Neutral Citation Number: [2023] EWHC 1875 (Admin)

Case No: CO/2600/2022

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 28 July 2023

Before :

MR JUSTICE JULIAN KNOWLES

- -

Between :

THE KING ON THE APPLICATION OF DRAGUTIN POPOVIC	**Claimant**
- and -	
(1) EALING MAGISTRATES COURT	
(2) WILLESDEN MAGISTRATES COURT	
(3) CROWN COURT AT HARROW	
(4) CROWN COURT AT ISLEWORTH	**Defendants**
	Interested Party

-and-

DIRECTOR OF PUBLIC PROSECUTIONS

- -

- -

The Claimant appeared in person
The other parties did not appear and were not represented

Hearing date: 11 July 2023

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APPROVED JUDGMENT

This judgment was handed down remotely at 10.30am on 28 July 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

Mr Justice Julian Knowles:

Introduction

1. This is a renewed application for permission to seek judicial review. Sir Duncan Ouseley sitting as a retired High Court judge refused permission on the papers in a lengthy decision dated 28 February 2023. I will return to his reasons later.

2. I heard oral submissions from the Claimant on 11 July 2023 and said I would give written reasons.

3. The Claimant has lodged a lot of material and made a great many points. The failure to mention a particular point does not mean that it was being overlooked.

Background

4. The Claimant seeks to judicially review no less than 10 decisions (according to the Claim Form) arising out of or connection with his conviction in October 2019. On 16 October 2019 the Claimant was convicted in his absence at Ealing Magistrates Court of assaulting a County Court officer in the execution of his duty on 14 January 2019 contrary to s 14(1) County Courts Act 1984 (first decision challenged on the Claim Form).

5. The second decision challenged is that of a deputy district judge sitting at Uxbridge Youth Court on 16 October 2019 to issue an arrest warrant. That Court is not currently a Defendant but there is before me an application to join it.

6. He was sentenced on 22 October 2019 at Willesden Magistrates Court to 10 weeks' imprisonment and to pay £200 compensation and £625 in costs (third decision).

7. According to the Claimant's Skeleton Argument, [26], at the end of 2021 he was informally advised by a *McKenzie* friend that he may have grounds of appeal to challenge the legal validity of his conviction. He said he was advised that he should apply to the magistrates' court to re-open both his conviction and subsequent sentence under s 142(1) and (2) Magistrates' Courts Act 198016, and if that application was refused, to seek to appeal to the Crown Court out of time.

8. An application was duly made, and after some to-ing and fro-ing, was refused on 6 January 2022 (fourth decision).

9. On 14 January 2022 North London Magistrates Court centre notified the Claimant by email letter that his application under section 142(1) and (2) Magistrates' Courts Act 1980 had been submitted to the Legal Manager and was refused (Skeleton Argument, [34]) (fifth decision).

10. The Claimant then sought details under Crim PR r 5.9(1)(3)(a)(b) regarding who had considered his application, by an email sent on 14 January 2022 but said he never received a reply (Skeleton Argument, [37]-[38]) (sixth decision).

11. The Claimant then sought to appeal to the Crown Court out of time against his conviction, however an extension of time was refused by His Honour Judge Wood at Harrow Crown Court on 15 March 2022 (seventh decision).

12. Moving to the Crown Court at Isleworth, according to the Claimant's Skeleton Argument at [51]-[54], North London Magistrates' Court Centre notified the Claimant that his Notice of Appeal had been resent to the Crown Court at Isleworth by email sent on 23 March 2022. (I am not entirely sure why, given the matter had already been determined at Harrow; it may just have been administrative confusion). The Claimant made enquiries of the Crown Court at Isleworth regarding the transfer of his Notice of Appeal to that Court, by emails dated 24 March 2022 and 28 March 2022.

13. The Crown Court at Isleworth notified the Claimant by email sent on 29 March 2022 that Her Honour Judge Wood (different from the Harrow judge) had refused to extend time to appeal on 24 March 2022, without giving any reasons (eighth decision). (There is an application to amend the grounds dated 13 June 2023 in relation to this challenge alleging that prejudicial material had been placed before the judge by a court administrator).

14. The Claimant requested further information as to which judge had refused his Appeal out of time by email sent on 29 March 2022. The Crown Court at Isleworth notified the Claimant that due to an administrative error, HHJ Wood had considered and refused the application by email sent on 30 March 2022.

15. The Claimant sought further information in an email sent to the Crown Court at Isleworth on 6 April 2022, but this has not been responded to further.

16. The Claimant then applied to HHJ Wood to state a case for the opinion of the High Court but this was refused by her on 30 May 2022 (ninth decision).

17. The Claimant also challenges the failure on 9 May 2022 by Isleworth Crown Court to provide the notes of HHJ Wood regarding his refusal to extend time on 24 March 2022 (tenth decision).

18. The Claim Form contains various applications for disclosure.

19. The Claimant also applies for a costs capping order on the grounds that the claim relates to issues of general public importance. He also sought permission not to have to serve a financial statement under CPR r 46.17(3) on Article 8/privacy grounds.

List of issues and CPS response

20. Under the heading 'List of Issues' the Claimant's Skeleton Argument raised the following (*inter alia*) (I have reformulated some of them slightly): (a)

breach of s 11(1)(b) Magistrates' Courts Act 1980; (b) denial of natural justice and/or Sch 1, article 6(1) ECHR, Human Rights Act 1998; (c) authorised prosecutor under s 29 Criminal Justice Act 2003; (d) validity of the charge of which the Claimant was convicted; (e) whether the court which sentenced the Claimant had jurisdiction to do so; (f) whether the refusal to re-open the Claimant's conviction and sentence under s 142(1) and (2) Magistrates' Courts Act 1980 was lawful. There are other issues which were set out which I will not set out. The Claimant knows what they are.

21. The CPS submissions in response can be summarised as follows.

a. in each case, the Claimant has not acted promptly and / or not later than three months after the grounds to make the claim first arose (CPR r.54.5(1);

b. the Claimant had alternative avenues for challenging his conviction and sentence;

c. the Claimant instead exercised a different avenue for appeal, by applying or having application made on his behalf to the trial judge DDJ Studdert to state a case on 31 October 2019. That was refused. That had the effect of extinguishing any further right of appeal to the Crown Court (s 111(4) Magistrates Court Act 1980) (there appears to be an issue whether this application was done of the Claimant's authority);

d. judicial review is a remedy of last resort and where a claimant had adequate alternative remedies available to him at an earlier stage, permission should be refused;

e. even if (which is denied) there was any arguable error of law or jurisdiction in any of the challenged decisions, it is highly likely that the outcome would not have been substantially different for the Claimant (s 31(2A), Senior Courts Act 1981).

22. In relation to the Claimant's challenge to his conviction, the CPS's submissions say this at [6]:

> "The Claimant attended court but repeatedly declined to identify himself or to surrender despite being given multiple opportunities. At length, the judge ordered the court to be cleared of all persons other than the Claimant. The Claimant chose to leave court with his supporters. Thereafter the judge proceeded with the trial in his absence, on the Crown's application. He was entitled to do so."

23. As to what happened, the Claimant said this in his Statement of Facts:

> "The Claimant also recollects that after entering the court room he requested the court to proceed 'in equity', as he was making a special appearance 'in propia persona' and

> the Claimant made this request to the Deputy District Judge 3 times.
>
> The Claimant further recollects that the Deputy District Judgeleft the courtroom 3 times and after the final exit, he returned and told everyone in the courtroom to 'leave the court'."

24. I confess to not being entirely sure what asking a magistrates court to proceed 'in equity' means, because the defendant was making a 'special appearance 'in propria persona'', but it smacks of the sort of language used by Freemen on the Land and other proponents of pseudo-legal arguments which Rooke ACJ described in *Meads v Meads* [2012] ABQB 571. However, I do not need to consider this matter further.

Sir Duncan Ouseley's reasons and my decision

25. I return to Sir Duncan Ouseley's reasons for refusing permission to seek judicial review on the papers. I should quote them in full. But before I do, given that lack of promptness underpinned much of his reasoning for refusing permission, it is worth emphasising that the time limit for bringing judicial review is *not* three months from the challenged decision, as many claimants believe. CPR r 54.5(1) provides (emphasis added):

> "(1) The claim form must be filed –
>
> (a) promptly; *and*
>
> (b) *in any event* not later than 3 months after the grounds to make the claim first arose."

26. The test is therefore 'promptness'. A claim form filed within three months of the relevant decision may, still, therefore not have been filed 'promptly', depending on the facts and the context.

27. Sir Duncan said:

> "1. The 10 decisions which the Claimant seeks permission to challenge all arise out of his prosecution, conviction and sentence for assaulting an usher at a County Court possession order hearing in which he was not a party, but part of a group, claiming to assist the tenant, which refused to obey an order that the court be cleared of what the judge saw as their disruptive presence. The conviction was dated 19 October 2019, and he was sentenced to 10 weeks in prison on 22 October 2019. Proceedings were sent to the Admin Court on 24 June 2022, returned as defective on 7 July, and resubmitted on 16 July 2022.
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> 2. The first three decisions being challenged are the conviction and sentence decisions, plus a decision

seemingly of the Uxbridge Youth Court, which has nothing to do with the adult Claimant, and that court is not a party [in fact, as the Claimant points out, it appears that it was a judge sitting at that court who issued the warrant but he was not sitting as a judge of the Youth Court so the point does not matter]. Either way, time has long past for a judicial review challenge to those decisions. The only discernible basis upon which an extension of time, not requested but said not to be necessary, is that the Claimant was pursuing other remedies. That can be a basis for an extension, if sought, but the timetable of events after 19 October 2019 shows that over a year passed before any alternative remedy was sought. The response that the Claimant was unrepresented, and could not take legal advice, sits ill with the level of legal analysis with which the Claimant has favoured the court.

3. The fact that he was not represented is not of itself a good excuse for the lapse of time, nor the fact that he was in prison for 10 weeks. That could explain a delay of a month or so. Nor that he was unaware of the grounds of appeal. He may not have been able to research all the recondite, and unsound points he takes, but they are all grist to the one point he did know which is that he was convicted after a trial when he was not in court, although he was in court when his case was called on. (He says that he did hear himself being called to identify himself; and it follows that he did not hear the District Judge say that the one called Popopvic was to stay in court when it was cleared; the court notes say he did not identify himself or admit to being the defendant, when the case was called on, or stay when the conditions in the court led to it being cleared). Thereafter he appears to have taken, on his case, no steps at all to point out that he was the defendant and should be let back in. Accordingly, the challenge to those decision is out of time, and to the extent that it is sought, I refuse to extend time.

4. The next two decisions are decisions of Willesden Magistrates Court on 6 and 14 January 2022 to refuse to reopen the conviction and sentence decisions under s142 Magistrates Courts Act 1980. The applications were made on 19 December 2021, after the Claimant had received informal legal advice. There may or may not have been an arguable case on the merits that s142 does not only apply where a defendant has been absent. However, where a defendant has been present, and has failed to identify himself, whether or not because of noise in the court created by his friends and supporters, and no steps have then been taken to draw that point to the attention of the

court, and the point has been left for over a year, the only rational decision the Court could have reached was to refuse to reopen the case. The challenge to those decision is three months out of time, and again no reasonable basis has been shown for an extension of time.

4. The next two decisions are those of HHJ Wood at Harrow and Isleworth Crown Courts on 15 and 24 March 2022 [in fact, as I have said, there were two HHJ Woods – one male, one female], refusing an extension of time for an appeal to be lodged against the 2019 conviction and sentence. Although there was some toing and froing between the two Courts, about which the Claimant makes various legal claims, there is nothing in that procedural aspect. Nor is there anything arguable in the contention, if I understand it aright, that there was some delegation of decision-making: the Judge clearly made the decisions. The Judge may have misunderstood the point that the Claimant was making about new law, *Mitchell*, and *Terence Ewing v Brentford County Court* (a very different case on the facts), but nothing arguable turns on that. Her reasoning as set out in the DPP/CPS AoS is perfectly clear, and contains no arguable error of law. The Claimant knew what had happened at the hearing, and of his sentence and could have appealed straightaway, or while in prison, or immediately upon release. His claim at root is that what happened was fundamentally unfair, and he knew what facts he intended to rely on. he may not have worked his way through all the recondite points he now wishes to develop in support of that point, but that is not the issue. Even if some extension could have been granted, the Claimant had to show that the whole period of extension should be granted. The only rational decision would be to refuse the extension of time. If these two challenges had had arguable merit, I would not have refused an extension of time to bring these judicial review proceedings.

5. The decision of 30 May 2022, by HHJ Wood, to refuse to state a case in relation to her refusal of an extension of time has no merit, for the reasons I have given above.

6. There are then two decisions in relation to documents. (i) The Claimant challenges the refusal of HHJ Wood to provide him with her notes of her decision of 24 March 2022, and a typed version. As I read the papers, he now has that note of her reasons. In so far as he seeks some other notes which the judge may have made, he is not entitled to those. (ii) The Claimant also seeks to challenge the ongoing refusal or failure of the Magistrates Court to

> provide the court clerk's notes of the hearing of 16 October 2019, which have been provided to the CPS, and which are cited in the AoS. I consider that he should have been provided with those notes, at the same time as they were sent to the CPS. He should be sent them now, so that all are treated equally. However, I decline to grant permission for that to be pursued to an order, because the challenges to the various decisions are out of time or hopeless, with or without them. Nonetheless, I hope that the CPS and Court Service, reading this will provide them to the Claimant so that if there is a renewed application everybody is on an equal footing, and there will be no suspicion that something favourable to the Claimant has been omitted.
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> 7. This is not a case for a protected costs order. The public interest points are not sustainable on the his own case, and in view of the delay. The provision of a financial statement is not a breach of Article 8, and arrangements can be made for the protection of private and confidential material."

28. The reference in [4] to the CPS AoS is to this passage at [10] and [11]:

> "10. Challenges 7 and 8, against Harrow Crown Court and Isleworth Crown Court in respect of refusing to extend time for appealing conviction and sentence, on 15.3.22 and 24.3.22. The Claimant's application to appeal (seemingly filed on or around 4.2.22) stated he had 'recently' been advised that an arguable defence may exist if the court officer said to have been assaulted was not acting in execution of his duty. No date was given, nor any explanation for why advice had not been sought sooner. No reasons at all were given for delay in bringing the multiple other grounds of appeal which the Claimant sought to advance, all of which could have been brought in time. The Crown Court had no jurisdiction to consider these applications given the Claimant had applied to state a case on 31 October 2019 (s.111(4) MCA 1980). In any event, even if that jurisdictional bar did not exist, the learned judges were entitled not to permit an extension of time and made no error by not doing so. Her Honour Judge Wood at Harrow gave an appropriate decision on 15.3.22, as follows:
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> > "There is no good reason for giving leave to appeal out of time. A change in the law has not been regarded as a good reason (*R v Mitchell*: 1977). If correct, the fact that the appellant may have an arguable defence of which he has only recently become aware is not, in itself, a good reason for

> extending time. There is no reason put forward for the need to extend time to appeal on the other grounds: those grounds were known and evident at the time of conviction."
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> 11. The Claimant's application for leave to appeal out of time appears also to have been separately referred to His Honour Judge Wood at Isleworth on 24.3.22. The reasons for that referral are unclear. His Honour Judge Wood endorsed "application refused" on the same date, mirroring the decision of Her Honour Judge Wood at Isleworth."

29. I have considered the papers filed by the Claimant in support of his renewed application including in particular his Form 86B of 6 March 2023 and his Skeleton Argument for Renewal Hearing raising questions about Sir Duncan's reasons.

30. I have also considered the points made orally by the Claimant at the hearing on 11 July 2023.

31. In substance, these were a repeat of the points he had made in writing and in his renewal submissions. They were, in summary: being in prison had been stressful and he had not been in a position in 2021 to challenge his conviction. It was only when *McKenzie* friends advised him that the position changed. He said that various courts had acted without jurisdiction, and there had not been an authorised prosecutor. The arrest warrant had not been lawful. There had been a breach of Article 6/natural justice. He said he had surrendered on the day of his trial. The proceedings had all been *ultra vires* and a nullity. There had been various errors of law and things had been done by unknown officials. Prejudicial material had been put before HHJ Wood in March 2022, which he only discovered later that year.

32. I specifically invited the Claimant to identify any arguable error in Sir Duncan's reasons, but apart from a general assertion that he had not considered matters properly (a suggestion I reject), and the points I have set out, he was not able to do so in any way that I found persuasive or which cast any arguable doubt on Sir Duncan's detailed reasons.

33. I therefore refuse this renewed application for the reasons given by Sir Duncan Ouseley, which I agree with and adopt and cannot improve upon (subject to the one or two minor and immaterial corrections I noted). These proceedings were commenced far too late and they lack merit. I do appreciate that the Claimant feels strongly, but for the reasons I have set out, this is not a case where permission can properly be granted.

34. The Claimant's other applications are also refused. So far as the complaint about prejudicial material before HHJ Wood is concerned in relation to the 24 March 2022 decision, and the application to amend the grounds to add it, there is nothing in it. Judges are well able to put irrelevant material out of their

minds and I have no doubt that HHJ Wood did so. There is no point adding Uxbridge Youth Court as a party given the refusal of permission.