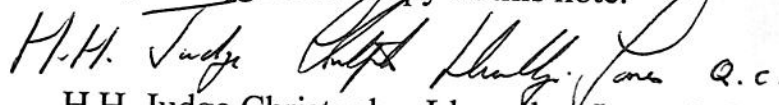


Cardiff Crown Court

In the matter of Maurice John Kirk

1. I have made 2 Rulings in relation to applications/correspondence by Mr. Kirk. The applications/correspondence relate to convictions by the Cardiff magistrates court on the 2nd day of November 2010 and the 24th day of August 2011.
2. Copies of the 2 Rulings should be sent to Mr. Kirk at Cardiff prison and to his home address, 49 Tynewydd Road, Barry, CF62 8AZ
3. Copies should also be sent to the Cardiff Magistrates Court for the attention of District Judge Berg and District Judge Jenkins and the Senior Legal adviser to the magistrates.
4. In relation to the 2nd day of November 2010 conviction the Magistrates Court should be asked to inform the Crown Court when sentence has taken place. The documents filed by Mr. Kirk should then be treated as a valid notice of appeal against conviction. The file should be brought to the attention of the Recorder so that he can give directions in relation to the listing of that appeal.
5. All of the documents should be kept upon a file at the Crown Court together with copies of my Rulings and a copy of this note.


H.H. Judge Christopher Llewellyn-Jones Q.C.

Dated the 14th day of November 2011

CARDIFF CROWN COURT

In the matter of an Application by Maurice John Kirk for leave to appeal against a conviction at the Cardiff Magistrates Court on the 2nd day of November 2010.

Application

1. By a notice dated the 21st day of October 2011 (received at the Cardiff Crown Court on the 26th day of October 2011) Maurice John Kirk applies for leave to appeal out of time against a conviction for Common Assault of Derrick Hassan by beating on the 26th day of July 2010, contrary to section 39 of the Criminal Justice Act 1988.
2. Mr. Kirk was convicted of that offence in his absence on the 2nd day of November 2010.

History of the case at Magistrates Court.

1. The Memorandum of conviction records that Mr. Kirk appeared before District Judge Charles on the 27th day of August 2010. A not guilty plea is recorded and the case was adjourned for trial on the 2nd November 2010.
2. I have enquired of the Magistrates Court as to how that plea was entered. I have been told that Mr. Kirk said that he was not fit to plead. The District Judge rejected that and entered a not guilty plea.
3. Mr. Kirk indicates in his grounds of appeal that there was medical evidence available to the Court at that hearing. I asked for any medical evidence to be sent to me by the Magistrates Court. I have received reports which post-date that hearing.
4. The Memorandum of Conviction records that Mr. Kirk was found guilty on the 2nd day of November 2011. The case was, I understand, tried by District Judge Berg. Mr. Kirk did not attend that hearing and so was found guilty in his absence. A warrant was issued for his arrest without bail. I have received the Notes of evidence from the Magistrates Court. The memorandum records under "Reasons" the witnesses gave clear and concise evidence without embellishment and corroborated each other.
5. Mr. Kirk has, I understand, been arrested upon the warrant. He has not been sentenced I have been informed that he is due to be sentenced on the 15th day of November 2011.

Medical Reports

1. Two medical reports from Dr. Elizabeth Sinclair Miller have been forwarded to me by the Magistrates Court. The first is dated the 6th September 2010. Under the Heading 'Occupational Health Opinion' it reads "Maurice Kirk is not fit, because of severe pain he is experiencing from severe arthritis of the left hip and damaged right ankle and because of psychotropic effects of the medication he requires to control this pain. This makes it impossible for him to carry out his activities of daily living and undertake the mental activity required to prepare complex legal reports. Maurice Kirk's health varies from day to day and he is not physically fit enough to be able to attend court on consecutive days for the duration of a court case."
2. That report appears to have been prepared in the context of a civil action in which Mr. Kirk is involved. The case before the District Judge was not complex and should have lasted no more than a morning.
3. The second report dated 22nd November 2010 is said to be a Supplementary report to the above report. That report repeats the opinion and says there has been no change. That report plainly from its date could not have been before either District Judge.

The Law

1. Section 108(1)(b) Magistrates Court Act 1980 states that a person who has been convicted by a Magistrates Court after a plea of not guilty may appeal against his conviction or sentence.
2. Rule 63.2(2) of The Criminal Procedure Rules 2011 states that the appellant must serve the appeal notice (a) as soon after the decision appealed against as the appellant wants, but (b) not more than 21 days after (i) sentence (or the date sentence is deferred, which ever is the earlier) if the appeal is against conviction or against a finding of guilt, (ii) sentence, if the appeal is against sentence.

Decision

1. Although Mr. Kirk was convicted in his absence on the 2nd day of November 2010, the District Judge did not proceed to sentence but issued a warrant for his arrest.
2. He is yet to be sentenced.
3. It follows that under Rule 63.2(2) Mr. Kirk has 21 days from the date of sentence in which to file a Notice of appeal against conviction.

4. It follows that Mr. Kirk is still within time to file a Notice of appeal and does not require leave to appeal out of time.

H.H. Judge Christopher Llewellyn-Jones Q.C.

H.H. Judge Christopher Llewellyn-Jones Q.C.

Dated the 14th day of November 2011