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*Judgment: approved by the Court for handing down (subject to editorial corrections)**	*Delivered:*	**07/05/2019**

IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

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REGINA

-v-

SEAN MURPHY

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Before: Morgan LCJ, Stephens LJ and Treacy LJ

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MORGAN, LCJ (delivering the judgment of the Court)

[1] On 12 January 2017 the applicant was tried at Newry Crown Court before Her Honour Judge Crawford on eight counts. The first seven counts alleged several breaches of a restraining order contrary to Article 7 of the Protection from Harassment (Northern Ireland) Order 1997 ("the 1997 Order") between 28 January 2016 and 21 March 2016. The 8th count alleged harassment, contrary to Article 4 (1) of the 1997 Order between 27 January 2016 and 22 March 2016. The principal prosecution witness was the applicant's wife.

[2] After she had completed her evidence in chief and the applicant's counsel began his cross-examination the applicant intervened in a manner which suggested that he did not wish the cross-examination to continue. The hearing adjourned and shortly thereafter counsel for the applicant indicated that he had clear and unequivocal instructions from his instructing solicitor to ask that the applicant be re-arraigned on Count 8 of the indictment. When re-arraigned the applicant replied "Not Intended but Guilty". There is no dispute about the fact that such a plea was equivocal.

[3] The court then adjourned for a further short period after which the applicant's counsel again asked that the applicant be re-arraigned on Count 8 as the applicant had indicated his wish to enter a plea unequivocally to that count. The judge agreed that he could be re-arraigned and the applicant pleaded guilty. The jury before whom he pleaded duly found him guilty on Count 8 and the remaining seven counts

were left on the books not to be proceeded with. The jury was then discharged. The applicant was released on bail pending sentence.

[4] On 17 January 2017 the case was again listed before the judge on the basis of an application by the applicant's solicitor seeking to come off record. He indicated that the applicant had raised an issue of acting under duress when he pleaded guilty and wanted to make an application to vacate his plea and resume the hearing. The applicant indicated that he did not consider that his solicitor was in any way to blame or the cause of any duress. In those circumstances the judge adjourned the matter to see whether the issue between the applicant and his solicitor could be resolved.

[5] The application was renewed on 25 January 2017. The applicant explained that he stopped the trial because of the emotional distress to his wife and himself. The applicant stated that he had had a good relationship with his instructing solicitor but because he had not given him competent and further assistance on the issue of vacating his plea he now wished to dismiss him. The trial judge allowed that solicitor to come off record and advised the applicant to obtain alternative representation. The applicant eventually obtained alternative representation, although there was some delay while the second solicitor instructed came off record, and he was represented by counsel and solicitor on 23 June 2017 when the application to vacate the plea was made.

[6] The basis of the application to vacate the plea was that the applicant did not understand the advice given to him by his legal representatives at the time because he was under great pressure and stress. He was worried about his wife and he was in a very bad spot. He was under pressure to plead to Count 8 and he was not able to comprehend all of the material that was being presented to him. He asserted that the consequences of pleading guilty had not been explained to him and that he had not read either of the written authorities signed by him indicating his wish to plead guilty and his acceptance that he was guilty of harassment.

[7] In cross-examination Mr Murphy indicated that he was under serious duress from within the court system and the prosecution together with duress from family circumstances and farm circumstances. He was under emotional, psychological stress because of the circumstances of previous prosecutions and claimed that he had never had any emotional or adversarial intent towards his wife who was the primary witness. Evidence was also given without objection by his former solicitor to indicate that he had explained the content of the written authorisations to the applicant and that he appeared to have read them over. The solicitor rejected any suggestion that the applicant was bullied or put under any pressure to plead.

[8] The judge found the applicant's evidence that he was not fully and appropriately advised was entirely unconvincing. His solicitor had given him comprehensive advice on the options available to him and made it clear that the

decision was that of the applicant alone. She accepted that the solicitor had read the contents of the written authorisations to the applicant and allowed him the opportunity to read them before signing. The judge rejected any suggestion that he was bullied by his solicitor. She accepted that the applicant was in a stressful situation. He was facing criminal charges in respect of his estranged wife. There were various sources of stress within his personal and working life. There was concern about the welfare of his animals. The judge was satisfied however, that the stress and pressures upon the defendant did not deprive him of his freedom to choose whether to plead guilty or not guilty.

[9] The trial judge noted that the law was helpfully set out in the judgment of Deeny J in R v Phillips [2006] NICC 4 and the judgment of the Court of Appeal in R v WP [2017] NICA 21 delivered by Treacy J. Those authorities established that the trial judge has a discretion to vacate an unequivocal plea of guilty before sentence is passed. Only rarely, however, would it be appropriate for the judge to exercise this discretion where the accused had been represented by experienced counsel and, after full consultation with counsel, had already changed his plea from not guilty to guilty. The judge should satisfy herself that there was no pressure or mistake but pleading guilty due to a reluctant acceptance of strong advice given by counsel as to his best interests is not a ground for allowing a change of plea.

[10] The judge also noted the principle of free choice referred to in R v Nightingale [2013] EWCA Crim 405. The court in R v WP approved in particular the passage at paragraph [11]:

> "What the principle does not mean and cannot mean is that the defendant making his decision must be free from the pressure of the circumstances in which he is forced to make a choice. He has, after all, been charged with a criminal offence."

The judge concluded that neither the circumstances of being at trial nor the issues within the applicant's personal life were such as to deprive him of his freedom to choose whether to plead guilty or not guilty. She accepted that the applicant was fully and appropriately advised by legal representatives, that he understood that advice and that he freely acted on his own choice by entering a plea of guilty. Accordingly, she declined to exercise her discretion to vacate the plea and dismissed the application.

The appeal

[11] Despite the ruling having been made on 23 June 2017 it was not until 26 October 2017 that the applicant submitted a notice of appeal. The only reason advanced for not doing so was that he had been in custody until 20 October 2017.

There is, of course, no reason why he could not have lodged his appeal while he was in custody. The applicant required an extension of time to proceed.

[12] The notice of appeal was lodged by the applicant on his own behalf. On 22 January 2018 he executed a form of authority appointing McIvor Farrell as his new solicitors. They obtained an audio recording of the proceedings in October 2018 and subsequently consulted with the applicant. The solicitor client relationship deteriorated as a result of which the solicitors applied to come off record on 8 February 2019. It was indicated that Mr Murphy had emailed to say that he would have to get a different solicitor. The case was listed again for mention on 22 February 2019. The applicant sent an email indicating that he had received the file case papers the previous day and arranged for new solicitors to advise on dealing with the matter.

[13] The case was listed for further review on 8 March 2019 and on the previous day the applicant sent an email asking that it be taken out of the list as papers were being given to solicitors to represent him in the matter. The applicant was advised that the case was listed for hearing on 29 April and that he would need to get a solicitor promptly. The case was again listed for review on 22 March 2019. The applicant had not progressed the matter of representation by that date nor on 5 April when the matter was listed again. He said that he planned to meet solicitors that afternoon. He was again advised that the case would proceed on 29 April 2019 and on that morning he came to court to represent himself indicating that he had spoken to a solicitor prior to Easter but the solicitor had not by that stage accepted any instructions. In light of his failure to take appropriate steps to secure representation the appeal proceeded.

[14] The grounds of appeal essentially repeated much of what had been put before the trial judge in the applicant's evidence. Despite the reassurance given by the applicant and the submissions to the judge on 17 January 2017 that his solicitor had not been wanting in any way or in any way to blame or the cause of any duress the notice of appeal alleged that the applicant had been pressured by his solicitor to enter a plea, that he had been bullied by his solicitor, that he had not been carefully advised for the hearing and that in any event his wife was not a credible witness because of her alleged history of mental health.

[15] The applicant sought to sustain his argument by reference to submissions made by him in other family proceedings that the allegations made by his wife were the product of her mental health difficulties. As a result of this contention prior to the original trial third-party disclosure was provided in relation to the medical notes of his wife which showed no basis for the suggestion that her evidence was unreliable although the notes did record a significant history of alleged controlling behaviour by the applicant.

[16] The applicant explained that his only concern was to repair his relationship with his family but that did not sit easily with the fact that he had been convicted of six breaches of non-molestation orders between November 2014 and August 2015. He suggested that those convictions were erroneous. He was further convicted of breach of a restraining order which occurred on 16 October 2015 and a further breach of a non-molestation order on 5 March 2017.

[17] He was unable to point to any basis upon which the conclusion of the trial judge should be set aside. At the hearing we declined to extend time as there was no proper basis for doing so and the appeal was completely without merit.

Conclusion

[18] Far from being committed to a caring, collaborative approach to his wife the evidence suggests that this applicant is a manipulative, controlling person. In a medical report prepared on 17 March 2017 Dr Bownes considered that consequent upon the effects of inherent personality-based deficits and deficiencies, particularly a tendency to egocentricity, strong sense of personal entitlement, "boorish insensitivity", a propensity to emotional dysregulation in the context of stressful, demanding, frustrating or provocative interpersonal situations, an inherent imperfect "sense of self", a need to be liked and admired and perhaps inadequacy feelings the applicant's capacity to exercise appropriate levels of judgement may have been compromised.

[19] The application for extension of time is refused for the reasons set out.