Neutral Citation Number: [2020] EWHC 2074 (Admin)

Case No: CO/2148/2020

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 29 July 2020

Before :

MR JUSTICE FORDHAM

- -

Between :

SHELDON POMMELL	**Applicant**
- and -	
CROWN PROSECUTION SERVICE	**Respondent**

- -
- -

The **Applicant** in person, by video link
The **Respondent** did not appear and was not represented

Hearing date: 29 July 2020

Judgment as delivered at the hearing

- -

Approved Judgment

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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THE HON. MR JUSTICE FORDHAM

Note: This judgment was produced for the parties, approved by the Judge, after using voice-recognition software during an ex tempore judgment.

MR JUSTICE FORDHAM:

Introduction

1. This is an application for habeas corpus. The applicant has appeared in person by means of a video link. His application was refused on the papers and he has requested reconsideration of the application. He has a legal entitlement to do that under CPR87.4(2). His position is this, in outline. He is currently the subject of proceedings in the Crown Court, in relation to which is now charged firstly with a count of attempted murder and secondly a count of possession of a firearm with intent to endanger life. Mr Paul tells me this morning that the count of possession of a firearm with intent to endanger life has changed to a count of conspiracy relating to possession of a firearm. He entered not guilty pleas which as I understand was on 27 September 2019 at the PTPH. The charges relate in particular, as I understand it, to an incident overnight on 24 and 25 August 2019. Mr Pommell has been detained since August 2019 and it is now July 2020. He has been refused bail on a number of occasions. The papers refer to a first appearance before the magistrates on 27 August 2019 at which bail was refused. Most recently they refer to a refusal of bail on 31 March 2020. Mr Pommell tells me that he has legal representatives who are dealing with his case in the Crown court proceedings. I have seen documents which on the face of it confirm that. One example is a letter of 21 May 2020 from the CPS to Waterfords Solicitors responding to a disclosure note which Waterfords Solicitors had issued on 21 April 2020.

2. The basis for the application for habeas corpus is set out in a written document and was helpfully read out to me by Mr Pommell today. I will record its contents.

> "Unlawful detention.
>
> The claimant seeks to have all charges against him dismissed on the following grounds:
>
> 1. Abuse of process. Law enforcement failed to investigate the claimant's version of events which was disclosed to them during his interview in the form of a prepared statement. In doing so they failed to obtain CCTV which is vital to the claimant's defence.
>
> 2. Lack of evidence. The Crown seeks to rely solely on CCTV and phone records which do not implicate guilt of the claimant, nor have the Crown taken into consideration the defence case that case statement of guilty parties in this case.
>
> 3. Breach of article 6 of the ECHR. Entitled to a fair and public hearing within a reasonable time, and withholding relevant material. That being co-defendants [two names are given]'s witness statements."

In his oral submissions to me today, Mr Pommell has emphasised and added particular points. He says the prosecution has refused to disclose evidence requested for the trial. He says information relating to an alleged security breach leading to a move of the trial from one location to another is not been disclosed to his legal team. He complains that the prosecution have changed their case and changed the charges to fit a theory, not put to him in interview, and not supported by evidence. He says that statements made in

open court to block his application for bail were unsubstantiated and have subsequently been retracted. He says that the charges should be reconsidered.

3. When the application for habeas corpus came before the judge dealing with it on the papers he refused it for the following reasons. Morris J said, on 2 July 2020:

> "Habeas corpus is a remedy for unlawful detention. There is no evidence that the claimant's current detention on remand… is unlawful. Bail was refused by HH Judge Rayner at Woolwich Crown Court on 31 March 2020. There has been no further application for bail since then. The basis of the claimant's claim for habeas corpus is not that the refusal of bail was wrong and thus that detention was unlawful for that reason. Rather the basis is that all charges against him should be dismissed for abuse of process, lack of evidence and/or for delay in the trial process. Those are matters which are properly to be considered (if at all) by the Crown court itself, by way of an application to dismiss… or an application for a stay of proceedings for abuse of process…"

Those were the essence of Morris J's reasons.

4. Having considered the matter afresh, and having taken into account everything that Mr Pommell has written and has said, I have reached the same conclusion, for the same reasons. Issues which relate, as clearly the issues raised before this court on this application do – to the maintaining of the charges the manner of investigation, the nature of charging decisions, the disclosure of evidence and the evidential support for the prosecution case – all of these are matters which arise squarely within the criminal process. Mr Pommell has a legal team within the criminal process. That team is able to invoke such protections as are available within the criminal process. Indeed, it is clear on the face of the documents that such steps have been being taken. The dismissal of charges, if it is something that can appropriately be sought, is something to be sought within the criminal process. Habeas corpus does not and cannot in my judgment lie on the basis that a criminal accused invites the High Court to order that the charges against him be dismissed, whether on grounds of (1) abuse of process (2) lack of evidence or (3) breach of article 6. Those grounds do not constitute a basis for contending that the detention is unlawful. The detention is lawful pursuant to the steps and orders made within the criminal process, and it is within that forum that abuse of process lack of evidence, and breach of article 6 fall to be addressed. The avenues for doing so were accurately described by Morris J. If there is a basis for invoking them then no doubt the applicant's legal team will do so, but certainly they can and are able to do so. If there is no basis for making the appropriate applications, at the appropriate time and in the appropriate forum, then it follows that there could be no basis for any action elsewhere.

5. I asked Mr Pommell at today's hearing whether he had a response he wished to make to Morris J's reasons. He explained to me why he says the alternatives of dismissal of the charges and bail are not available. So far as dismissal of the charges is concerned he told me that his position, and his legal team's position, is that that is not an option open to him until the matter comes to trial. That does not become a reason why the High Court, through habeas corpus, will effectively entertain an application to dismiss criminal charges in the period prior to trial.

6. So far as bail is concerned Mr Pommell submits that he cannot now seek bail again until, he thinks, the end of September in conjunction with custody time limits, in the

light of his previous failed applications. He submits, and repeats, that bail was blocked on the basis of unsubstantiated claims by the prosecution which were subsequently retracted. I see no reason to suppose that if Mr Pommell's legal team considered that they had a proper basis for submitting that bail had been refused on the basis of misleading statements subsequently withdrawn, that they could not bring that to the attention of a court with a bail jurisdiction, submitting that that constituted a material change of circumstances or inviting the bail court to reconsider bail on the basis that it had been materially misled. I am in no position to assess whether there is anything at all in the suggestion that the bail court was misled, by reference to unevidenced assertions later retracted. But the key point for today is that, were that the position, I have no doubt at all that it is the bail jurisdiction which is the appropriate forum for making such a submission. I have no doubt at all that it would be Mr Pommell's legal team in his in the criminal proceedings, who have assisted him in relation to bail including the previous application for bail which was refused, who would be in a position to evaluate whether there is any basis for any further application at this stage and ahead of September. Putting all of that to one side, and whatever the position is so far as the current availability or restrictions on making a further application for bail or returning to the bail court in this case, I have no doubt that none of that at seeks serves to affect the invocation of the High Court's jurisdiction by way of habeas corpus.

7. To the extent that there are limitations within the criminal process as to the timing of applications which seek to have charges dismissed, or for that matter applications and further applications for bail, that is the consequence of carefully designed legal rules. These rules always fall to be operated against the backcloth that the individual it is incarcerated on remand on the basis that he is facing a criminal trial. I repeat: it is within the forum of the criminal proceedings, and subject to a human rights-compliant application of the rules applicable to those proceedings, that the arguments as to dismissal of charges and the arguments so far as the justification for withholding bail are concerned need to be addressed.

8. The written arguments the materials in the court before the court and the oral submissions have failed to persuade me, even arguably, that there is any basis for concluding that Mr Pommell is currently the subject of unlawful detention. I have considered the various powers which I have under CPR87.5. There is no basis for me ordering the issue of the writ or ordering release. There is, in my judgment, no need for any of the relevant directions in subparagraphs (b),(c),(d) or (e) of 87.5. The correct order, which is the order that I will make, is to dismiss the application pursuant to CPR87.5(f). There will be no order as to costs.

29 July 2020