Neutral citation number: [2017] EWHC 2153 (Admin)

CO/13/2017

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
THE ADMINISTRATIVE COURT

Royal Courts of Justice
Strand
London WC2A 2LL

Thursday 13 July 2017

B e f o r e:

MR JUSTICE HOLROYDE

Between:

THE QUEEN ON THE APPLICATION OF USMAN

Claimant

v

READING MAGISTRATES' COURT

Defendant

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(Official Shorthand Writers to the Court)

Mr Thom Dyke (Direct Access) appeared on behalf of the Claimant
The Defendant was not represented, did not attend.

J U D G M E N T
(Approved)

1. MR JUSTICE HOLDROYDE: The applicant, Mr Usman, applied for permission to apply for judicial review of a decision of the Reading Magistrates' Court on 19 December 2016 refusing to adjourn the summary trial of an allegation of driving with excess alcohol. Permission was refused by Mr Justice Collins on consideration of the papers on 19 June 2017. It is now renewed to this oral hearing. I am grateful to Mr Dyke for his helpful submissions on the applicant's behalf.

2. The charge against the applicant was that on 1 May 2016 he drove a car on a public place, namely an identified car in Bracknell, after consuming alcohol in excess of the permitted limit. He was to be represented at trial by a solicitor holding himself out as highly specialised in drink-driving offences. At pre-trial hearings two issues were identified to be contested at the trial: first, whether the car park was a public place for the purposes of the relevant legislation; secondly, a defence of duress in the circumstances put forward by Mr Usman to the broad effect that it was necessary for him to drive because he was in real fear of imminent attack.

3. The magistrates made an order that the defence should put in a skeleton argument. The solicitor chose not to do so. His justification in a statement which he has made for these proceedings is, in a nutshell, that he regarded the issue as so clear and the law as so well settled and so easy for everyone to understand that he was somehow relieved of the obligation to comply with the court's order.

4. An initial trial date of 15 August was adjourned at the applicant's request and a new date of 19 October 2016 was set. The court has statements from both Mr Usman and from the solicitor as to what happened. Mr Dyke tells me that although it is not explicit - perhaps there has been here a waive of legal professional privilege, and I of course accept what he tells me - it seems that the solicitor arrived at the court in good time; he had certainly a number of case papers; he indicates in his statement that he had never checked to see if there were any more papers which might, for whatever reason, not reach them because he regarded himself as having been put in funds solely for the conduct of the trial on the day of trial. He did, in fact, receive some further paperwork at court. The trial had been set for 2 pm. The notice issued by the court to the parties generally encourages them to attend the court half-an-hour, at least, before a hearing is due to begin. It seems that the solicitor was there at or shortly after 1 pm and made contact with the prosecuting solicitor at about 1.35 pm and was then provided by about 1.45 with a bundle of papers.

5. I have endeavoured in this hearing, but without success, to establish precisely what was in that bundle which was new and needed careful attention. Certainly there was a statement of Brian Haven (?), a police officer, which covered some four sides of paper, much of which comprises of the familiar pro forma generally seen in drink/drive cases. There were other pro formas commonly seen and no doubt very familiar to the solicitor. Meanwhile, Mr Usman himself was late arriving at court. It is a feature of the evidence before the court that there is a conflict between him and his solicitor as to just how late he was. The applicant Mr Usman says that he arrived at about 1.40 and was instructed

by the solicitor to wait because the solicitor was about to receive documentation from the prosecution. He says that the solicitor returned to him for about 5-to-2. They then went into a conference room but were called into court within a matter of minutes. The solicitor, for his part, says that having made contact with the prosecution for about 1.35 pm, he received the further documents at about 1.45 pm and sat down to read them in the public area of the court. He says that "a few minutes later" Mr Usman arrived at court.

6. When the case was called on the solicitor applied for an adjournment of half-an-hour, saying that he needed time to read and take instructions on the additional evidence. The magistrates refused. The solicitor, after what appears to have been a brief further conversation with Mr Usman, then withdrew from the case.

7. The application for judicial review is brought on the basis that it was wrong for the magistrates to refuse that application for an adjournment and thereafter to insist on proceeding with Mr Usman doing the best he could to represent himself having expected to be represented by a specialist solicitor.

8. When he considered this matter on the papers, Mr Justice Collins accepted that the circumstances would, in the ordinary way, justify a grant of permission. He refused permission however on the ground which he stated as follows:

> "However the claimant chose to lodge an appeal to the Crown Court and to obtain thereby a suspension of the disqualification imposed. He failed to disclose this in his claim which was not received by the court until 3 January 2017. Judicial review is a remedy to be used if no alternative is appropriate. While an allegation that a hearing is unfair would normally justify judicial review, here the claimant chose to appeal using [the solicitor] and the appeal will consider its defence."

9. To take up one point mentioned there by the learned judge, Mr Dyke explains that the application for judicial review was lodged on 13 December, shortly before the expiration of the two-month period to challenge the decision, but that it appears to have taken a little time - no doubt because of the Christmas period - to be processed by the court. Mr Dyke has also, with commendable candour, accepted that the failure to disclose in the application for judicial review that there was also an appeal pending to the Crown Court was an error on his part. He acts through direct access. I accept of course that it was an error which was in no way motivated by a deliberate desire to mislead the court. It was an unfortunate error, but no more need be said about it.

10. In his renewed application for permission Mr Dyke argues that, particularly having regard to the clear indication by Mr Justice Collins that the case was arguable on its merits, the applicant should not be barred from judicial review merely because he has exercised his concurrent right to bring an appeal to the Crown Court. Mr Dyke draws my attention, rightly, to authorities supporting the view that the fact that there is a right of appeal to the Crown Court against conviction of a summary offence, is not in itself

an automatic bar to an application for judicial review (see R (Hereford Magistrates' Court ex p Rowlands [1998] QB 110, and R (On Application of Lightbourne) v West & Central Hertfordshire Magistrates' Court [2013] EWHC 119 Admin.

11. Mr Dyke acknowledges of course that the gravity of permission to apply for judicial review is always a matter of discretion. For my part, I readily accept that there is no automatic bar in these circumstances. I also accept for present purposes that the applicant has at least an arguable case on the merits though I do not accept that it would ever be "strongly arguable" as Mr Dyke submits.

12. Be that as it may, there is here an important question about whether it is a proper case for the grant of what could be a discretionary remedy of judicial review. The pending appeal to the Crown Court carried with it the considerable benefit of a suspension of the disqualification from driving which followed the magistrates' decision. That suspension has already benefitted the applicant for some eight or nine months and is not, in my view, to be disregarded when considering whether the discretionary remedy of judicial review is appropriate here.

13. Secondly, it is important to identify precisely what it is that the applicant seeks by these proceedings. His appeal to the Crown Court provides him with a re-hearing at which the two issues identified by the solicitor can properly be considered by a court of competent jurisdiction. Mr Dyke, very realistically, accepts that the system of trial of summary offences provides a defendant with two bites of the cherry, namely a trial before the magistrates and if need be a re-hearing on appeal to the Crown Court. Judicial review, if unsuccessful, would leave him with only one bite of the cherry, namely the appeal to the Crown Court. Mr Dyke argues that he is entitled in law to both bites.

14. I accept the broad structure of the argument but in considering the grant of judicial review as a discretionary remedy, it is nonetheless very important in my judgment to bear in mind that a refusal of judicial review would not leave the applicant without remedy. It would leave him with the opportunity to pursue his issues at a full hearing before the Crown Court. I also have regard to the timetable here. I make every allowance for the fact that Mr Usman is of limited financial resources and that Mr Dyke is assisting him on a direct access basis. But I repeat that Mr Usman was represented in the Magistrates' Court by a solicitor holding himself out as specialist and expert in matters such as this. The magistrates convicted the applicant on 19 June 2016. Notice of appeal to the Crown Court was served on the next day, 20 October. The application for a suspension of disqualification was made on 8 November. The court was told on that occasion that an application for judicial review was being considered. Yet no proceedings were actually issued until mid-December within about a week of the expiration of the two-month time limit.

15. In my judgment those are circumstances in which the granting of judicial review is not an appropriate remedy. Should it ever be necessary to explore the circumstances in which the adjournment was requested and refused by the magistrates, the very fact that

there is a conflict of evidence between applicant and his solicitor adds to my feeling that judicial review is not the appropriate course to be taken here.

16. For those reasons which are broadly similar to those of Mr Justice Collins, this renewed application fails and is dismissed.