

You're not Alone

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Dear Fellow Campaigners

It will be a great surprise to learn if any of you have not heard the news about the Supreme Court Judgement in R v Jogee, although prisons are such backward places the news may not have reached you that we won. A massive thanks goes out to all the legal teams involved especially Felicity Gerry QC who represented Ameen and Simon Natas, Tim Maloney and Jude Bunting who did JENGBA's brilliant intervention. Families once again turned out in large numbers and you would have been proud of the sea of red facing the Lord Judges (we were told we couldn't wear our JENGBA tops so we told everyone to wear red). To be honest we had no idea what to expect and our lawyers were embargoed from telling us until the decision was handed down so it was as much a shock to us as it was to you – we are getting lots of messages of the joy and parties that were going on in the wings and you can be sure it was replicated outside! To hear that JE had taken a wrong turn and has been wrong for over 30 years was amazing I wish you could have heard the loud collective gasp in the court. What does it all mean – we have asked Simon to explain the legal points of the judgement in this newsletter – but I do have some very important advice for you. (Thank you Balak for letting me know my nickname in Gartree is 'Iron Lady' – but I am the softie honest – but this next bit is so important you must pay attention, our phones, emails, Facebook has been inundated with questions and we have been telling everyone to wait for this newsletter for advice.)

The Court has not given us free rein for appeals – in fact they have said the Crown can retry Ameen for murder or manslaughter; however they can't use the foresight element which is what convicted him in the first place along with hundreds if not thousands of others. And so you all want to know what happens now and how do we move forward on appeals? We know the vultures are looming because families are telling us that they are being contacted by lawyers and there is even a website that has been launched that want £10,000 to look at a case. Now this is the most important advice to date we can give you. JENGBA has always considered itself a family, with all the embarrassing relatives that entails! You would not stand by and watch your family member get shafted again by the legal profession because they once again smell money. Even if they are saying they will do your case pro bono (which in itself doesn't make sense as there is legal aid available for appeals) they will then make a lot of money if granted leave for appeal. This is not true of all the lawyers, but we have struggled to find many who care as passionately about wrongful convictions as we do. If your previous legal team was good and you trusted them but they were unable to defend you against the 'possible foresight' test (which is impossible to defend and why we have won in the Supreme

Court) then of course contact them and ask if they are willing to represent you. If they mention money steer clear.

As you know we have been trying to set up a JENGBA legal unit for some time, but didn't have the resources to do so. Now we can and we will. Simon is going to advise but obviously he can't do all 650 cases (and rising) so we will find other lawyers and barristers to help us. We have already been offered an office and law students to get this started. This is a big step forward but it is the one we always intended to take and one that makes sense because many cases will have cross-overs (not at the scene, convicted by a phone call alone, police witnesses who lie etc.) If we keep the appeals under JENGBA auspices it will mean we will continue to succeed. But that is not the only battle – this is still hugely political and we don't want to wait years to be heard whether the CCRC will refer a case back to the COA.

We will be meeting with the CCRC next week. We have to fight to get them fast tracked and that the CCRC are given the resources to do so. Once we get some successes under our belt – we can then argue that a separate COA or some kind of tribunal needs to be established to look at all the cases because it is against people's human rights to keep them in prison under a law that the courts are now saying should not have been applied.

continued



WE DID IT!

JENGBA campaigners outside Supreme Court

If you want **JENGbA** to pass on your details to our lawyers you need to let us know so we can start the ball rolling. It will either be Simon Natas at ITN solicitors or Emily Bolton and Sophie Walker at the Centre Criminal Appeals but we will also be working with QC and barristers including Felicity Gerry who has offered to help. If you do decide to go back to your original legal team please keep us posted on developments, we don't want someone messing up an appeal that sets a precedent that will hinder others.

We are still a long way off from winning this battle but if we stick together, support each other, fight together we will get there I know we will, I always have. If the law has been wrong for over 30 years then the only moral thing to do is commute the sentences of those wrongfully convicted by it.

As always in solidarity,
Gloria 'Iron lady' Morrison
Proud Campaigner with **JENGbA**

IMPORTANT MESSAGE FROM SIMON NATAS JENGbA's LAWYER

Last Thursday's Supreme Court judgement in the case of *R v Jogee* was an historic day for justice and an extraordinary success for **JENGbA**. The celebrations over, **JENGbA** is now trying to field all the calls from prisoners, understandably anxious to know what the judgement really means. Some of the media reports on the case were quite misleading and we thought it important to set out in clear terms what the effect of the judgement might be for those seeking to appeal convictions.

The first thing to say is that the Supreme Court has not abolished joint enterprise. People can still be convicted if they assist or encourage others to commit crimes such as murder, as long as they *intend* to do so. What the Supreme Court overturned was the principle that the person who assists or encourages ("the secondary party") can be guilty merely because he or she *foresees* that someone else ("the primary offender") might do. This was known as "the foresight principle." After *Jogee*, a secondary party who merely foresees that the primary offender might intentionally cause serious injury or kill cannot be guilty of murder, although he or she might still be convicted of the lesser offence of manslaughter. The Supreme Court also made clear that an intention to assist might be *conditional*. For example, a number of men may decide to confront another group for a fight, hoping that their rivals will run away but all intending to commit GBH if resistance is met. If so, they may all be convicted.

The Supreme Court accepted that the introduction of the "foresight principle" was a legal wrong turn – in other words, it should *never* have been possible to convict of murder simply because someone foresaw that another might kill or intentionally inflict serious injury. The obvious question is whether this "wrong turn" will allow people convicted under the old law to appeal against their convictions.

The answer is that some, but not all, will be able to

rely on the new judgement in order to appeal. The fundamental principle is that the Court of Appeal will not quash a conviction unless it decides that it is unsafe and the fact that the judge's directions to the jury were wrong will not always be enough. The Supreme Court pointed out that the foresight principle may not actually have been important, on the facts, to the outcome of every trial or the safety of every conviction. A second issue is that an appeal must normally be brought within 28 days of conviction. The Court of Appeal has the power to grant leave to appeal out of time, but only where "substantial injustice" can be demonstrated. The defendant seeking leave to appeal out of time is expected to point to something more than the mere fact that the criminal law has changed. The Court of Appeal has previously said that "if the appeal is effectively based on a change of law, and nothing else, but the conviction was properly returned at the time, after a fair trial, it is unlikely that a substantial injustice occurred."

The central question is likely to be this: was there enough evidence to make the jury sure that the defendant *intended* to assist or encourage the crime in question or was the evidence such that they might they have relied upon the foresight test in order to convict? If the latter, we would argue strongly that substantial injustice had occurred and the conviction should be quashed.

What this means is that every case will have to be looked at on its merits. This will require a lot of careful work on the part of lawyers. In any case where there has already been an appeal, there will need to be a referral to the Criminal Cases Review Commission, but again, it would be better to ask a solicitor to look at the papers before asking the CCRC to take on the case. Fortunately, legal aid is likely to be available to allow lawyers to look at cases which may have been affected by the *Jogee* judgement.

**TELL YOUR FAMILY AND FRIENDS TO CHECK
OUR WEBSITE FOR NEXT LONDON &
BIRMINGHAM MEETINGS!**

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