.

This fact of itself does not demonstrate anything pertaining to the safety of your conviction.

4. You claim to have recorded conversations such as a CPS administrator saying that evidence has been destroyed.

You do not specify what evidence this is, or what relevance it may have had to your trial. Neither is it clear as to who destroyed such evidence. This submission does not provide any basis for referring your case to the Court of Appeal.

5. You claim you were denied the right of defence at the leave to appeal hearing.

An application to the Commission is not an appeal from the decision of the Court of Appeal. Your application to the Court of Appeal was a renewal of your applications for an extension of time and for leave to appeal which were refused by the Single Judge. You requested permission to address the Full Court. There is no right to address the Court on such an application. The papers were all before the Court of Appeal in which you stated your grounds of appeal and your reasons for requesting an extension of time. These were clear and unambiguous. It is difficult to see what further light could have been shed on these through oral submissions. The presiding Lord Justice of Appeal, Lady Justice Hallett DBE refused your request. That is an end of the matter; any decision she made has no bearing upon the safety of your conviction. The Commission may only refer a case where there is new evidence or argument which raises a real possibility that the Court of Appeal will quash a conviction because it is unsafe. Necessarily, matters which occur on appeal or application for leave to appeal cannot retrospectively affect the safety of a conviction. Accordingly, the Commission cannot refer your case on this basis.

6. You have made no separate submissions relating to your sentence. The Court of Appeal has refused leave to appeal sentence being satisfied that there are no arguable grounds of appeal. The Commission is unable to identify any new information or argument on a point of law that could give rise to a real possibility of the Court of Appeal reducing your sentence.

Provisional Decision

On the information available, the Commission has reached a provisional view that there is no real possibility that your conviction would be quashed or your sentence reduced if they were referred to the Court of

Appeal. You have the opportunity to make further submissions in response to this provisional view. Any further information or submissions must reach the Commission by 16 January 2008.

On 14 January 2009 you attended the Commission's offices in person and handed in your further submissions.

The Commission's comments on these are set out below;

Further Analysis and Reasons

1. You query how your legal representatives could have known that your character witnesses were members of the BNP.

Your complaint against your legal representatives and their standard of representation was a ground of appeal and as such further exploration of this issue will not be pursued. As is clear from Mr Munt's response to the Bar Standards Board, the issue of character witnesses was discussed with you in conference on 16/01/07. Your membership of the BNP is not disputed and counsel makes it clear that it was agreed that this should not be disclosed to the jury. The decision as to which witnesses to call was taken in the conference of 16/01/07¹. If you were dissatisfied with the advice of your legal representatives, it was always open to you to dismiss them. You did not do so. There is not the remotest possibility of the Court of Appeal concluding that the fairness of your trial and safety of your conviction was impaired by incompetent representation in respect of the calling of character witnesses.

2. You further speculate that there was a conspiracy against you and that Mr Munt is related to Ms Tessa Munt and that between them they set you up. You seek further to embellish this allegation with reference to the letter for Mr Bashforth to Dr Mendelson wherein it is mentioned that Mr Johal was a newly qualified solicitor

Mr Johal's occupation was fully disclosed at trial. The Commission can see nothing suspicious in the fact that Mr Johal practices out of Chesterfield. The listing you enclose is that of Derby County Court for 28 June 2007, not that of Derby Crown Court. This lists civil cases. There is no evidence to indicate that the Johal in the third case is your co-defendant. Further, the name Johal refers to the complainant in that case and not the solicitor. As this is a list of civil actions, the Commission is unable to see how this furthers your speculation that Mr Munt and Mr Johal plied their trade in Derby Crown Court. The remainder of your

¹ The Commission notes that the character witness letters from Garry Whitaker, KW Collingwood, John Grass, Lee Griffiths and Helen Cheetham all post-date the conference on 16/01/07 and the date of your conviction, 16 March 2007. The letter from DM Stevenson is undated.

submission about venue is unsubstantiated speculation and the Commission is satisfied that there is not the remotest possibility of the Court of Appeal being prepared to receive or further explore such allegations. In these circumstances the Commission does not intend to pursue this matter any further as it is unable to see how this could have impacted upon the fairness of your trial or the safety of your conviction.

3. You complain that the Judge, Recorder Barker QC, in had invited the prosecution to recharge your brother, Adrian Glasgow, and that this was psychological blackmail and a misdirection.

The Commission is unable to see how the Judge appropriately performing his judicial function could be considered to have engaged in blackmail. Neither is this a misdirection as it was advice to the prosecution and not a direction to the jury. It could have no impact upon the fairness of your trial or the safety of your conviction.

4. You complain that the summing-up does not wholly reflect what was said in court and that the Court of Appeal Summary is a "dilution, an extraction of non-key facts".

The quality of the Court of Appeal Summary – which is, simply that, a summary – has no bearing upon the safety of your conviction. As for the Summing-up it was a summary of the evidence. Your critique was before the Court of Appeal who refused you leave to appeal. This, accordingly, is neither new evidence nor argument. In the absence of identifiable bias or misdirection, there is no possibility that the Court of Appeal would consider that the summing-up could, of itself, render your conviction unsafe. The Commission is unable to detect any bias or lack of balance in the summing-up nor is there any apparent misdirection on the law. In these circumstances there is no basis upon which your conviction could be referred to the Court of Appeal.

5. You finally refer to the absence of marks on your hands, the photographic evidence relating to Mr Johal's injuries, and his failure to claim any damages from you.

Regarding the first two matters, these are not new and were known at trial. The third matter has no bearing upon the safety of your conviction and cannot present a basis for referring your case to the Court of Appeal.

The Commission has carefully considered your further submissions and is unable to identify within them any new evidence or argument that could give rise to a real possibility of the Court of Appeal quashing your conviction if referred to them. Further, there are no exceptional circumstances that could

justify a referral of your conviction in the absence of new evidence or argument. No further submissions have been made regarding your sentence. Insert reasons here and perhaps conclude with a paragraph such as the following.

In sum, therefore, the submissions do not present any new evidence or argument on the basis of which a real possibility could arise that the Court of Appeal would quash your conviction and/or reduce your sentence if referred to them. No further submissions have been made on the issue of sentence. The Commission is satisfied that there are no reasonable lines of investigation that it could pursue that would have any prospect of presenting evidence or argument that could provide a basis for referring to the Court of Appeal either your conviction or sentence.

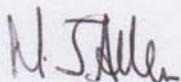
Consequently, the Commission confirms its provisional view that there is no real possibility that the Court of Appeal would quash your conviction or reduce your sentence if referred to them.

Decision

The Commission has decided not to make a reference and this statement sets out the Commission's reasons in accordance with section 14(6) of the Criminal Appeal Act 1995. This decision has been made by a Commissioner and is signed by the Commissioner on behalf of the Commission.

Your file has now been closed. However, you may re-apply to the Commission at any time in the future should new information about your case come to light. For the next three months we will keep at our offices any material you sent to us. The files will then be moved into storage for a minimum of four years and nine months before being eventually destroyed. If you need any of your material to be returned please get in touch immediately.

Yours sincerely



M J Allen
Commissioner