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IN THE HIGH COURT OF JUSTICE
DIVISIONAL COURT
[2023] EWHC 2372 (Admin)



No. CO/2896/2023

Royal Courts of Justice

Thursday, 10 August 2023

Before:

LADY JUSTICE ANDREWS
MRS JUSTICE FARBEY

B E T W E E N :

THE KING
on the application of
ONASIS MENSAH

Claimant

- and -

CROWN COURT AT MANCHESTER

Defendant

- and -

DIRECTOR OF PUBLIC PROSECUTIONS

Interested Party

THE CLAIMANT did not appear and was not represented.

THE DEFENDANT did not appear and was not represented.

MR D BRAMHALL appeared for the Interested Party.

J U D G M E N T

MRS JUSTICE FARBEY:

Introduction

- 1 This is the judgment of the court. The claimant is remanded in custody at HMP Forest Bank pending trial in the Crown Court at Manchester on two charges of being concerned in the supply of Class A drugs (crack cocaine and heroin respectively) contrary to section 4(1) of the Misuse of Drugs Act 1971. By a claim form sent to the court on 4 August 2023, he applies for judicial review of the decision of HHJ Corbett-Jones made at the Crown Court on 18 July 2023 to extend the custody time limit (“CTL”) from 18 July 2023 to 16 August 2023. By order of a Deputy High Court Judge of 4 August 2023, permission to apply for judicial review was granted. The Deputy Judge set an urgent timetable for the hearing of the claim.
- 2 The claimant’s solicitors were given the impression by the Legal Aid Agency that the criminal legal aid available for the Crown Court proceedings extended to this claim. That is not correct, as the solicitors ought to have known. Owing to lack of funding, the claimant does not appear today. The court invited the solicitors yesterday to indicate whether they wished to ask for an adjournment or for the claim to proceed in the claimant’s absence on the basis of the papers already sent to the court. They have chosen the latter course. Not least, any adjournment would in all likelihood render the claim academic as the claimant’s short trial would have ended by the time that legal aid were granted and the claim relisted before the Divisional Court.
- 3 We have therefore proceeded to hear the claim today. We have a skeleton argument from counsel for the claimant, Ms Helen Longworth, for which we are grateful. We have been supplied with a bundle of documents by the interested party. We are grateful to Mr Daniel Bramhall, who appears for the interested party, for the fair and careful way in which he has put his submissions in the absence of Ms Longworth.

Statutory framework

- 4 By virtue of section 22(1) and (2) of the Prosecution of Offences Act 1985, the Secretary of State may by regulations set time limits in relation to the remand in custody of a defendant before trial. Section 22(3) of the Act provides:

“The appropriate court may, at any time before the expiry of a time limit imposed by the regulations, extend, or further extend, that limit; but the court shall not do so unless it is satisfied:

- (a) that the need for the extension is due to—
 - (i) the illness or absence of the accused, a necessary witness, a judge or a magistrate;
 - (ii) a postponement which is occasioned by the ordering by the court of separate trials in the case of two or more accused or two or more offences; or
 - (iii) some other good and sufficient cause; and

(b) that the prosecution has acted with all due diligence and expedition.”

5 It is common ground that the key question in the present case is whether the Judge was entitled to conclude that there was “some good and sufficient cause” for an extension.

The facts

6 There is no dispute as to the facts. On 17 January 2023, the claimant appeared at Tameside Magistrates' Court and indicated not guilty pleas to the charges we have set out above. The case was sent to the Crown Court for trial. The claimant was remanded in custody. On 21 February 2023, there was a plea and trial preparation hearing at which the trial date was set for 17 July 2023 within the CTL. At a hearing on 7 March 2023, it was confirmed that the estimated length of the trial would be four days. At a further hearing on 11 July 2023, the claimant indicated that he would object to any extension to the CTL should the Crown not be ready for trial. At a hearing on 13 July 2023, both parties confirmed that they were ready for trial but that there were a number of legal matters to raise before the trial judge before a jury could be sworn.

7 On 17 July 2023, the case was listed for trial in the Crown Court at Manchester (Minshull Street) before Mr Recorder Blakey to start not before 2.15 p.m. with no witnesses warned for that day. There was another trial before the Recorder that was in its final stages, with speeches by counsel and summing-up beginning shortly before the lunchtime adjournment. Also in the Recorder’s list was a ten-day trial with a higher listing priority, owing both to its complexity and to previous CTL extensions. That trial took priority and began once the jury in the morning trial had begun their deliberations.

8 The claimant’s case was mentioned before the Recorder during the course of the afternoon. He said that his court could not accommodate it and that the trial would be re-allocated. The Listing Office then told the parties that there were four trials of higher priority to fix the following day and that the claimant’s case would be listed for an application to extend the CTL.

9 On 18 July 2023, before Judge Corbett-Jones, the prosecution applied to extend the CTL. The defence objected on the grounds that a lack of court resources to hear a routine case, capable of being heard by either a Judge or a Recorder, effectively removed the protection underlying the statutory purpose of CTLs. It was submitted that there was nothing about the claimant’s case to require an extension. There was no good and sufficient cause for an extension to be granted. The defence objected to the contention that the prosecution had acted with all due diligence and expedition but this aspect of the submissions below is not pursued before us.

10 In allowing the prosecution application and extending the CTL, the Judge held (among other things):

“Regrettably due to a number of other priority trials taking precedence in the court’s list, particularly in the courtroom to which this case had been allocated, it was regrettably necessary to vacate the trial from the list yesterday afternoon and the matter was adjourned to today to be re-fixed and for an application in relation to custody time limits which are due to expire today, 18th July ...

I do bear in mind the guidance afforded by [the relevant case law] but as in each of those authorities it is made clear the reality is that each case where the court has to consider this difficult issue has to be looked at on its own unique facts and looking at the prevailing situation for the court at that given time ...

I am satisfied that the cause of the adjournment in this case goes beyond any lack of what might be regarded as normal adequacy of resources. The current situation is such that any amount of resources which might realistically be expected in times when the court has an increased flux in the volume of work could not meet the exceptional circumstances which presently exist ...

There is, as is well known, currently recruitment for a proportionately large number of Circuit Judges and court staff with the intention that within months there should within this court alone be the ability to run considerably larger numbers of trial courts. From the information that has been provided to me for this particular case, accommodation was sought at Crown Square, Bolton, Liverpool, Chester and none of the courts were able to accommodate the trial. This court, as I have already indicated, had four priority trials to accommodate on the same day which are more aged than this case and involve a greater degree of vulnerability so far as the parties and witnesses are concerned.”

- 11 Having weighed the competing factors, the Judge concluded that the statutory test for an extension was met and he further considered that bail should not be granted. The CTL was therefore extended. The trial was listed for hearing on 14 August 2023 which is next week.

The parties' submissions

- 12 On behalf of the claimant, Ms Longworth submits in writing that the Judge's decision undermined the statutory protection afforded by section 22 of the Act. If Parliament had intended that CTLs could be extended in routine cases, such as the claimant's case, it would have amended the regulations. The Judge had failed to base his decision on the facts of the case and had relied only on the general circumstances that prevailed in listing cases in Manchester.
- 13 Ms Longworth submits that the only reason for the extension was the lack of available court time. The inability to find a courtroom was not on its own a sufficient cause when it was the only reason for the extension. She submits that, despite the current number of trials awaiting to be heard, there is no exceptional factor in the claimant's case that may provide a sufficient cause to extend the CTL.
- 14 On behalf of the interested party, Mr Bramhall submits that the lack of a courtroom was a good and sufficient cause for an extension of the CTL in this particular case. It is routine that cases are listed in court centres that have upon them a great deal of pressure, as a result of the volume of cases being heard, which will vary in their priority in light of the nature and complexity of the offences to be tried. Mr Bramhall submits that the Judge considered the correct statutory test in light of the relevant case law. The Judge referred in his ruling to relevant considerations. He emphasised that efforts had been made to accommodate the trial elsewhere. He reached a decision that was open to him and had made no reviewable error of law or approach.

Discussion

- 15 In *R (Director of Public Prosecutions) v Crown Court at Bristol* [2022] EWHC 2415 (Admin), [2023] 1 WLR 547, this court reviewed the case law on the principles that should govern decisions as to whether to extend CTLs. We cannot improve on that review (which we have considered) and no purpose would be served by the extensive citation of case law in the present case. It suffices to note a number of salient features of the authorities reviewed in the *Bristol* case.
- 16 Ms Longworth relies on the principles set out in *R v Manchester Crown Court Ex Parte McDonald* [1999] 1 WLR 841 which were quoted in the *Bristol* case as follows:

“30. In *R v Manchester Crown Court Ex Parte McDonald* [1999] 1 WLR 841, Lord Bingham of Cornhill CJ (with whom Collins J agreed) approved statements in earlier authorities to the effect that neither the seriousness of the offence nor the shortness of the extension sought could be a good and sufficient cause for an extension. At p.846, Lord Bingham CJ identified three overriding purposes of the custody time limit regime, to which any judge considering an application to extend under section 22(3) must give full weight:

‘(1) to ensure that the periods for which unconvicted defendants are held in custody awaiting trial are as short as reasonably and practically possible; (2) to oblige the prosecution to prepare cases for trial with all due diligence and expedition; and (3) to invest the court with a power and duty to control any extension of the maximum period under the regulations for which any person may be held in custody awaiting trial’.

31. At pp 847-8 Lord Bingham CJ said this:

‘While it is possible to rule that some matters, such as those we have just mentioned, are incapable in law of amounting to good and sufficient cause for granting an extension, there is an almost infinite variety of matters which may, depending on the facts of a particular case, be capable of amounting to good and sufficient cause. It is neither possible nor desirable to attempt to define what may or may not amount to good and sufficient cause in any given case, and it would be facile to propose any test which would be applicable in all cases. All must depend on the judgment of the court called upon to make a decision, which will be made on the peculiar facts and circumstances of the case in question, always having regard to the overriding purposes to which we have made reference above.

‘The courts have held, although reluctantly, that the unavailability of a suitable judge or a suitable courtroom within the maximum period specified in the regulations may, in special cases and on appropriate facts, amount to good and

sufficient cause for granting an extension of a custody time limit ...”

- 17 The court in the *Bristol* case went on to consider the judgment of Lord Woolf CJ in *R (Gibson) v Crown Court at Winchester* [2004] EWHC 361 (Admin), [2004] 1 WLR 1623 where he held at para 29 that applications to extend time limits occasioned by judicial unavailability could in principle be granted and that:

“The courts cannot ignore the fact that available resources are limited. They cannot ignore the fact that occasions will occur when pressures on the court will be more intense than they usually are. In such a situation it is important that the courts and the parties strive to overcome any difficulties that occur. If they do not do so, that may debar the court from extending custody time limits.”

- 18 In *R (Director of Public Prosecutions) v Crown Court at Woolwich* [2020] EWHC 3243 (Admin), [2021] 1 WLR 938, Lord Burnett of Maldon CJ and Holroyde LJ considered a challenge to the refusal to extend CTLs in the context of adjournments caused by the conditions of the Covid-19 pandemic. At para 44 of the judgment, the court held that factors which may come into play include:

“(a) the likely duration of the delay before trial; (b) whether there has been any previous extension of the CTL; (c) the age and antecedents of the defendant; (d) the likely sentence in the event of conviction; a defendant should rarely be kept in custody if he had served, or come close to serving, the likely sentence were he convicted; (e) the underlying reasons why bail was refused; (f) any particular vulnerabilities of the defendant which make remand in custody particularly difficult.”

- 19 It is plain from the authorities that the question of whether to extend a CTL is fact sensitive and will depend on all the circumstances. The Judge in this case was well aware of the complexity, length and priority of the case. He took steps to ensure that an adjourned trial could commence as soon as possible and in any event within a few weeks. Applying the factors set out in the *Woolwich* case, he took into consideration that there had not been a previous extension of a CTL. He noted that the claimant is 37 years old and has nine previous convictions, albeit none of his convictions relate to drugs. He took into account that, if convicted, the claimant would inevitably face a custodial sentence. No particular vulnerabilities of the claimant were drawn to his attention. His approach was in our judgment unimpeachable.
- 20 It is inaccurate to contend that the Judge decided to extend the CTL solely on the basis that there was no capacity for the trial to start. While the lack of capacity was the driving factor, the Judge took into consideration all relevant factors as he was bound to do. He was entitled to weigh the relevant factors in the balance and to reach the conclusion that there was good and sufficient cause for an extension. He took a decision within his statutory discretion and so (contrary to Ms Longworth’s submissions) cannot properly be regarded as subverting the will of Parliament. He was well placed to take the decision as a Circuit Judge involved with the work of the court on a daily basis. There is no reason for this court to interfere.
- 21 It is not our function to retake the decision but to exercise a supervisory jurisdiction limited to public law error. Despite Ms Longworth’s helpful written submissions, we are not

persuaded that the grounds of challenge raise any such error or that the Judge made any reviewable error of law.

22 For these reasons, this claim is dismissed.

Postscript

23 Finally, we note that the Deputy Judge did not have the benefit of an acknowledgement of service or summary grounds of resistance from the interested party when considering whether to grant permission to apply for judicial review, which she determined on the papers. It seems to us that the claimant ought, in seeking urgent consideration, to have conceded some abridged time for the interested party to lodge an acknowledgement of service and summary grounds. The Form 463 seeking urgent consideration simply left blank the boxes relating to abridgement of time for the acknowledgement of service.

24 The input of other parties at the permission stage is orthodox even in urgent cases concerning liberty. In this case it may have prevented a number of wrong turnings which have caused the Divisional Court to sit at very short notice and the interested party to undertake work, such as producing a bundle, which the court can reasonably expect from a claimant's lawyers.

CERTIFICATE

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This transcript has been approved by the Judge.