

Private and Confidential

Mr James Colton



Your ref:

Our ref:

00097/2018

24 July 2018

Dear Mr Colton,

Statement of Reasons letter - decision NOT to refer conviction or sentence

On 19 January 2018 the CCRC received an application for a review of your conviction and sentence. The CCRC has now reached a decision **not** to refer your conviction or sentence to the appeal court. Its reasons are set out below.

Your trial

On 16 November 2009 at Bournemouth Crown and County Court, you were convicted of 14 counts of indecent assault. You were sentenced to 8 years' imprisonment.

It was alleged at trial that you had indecently assaulted your two step-daughters over a number of years while you lived with them. They both gave evidence to this effect at your trial. Your ex-wife also gave evidence that she had seen you in bed with one of the girls engaging in sexual activity and that during sexual activity with her you would describe sexual fantasies with young girls including her daughters.

Your defence was that no sexual activity had occurred and you gave evidence in your own defence. You said that the allegations had been fabricated as part of acrimonious divorce proceedings.

Your appeal

You applied for leave to appeal against your conviction.

In February 2012, your application was refused by the Single Judge who concluded that your complaints did not raise an arguable ground upon which it could be said that your conviction was unsafe.

Your application to the CCRC

In your application you raise a number of issues about your conviction and sentence. These are summarised below with the CCRC's responses to each.

- 1. You suggest that the divorce file including the affidavits contained in that file were deliberately withheld from you and therefore could not be used at trial to support your case.**

It is clear from the fact that you have sent the CCRC extracts of the disclosure schedule that these documents were disclosed. Further it is clear that you tried to adduce these documents into evidence and they were excluded by the judge following a hearing. Finally this is a submission that you have already made to the Court of Appeal, who rejected it.

As a result the CCRC considers that there is nothing in this aspect of your submissions on which a referral to the Court of Appeal could be based.

- 2. You claim that the lawyer Mr Booty did not call key witnesses in your defence and that his interpretation of the divorce files is seriously flawed.**

In order for the Court of Appeal to accept a ground of appeal on the basis of defence incompetence you would have to show that you did not receive a fair trial due to a failure of preparation on the part of the representatives. Both the Bar Council and the Court of Appeal have investigated your complaints in regards to your representation and have found against you.

Your complaints amount to a disagreement with your representatives as to how the case should be conducted. This is an issue that the Court of Appeal has looked at many times and it has made its position in such cases very clear¹;

'Something of a myth about the meaning of the client's "instructions" has developed. As we have said, the client does not conduct the case. The advocate is not the client's mouthpiece, obliged to conduct the case in accordance with whatever the client, or when the advocate is a barrister, the solicitor "instructs" him.'

¹ R v Farooqi & Others [2013] EWCA] Crim 1649

The Court of Appeal's position is that counsel are the experts in the law and the tactics best used at trial. Your dispute with your representatives amounts to a disagreement about the tactics used to put your case forward to the jury, and as such is not an argument that would lead to a real possibility that the Court of Appeal would quash your convictions.

- 3. You say that the police failed to investigate your case properly, failed to account for your mental health and made several breaches of PACE in their dealings with you.**

The CCRC has read all of your submissions on this point and compared them to the grounds submitted to the Court of Appeal. We have found nothing new in these submissions. There is, therefore, nothing in this submission that has not already been considered by the Court of Appeal. Consequently, these submissions do not give rise to new evidence or argument on which a referral to the Court could be based.

- 4. You say that the Single Judge in his judgement has "made it clear that a defendant in a criminal trial has no right of a defence." This is part of a wider masonic conspiracy and failings which lead to you being found guilty.**

The key issue in this submission appears to be based on a misunderstanding of the Single Judge's reasoning. The Single Judge effectively said that your defence was not prejudiced by your not having served a Defence Statement as you were not cross-examined as to why you had not served one, and there was no direction to the jury that they should make an adverse inference for the lack of Defence Statement. It is clear from reading the summing up, the documents you sent to the Court of Appeal and your application to the CCRC that your defence of denial was put to the jury in some detail and, while you may not have agreed with how that defence was deployed tactically, that is not a ground on which you could appeal.

The Single Judge found that you had provided no evidence to support your allegations of bias on the grounds of freemasonry and you have not provided any such evidence to the CCRC either.

As a result this is not an argument that would give rise to a real possibility that the Court of Appeal would quash your convictions.

Your sentence

5. You have asked the CCRC to consider your sentence. However, you have not appealed to the Court of Appeal, and the CCRC has not found

any exceptional circumstances in this case that would allow them to look at your sentence without an appeal.

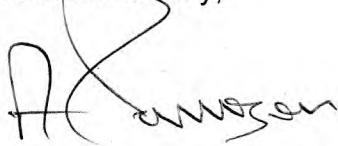
Our consideration of the issues

We have now considered all the issues you raised in your application (see 'The documents we have looked at' attached). As a result, we have decided that there is no real possibility that your conviction would not be upheld, and no real possibility that your sentence would be reduced if referred to the appeal court. (See 'The law the CCRC has to follow when looking at your case' attached).

Return of material you sent us

If you have sent us any material you want us to return, you must let us know as soon as possible. We will only keep your material for a further three months. After that, we will destroy it.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'A Rennison', written over a horizontal line.

**A Rennison
Commissioner**

Need some support? You can talk to the Samaritans FREE on 116 123

The papers we have looked at

- Transcripts of the trial judge's summing up
- Sentencing remarks
- The Court of Appeal judgment and other papers relating to your appeal
- Your application to the CCRC

Note

1. The CCRC has a legal duty to disclose any new material it has obtained during its review which would help the applicant make their best case for a reference to the appeal court. The CCRC may, in its discretion, provide other material where it considers it appropriate.
2. The material may be sent to the applicant in its original form, or as an extract or it may be summarised.
3. In this case, the CCRC has not sent you any material other than this letter because the information is adequately summarised in this letter, or in material already available to you.

The law the CCRC has to follow when looking at your case

Criminal Appeal Act 1995

This notice sets out the CCRC's decision and reasons in accordance with section 14(6) of the Criminal Appeal Act 1995.

The CCRC's powers to refer

The CCRC may refer **your conviction** to the court if:

1. there is a **real possibility** that your conviction would be overturned if it were referred; and
2. this real possibility arises from evidence or argument which was **not put forward at your trial or appeal** (or there are exceptional circumstances²); and
3. you have already appealed or applied for leave to appeal against conviction (or there are **exceptional circumstances**³).

The CCRC may refer **your sentence** to the court if:

1. there is a **real possibility** that your 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 your trial or appeal**; and
3. you have already appealed or applied for leave to appeal against sentence (or there are **exceptional circumstances**²).

² "Exceptional circumstances" to allow us to refer a case without something 'new' are extremely rare.

³ "Exceptional circumstances" to allow us to refer a case where there has not been an earlier appeal are very rare. There has to be a good reason why there has been no appeal and why there cannot be an appeal now without the CCRC's help.