



Respondents Notice and grounds of opposition to appeal against conviction or sentence (*Criminal Procedure Rules, r.68.6(5)*)

ON COMPLETION PLEASE SEND THIS FORM TO THE REGISTRAR, CRIMINAL APPEAL OFFICE, ROYAL COURTS OF JUSTICE, STRAND, LONDON, WC2A 2LL

Write in **BLACK INK** and use **BLOCK CAPITALS**

The Respondent give full name	Name of Respondent	Crown Prosecution Service		
	Address	Appeals Unit, Special Crime Division, 102 Petty France, London, SW1H 9EA		
	Postcode	SE1 9HS	Reference	86SA0215542

Case Details	Name of Appellant	Alex SMITH	CAO Reference No.	2015/03661/B2
	The Crown Court at	Manchester		
	Name of Judge	HHJ Owen		
	Date of Conviction	1 February 1999	Date of Sentence	1 March 1999
	Date on which appellant's notice of appeal was received by the respondent			7 October 2015
	Indictment No:	T1998 1553		

The Respondent is applying for: <i>Please tick as appropriate</i>	<input type="checkbox"/>	Extension of time in which to give notice of opposition to appeal (give reasons below)
	<input type="checkbox"/>	Permission to call witness

If you require an extension of time in which to give notice you must state reasons:

1. Identify each ground of opposition on which the respondent relies, numbering them consecutively (if there is more than one), concisely outlining each argument in support and identifying the ground of appeal to which each relates. Summarise any relevant facts not already summarised in the appeal notice:

Summary of Submissions

1. The Respondent opposes the appeal, application for permission and application for permission to amend the grounds of appeal.
2. The factual basis for the assertion that the Applicant was entrapped is unsupported by evidence and is in direct contradiction to earlier documents submitted by the Applicant as part of this application for permission to appeal.
3. There is no basis for the suggestion that the coins were not in fact counterfeit. There is no good reason why the application for leave to appeal on this ground could not have been made many years ago. The Respondent is severely prejudiced by the delay.
4. The Applicant entered unequivocal pleas of guilty at trial.
5. The convictions are safe.
6. The application for extension of time to renew the application to appeal is opposed. It is out of time by a considerable margin. By waiting for a negative decision from the CCRC before renewing his application for permission to appeal potentially amounts to a manipulation of the process of the Court, and in any event, means there is not a good reason to further extend time.

Available Documents and Searches Made

7. The Crown Prosecution Service has made extensive efforts to obtain documents relating to the case. The following enquiries have been made, with the results set out below:

Person/Role	Result of Enquiry
Crown Court	Indictment and Record Sheet obtained. Original file of statements, exhibits etc., not in existence
Crown Prosecution Service	Records Management Unit confirms no papers held.
Metropolitan Police SCIT	No papers found in the Registry
Greater Manchester Police	No case papers held. They would have been weeded and destroyed around 2006. There is an electronic record with "little to no detail on it"
Paul Dyke (defence counsel at sentence)	Has no recollection of the case
AJ Morris (defence counsel on date of plea)	"I remember dealing with this case. We raised the defence of entrapment but on the first day of trial before any jury was empanelled there was a conversation in HHJ Henshall's chambers. Without revealing anything said or indicated I later advised the defendant that the defence was unlikely to succeed and he pleaded guilty."
Stuart Duke (prosecution counsel)	Has 'absolutely no' recollection of the case.
Probation Service	They have no records relating to the Applicant

Royal Mint

They have no records relating to the Applicant: "That is not to say emphatically that the Police did not contact The Royal Mint at that time, it was a long time ago now so it is possible that records were not kept or were mislaid."

8. It follows that, despite exhaustive enquiries, the Respondent has been unable to retrieve a copy of the statements or exhibits in the case.
9. The Applicant has supplied a newspaper cutting from the Manchester Evening News containing a report of the case.

Proceedings

10. On 2 September 1998 an indictment was signed containing a single count of delivering counterfeit currency, namely 1000 coins, on 9 April 1998, contrary to section 15(2) of the Forgery and Counterfeiting Act 1981.
11. On 21 October 1998 the indictment was amended. The single count was replaced with two separate counts of delivering counterfeit currency:
 - a. Count 1 indicted the delivery of 3 £1 coins on 2 April 1998
 - b. Count 2 indicted the delivery of 996 £1 coins on 9 April 1998
12. The Defendant was arraigned on 21 October 1998 and entered not guilty pleas to both counts.
13. On 1 February 1999 the Defendant was re-arraigned and pleaded guilty.
14. On 1 March 1999 the Defendant was sentenced to 6 months imprisonment on each count, to run concurrently. An order was made under section 24 of the Forgery and Counterfeiting Act 1981 for forfeiture and destruction of the coins.
15. The Manchester Evening News Article of 2 March 1999 reported the Crown saying:

"Prosecutor Stuart Duke said Smith's appearance on the Kilroy TV show last month attracted considerable media interest. In addition to exposing himself he claimed to have criminal connections and could supply anything "from women to drugs". As a result a Sunday paper contacted him and met him at the hotel last April. "He boasted about his criminal connections and said he could get fake £1 coins at 40p each in quantities of up to 1,000 which would cost £400" said Mr. Duke. He handed over three fake coins to the two undercover reporters and a week later produced a further 997 counterfeit coins" A story was published by the newspaper. A copy of the secretly taped meeting was passed to police and Smith later surrendered to police. He admitted supplying the coins, but said it was a publicity stunt to gain media recognition which had backfired. Smith claimed he knew it was a setup."
16. The Defence said:

“Anthony Morris, defending said one of the men he dealt with was Smith’s former publicity agent. They had been concerned together in earlier scams aimed at getting Smith publicity and he knew whatever he said or did would get newspaper exposure. “He was born into a circus family and appeared publicly as a clown as a three-year old”, said counsel. “He has done many outlandish things to gain publicity aimed at furthering his career”. Smith knew the fake coins would not be circulated publicly in what was a one-off offence by a man of good character.”

17. His Honour Judge David Owen is reported to have said:

“Possessing counterfeit currency in any circumstances is a very serious offence when done without lawful authority. I bear in mind everything that has been said, but it is clear this case crosses the custody threshold. I limit the sentence because it is not an ordinary case, but in my view there must be custody.”

18. The 28 day time limit for making application for leave to appeal against conviction expired on 1 March 1999.

19. The application for leave to appeal is therefore 5803 days out of time.

20. On 5 May 2016, William Davis J refused the application for an extension of time and for permission to appeal.

21. The 14 day time limit for renewing the application expired on 29 May 2016.

22. The Applicant then pursued an application to the Criminal Cases Review Commission.

23. According to the Applicant, the Criminal Cases Review Commission made a final decision refusing to refer the case to the Court of Appeal on 11 June 2018.

24. On 24 May 2019, the Applicant served notice that he wished to renew his application for an extension of time and permission to appeal. It follows that the application to renew is 1101 days out of time.

The Applicant’s Case on the Facts

25. The Applicant has set out, in several documents, his account of the events that underlie his conviction:

Grounds of Appeal prepared by the Applicant dated 19 January 2015

26. In this (unpaginated and unnumbered) document the Applicant states:

- a. “.....I was able to prove that I had engineered the situation and knew all along that it was Mazher Mahmood to whom I gave the fake coins”
- b. “Those mitigating circumstances were the facts that:
 - i. I had engineered the situation to occur
 - ii. I knew it was Mazher Mahmood

- iii. I knew for a fact that the fake coins would be going to Mahmood and as such could never end in public circulation....
- iv. I knew that I would end up helping the police by giving them info on where the coins were obtained from which of course I did and in return the Police spoke up positively on my behalf to the Judge/Courts.
- v.
- vi. I could prove that I did not say/do everything that Mahmood claimed in the story he published
- vii. As I 100% knew that I was giving the coins to Mazher Mahmood in my attempt to expose this unethical and arguably illegal techniques of making situations and stories occur, and that he would have to give them to the Police and that I would then tell the Police where they came from. Not only did I have Zero Criminal Intent, I was also under the impression that I would be afforded the same journalistic license that it seems Mahmood had been afforded for years when involving himself in perceptibly criminal actions for the purpose, he would and the newspaper would argue of the public interest.

The Applicant's Website

27. On the Applicant's website (a printout of which was provided by the Applicant) he describes the article that appeared about him supplying counterfeit coins. He said¹

"This is an article that only appeared as a result of me engineering a Media Hoax and Sting against the News of the World in my quest to both Expose them and also the illegal and dodgy tactics and methods used by many unethical Journalists at the time."

28. Later on the same webpage he says²:

"Ultimately it is true that for about 30 minutes I had some Fake Pound Coins in my possession, HOWEVER I KNEW THEY WOULD NEVER GET INTO PUBLIC CIRCULATION as I knew I was giving the to the News of the World as part of the Sting/Expose that I had engineered against them."

29. The Applicant then contends he had 'worked in the past briefly as a freelance undercover journalist'.

Grounds of Appeal prepared by counsel, Gerald Mohabir, dated 28 July 2015

30. The Grounds of Appeal contain the following assertions of fact:

- a. "...the applicant struck up a relationship with a man called Alan Breeze, a freelance journalist who was a close associate of MM. Between them they concocted media pranks...."³

¹ Page 2 of 33

² Page 4 of 33

³ Para 9

- b. “Between AB and the Applicant it was decided that they would send several tabloid newspapers an anonymous letter claiming the applicant was criminally connected, worked as a pimp and could supply guns. The end game was to ‘play a prank’ on the journalist who took the bait”⁴
- c. The ‘bait’ was taken by MM – calling himself Perry Khan. A meeting was arranged in a hotel. The applicant knew he was dealing with an undercover journalist⁵ and recorded the conversation.
- d. “It was the applicant’s intention to ‘expose’ the methods of MM and hence generate publicity by potentially selling the story to a rival publication”⁶
- e. “MM portrayed himself as a rich businessman... he claimed he needed girls, guns and counterfeit money. Playing along with the scenario the applicant embellished the story, bragging he could supply all of the above”⁷ The applicant phoned an escort and arranged for 2 girls to go to MM’s room.
- f. “The applicant was told by AB that it was possible for him to ‘buy’ some counterfeit money from an acquaintance”. As he didn’t have time to do this, he supplied 3 real £1 coins⁸.
- g. The applicant was given £400 by MM which he used to obtain the remainder of the counterfeit money - £997, which he duly supplied to MM.

Further Statement from the Applicant (attached to renewed application for leave of 24 May 2019)

31. The Applicant contends:

- a. The coins Mahzer Mahmood gave to the police were not tested⁹.
- b. The information as to where to get the fake coins was provided by MM’s associate¹⁰. The associate also pressured the Applicant to carry out the transaction¹¹.
- c. The Applicant only pleaded guilty as he received ‘bad advice’ that was computed by (unspecified) behind the scenes intimidation and threats he had from MM and his associates¹².

32. The Applicant has also provided an email from Chris Inson at the Royal Mint in response to a subject access request.

33. Mr. Inson states that:

⁴ Para 11

⁵ Para 14

⁶ Para 14

⁷ Para 15

⁸ Para 17

⁹ Update A

¹⁰ Update B

¹¹ Update C

¹² Update Q

- a. The Royal Mint 'is routinely sent coins to authenticate';
- b. The Royal Mint 'did have material submitted to us from law enforcement during the period of 1/1/1998 to 1/1/2002';
- c. 'Our investigation has uncovered no records held relating to the name of "Alex William Smith", "Alex -Leroy", or "Jonathan Royle"¹³.

Amended Grounds of Appeal prepared by Counsel, James Manning, dated 25 February 2021

34. The Amended Grounds of Appeal contain the following assertions of fact:

- a. In March 1998, in the course of working as a 'shock journalist' the Applicant 'became connected' with Mahzer Mahmood¹⁴.
- b. On Thursday 2 April 1996 the Applicant was plied with alcohol. Mahzer Mahmood then asked the Applicant to procure escorts, drugs, guns and money. The Applicant bragged he could do so. He supplied Mahzer Mahmood with 3 £1 which he falsely claimed were forgeries¹⁵.
- c. On Thursday 9 April 1996 Mahzer Mahmood supplied the Applicant with £400 in cash for the purpose of buying counterfeit currency.
- d. The Applicant purchased 1,000 counterfeit £1 coins from an associate of Mahzer Mahmood and gave them to Mahzer Mahmood.

Ground One – The conviction is unsafe as the Applicant was entrapped by Mahzer Mahmood

Relevant Law

35. An Applicant who seeks to set aside a conviction following a plea of guilty must show a clear injustice by demonstrating that he was deprived of a defence which would probably have succeeded (Boal (1992) 95 Cr. App. R. 272).
36. As to entrapment, the law was definitively stated by the House of Lords in Loosely [2002] 2 Cr.App.R. 29. A number of key principles can be derived:
 - a. It is not acceptable that the state should lure its citizens into committing acts forbidden by the law and then seek to prosecute them for doing so. This is entrapment.
 - b. Entrapment is not a substantive defence to a crime. The remedy, where appropriate, is exclusion of evidence or staying the indictment
 - c. As to whether the police behaviour is acceptable, each case must depend on its own facts.

¹³ As set out, above, the Royal Mint have confirmed to the Crown Prosecution Service that : "That is not to say emphatically that the Police did not contact The Royal Mint at that time, it was a long time ago now so it is possible that records were not kept or were mislaid."

¹⁴ Para 13

¹⁵ Para 14

37. The Court of Appeal has held that Loosely principles apply to journalists as well as police (Shannon [2001] 1 Cr App R 12), although not with the same force (Hardwicke and Thwaites [2001] Crim LR 220).

Relevant Facts

38. As set out, above, the Applicant’s case as to his behaviour has been relatively consistent:

Source	Case
Contemporaneous report of proceedings	His behaviour was a publicity stunt to gain media recognition which had backfired.
Grounds of Appeal prepared by the Applicant of 19/1/15	He ‘engineered’ the whole situation to expose Mahzer Mahmood.
The Applicant’s Website	He ‘engineer[ed] Media Hoax and Sting against the News of the World’
Grounds of Appeal prepared by counsel of 28/7/17	He intended to ‘expose’ the methods of MM and hence generate publicity

39. In response to grounds of appeal based upon the assertions set out in the table above, the Crown Prosecution Service served a Respondent’s Notice making the submission that Appellant’s case was not that he had been entrapped, but he himself had set out to entrap Mahzer Mahmood.

40. It is not suggested (nor is there any authority to support the contention) that seeking to expose the methods of a tabloid journalist could amount to a lawful authority or excuse.

41. In refusing permission to appeal, the Single Judge, William Davis J, observed:

“The Applicant’s own document prepared in January 2015 sets out his position in relation to the offence: he had engineered the position in full knowledge of the true identity of Mahmood (who was pretending to be someone else); he gave the counterfeit coins to Mahmood in order to expose his underhand techniques; he knew that the counterfeit coins would not enter circulation because he was giving them to an undercover journalist as part of a sting against that journalist. This renders Mahmood’s other dishonesty (whatever it may have been) as irrelevant.”

42. However, following the service of the Respondent’s Notice and the decision of the Single Judge, the Applicant lodged revised renewed grounds of appeal that contend that:

“...the Applicant was ‘pressured, induced and threatened to produce counterfeit currency by Mahmood.’”

43. The revised renewed grounds of appeal:

- a. Do not set out any particulars of any pressure, inducement, or threat.
- b. Do not deal in any way with the previous factual cases that were consistently advanced (ie that the Applicant sought to entrap Mahzer Mahmood and was well aware with whom he was dealing).

- c. Remain unsupported by a signed witness statement or an application to adduce the Applicant's account¹⁶. Grounds of appeal are not evidence.

Submissions

44. In Roddis [2020] EWCA Crim 396, the Court of Appeal held:

“...a defendant will only be allowed on appeal to present a factual case that is inconsistent with his instructions and testimony at trial in exceptional circumstances” [52]

It is submitted that principle applies with even greater force to different factual cases advanced in the same appellate proceedings.

45. In those circumstances, the Respondent submits:

- a. The Applicant ought to be refused permission to amend his grounds of appeal. It is submitted it is not in the interests of justice for the Applicant, having been refused permission to appeal on one factual basis, to be permitted to renew his appeal on a different basis.
- b. Were an application made to adduce the Applicant's new account, the Court of Appeal should not receive it, as pursuant to Criminal Appeal Act 1968 s23(2)(a) and (b) it is not capable of belief due to the numerous contradictory accounts and, would not afford any ground for allowing the appeal.

46. Therefore, it is submitted there is no, or no reliable, factual basis for concluding the Applicant was entrapped at all.

47. As such, any abuse of process argument would not 'probably have succeeded'. It would inevitably be rejected.

Ground Two – Mazher Mahmood's subsequent conviction renders his evidence unreliable

48. Mazher Mahmood did not give evidence. There was no trial.

49. The Applicant was convicted on the basis of his plea of guilty.

Ground Three – New Evidence from the Royal Mint 'Calls into Question the Basis for the Prosecution and the Conviction'

50. Section 15(2) of the Forgery and Counterfeiting Act 1981 provides:

“It is an offence for a person to deliver to another, without lawful authority or excuse, anything which is, and which he knows or believes to be, a counterfeit of a currency note or a protected coin”.

51. Accordingly it would have been necessary for the Crown to prove at any trial:

¹⁶ The Form W in the name of the Applicant appears to be limited to producing the email received from Chris Imson at the Royal Min.

- a. The Applicant delivered a counterfeit coin to another
- b. Without lawful authority or excuse
- c. Knowing or believing it was a counterfeit coin.

52. In Asiedu [2015] EWCA Crim 714, the Court of Appeal considered the importance of a plea of guilty. Lord Hughes, giving the judgment of the Court, held at para 16:

“A defendant who pleads guilty is making a formal admission in open court that he is guilty of the offence. He may of course by a written basis of plea limit his admissions to only some of the facts alleged by the Crown, so long as he is admitting facts which constitute the offence, and Asiedu did so here. But ordinarily, once he has admitted such facts by an unambiguous and deliberately intended plea of guilty, there cannot then be an appeal against his conviction, for the simple reason that there is nothing unsafe about a conviction based on the defendant's own voluntary confession in open court. A defendant will not normally be permitted in this court to say that he has changed his mind and now wishes to deny what he has previously thus admitted in the Crown Court.”

53. Lord Hughes then went on to consider various exceptions to the general principle – in particular when the plea was following an incorrect ruling of law, or where there was a legal obstacle to him being tried for the offence, none of which are relevant to *this* ground of appeal.

54. The Court continued at para 32:

“Because it is of cardinal importance that a defendant makes up his own mind whether to confess by way of plea of guilty or not, and because only he knows the true facts, it is not open to him to assert that he was led to plead guilty by mistaken overstatement of the evidence against him. As Sir Igor Judge P observed in R v Hakala [2002] EWCA Crim 730 at paragraph [81], the trial process is not a tactical game. A defendant knows the true facts; he ought not to admit to facts which are not true, whatever the evidence against him, and this will always be the advice he is given. If he does admit them, the evidence that they are true then comes from himself, whatever may be the other evidence advanced by the Crown.”

55. The Respondent is severely prejudiced by the Applicant's delay in pursuing this ground of appeal:

- a. In a case where it is contended that there was no evidence that the coins were counterfeit, the statements and exhibits are no longer available;
- b. The disclosure by the Respondent of information relating to Mahzer Mahmood plays no part in the substance of this ground of appeal. It follows that the Respondent cannot be said to have contributed in any way to the delay;
- c. There is no good reason why the application for permission to appeal on this ground could not have been made a very long time ago.

56. As to the merits of this ground, it is submitted:

- a. The Applicant pleaded guilty to the indictment in open court.
- b. There is no evidence that this was anything other than an unambiguous and unequivocal plea of guilty.
- c. It would be surprising if:
 - i. The Judge
 - ii. The Police
 - iii. The Crown Prosecution Service
 - iv. Prosecution Counsel
 - v. The Defendant's solicitor
 - vi. The Defendant's counsel at plea
 - vii. The Defendant's counsel at sentence

failed to realise there was no evidence of an essential element of the offence.

- d. The sentencing Judge made an order under section 24 of the Forgery and Counterfeiting Act 1981 for forfeiture of the coins. It is submitted this is consistent with the coins being counterfeit.
- e. On the Applicant's own case, he purchased 997 £1 coins for £400.
- f. In his original grounds of Appeal, Mr. Smith:
 - i. Accepts the coins were counterfeit (having purchased 997 £1 coins for £400);
 - ii. States he was going to help the police by giving the information on where the coins were obtained from;
 - iii. It would appear that, in mitigation, the Applicant accepted that the coins were counterfeit but he did not expect them to enter circulation.
- g. In relation to the email from the Royal Mint, it is submitted that, having regard to Criminal Appeal Act 1968 s23, it should not be admitted in evidence:
 - i. There is no reasonable explanation why the evidence was not adduced in the proceedings (s23(2)(d));
 - ii. The evidence does not afford any ground for allowing the appeal (s23(2)(b)) as:
 - 1. The coins may have been examined elsewhere than the Royal Mint;
 - 2. The fact that the Mint have no record of an examination from 1998 in the Defendant's name does not mean that one did not take place, as confirmed by the Mint.

Extension of Time to Renew Application for Permission to Appeal

57. On 23 June 2018 the Applicant sent an email to his legal team¹⁷ stating:

“I’ve looked at the documents from the Single Judge refusal of early 2016... and he did NOT tick the box at the bottom. Now I understand that we could have within 7 days of his refusal made an application for an oral hearing, however I also understand we did not do that as everything was going to the CCRC.”

58. Siobhan Egan, the Applicant’s former solicitor has stated¹⁸:

“It was agreed that depending on the outcome of the criminal proceedings against Mahmood, an appeal would be made to the Court of Appeal but they were to expect the appeals to be rejected in the first instance because of previous case law and commentary made by the Court of Appeal in relation to this type of non-State entrapment. In any event, a rejection by the Single Judge would open the way for an appeal to the CCRC. Mr. Smith was in agreement with that process.”

59. It is clear that the decision not to renew the application for leave to appeal in May 2016 was a deliberate tactical decision, taken, no doubt, as the CCRC would not consider a referral (bar exceptional circumstances) when a renewed application for leave was pending.

60. In Doherty 55 Cr. App. R 548, the Court of Appeal held:

“The court would wish to say that in general principle the power to extend time under rule 12 should be very rarely used. It must be remembered that before this question can arise the applicant must have given notice of his application for leave to appeal, the necessary transcripts and papers will have been prepared, the matter will have been before the single judge and the applicant will have received the single judge’s decision. In those circumstances, as it seems to us, the situation will be very rare in which it is appropriate or proper to grant the applicant an extension of the 14 days which the rules prescribe in which he is to make his final decision.”

61. It is submitted that by delaying the renewal application until *after* the case has been considered by the CCRC is to manipulate (whether deliberately or not) the process of the Court so as to achieve a further appeal that would otherwise not be available.

62. It is submitted the application for extension of time to renew the application for permission to appeal should also be refused.

Safety of the Conviction

63. The Criminal Cases Review Commission, who have been able to review all of the materials in this case, decided on 11 June 2018 not to refer the case to the Court of Appeal on the basis that there was no real possibility that the Court of Appeal would not uphold the conviction.

64. It is submitted the convictions are safe.

¹⁷ Disclosed by the Applicant with his renewal notice

¹⁸ Letter of 11 February 2021

Jonathan Polnay

Chambers of Sarah Forshaw QC and Mark Heywood QC
5 King's Bench Walk
Temple
London

30 March 2021

Authorities and Documents

Identify any relevant authorities and any other document or thing that the respondent thinks the Court will need to decide the appeal:

1. Asiedu [2015] 2 Cr. App. R. 8
2. Email from Royal Mint to Crown Prosecution Service dated 15 August 2019

Certificate of Service

(Criminal Procedure Rules, r.68.6(3) & 68.6(4))

Give details of those on whom this Notice of Opposition and any supporting documents have been served and the date and method of service:

Counsel: James Manning via james.manning@nexuschambers.com.cjsm.net
Solicitor: Jon Service, Frazer Bradshaw Solicitors via cjsm: office.mail@fblaw.co.uk.cjsm.net

Signature

Signed	Cara Pickering	Date	31 March 2021
For Respondent	CPS Lawyer on behalf of the CPS Appeals & Review Unit		

Details of ~~Solicitor~~ / Counsel* / other person* on behalf of the respondent

Name Jonathan Polnay

Chambers of Sarah Forshaw QC and Mark Heywood QC
5 King's Bench Walk
Temple, London

Respondent's Reference _____

For Criminal Appeal Office Use

Date Received _____

Date Acknowledged _____