



Neutral Citation Number: [2022] EWCA Crim 736

Case No: 202104056 B5

IN THE COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM THE CENTRAL CRIMINAL COURT
His Honour Judge Pounder
T20210285

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 27 May 2022

Before:

THE LORD BURNETT OF MALDON,
LORD CHIEF JUSTICE OF ENGLAND AND WALES
DAME VICTORIA SHARP,
PRESIDENT OF THE QUEEN'S BENCH DIVISION
LORD JUSTICE FULFORD,
VICE PRESIDENT OF THE COURT OF APPEAL CRIMINAL DIVISION
MR JUSTICE SWIFT
SIR NIGEL DAVIS

Between:

Regina	<u>Respondent</u>
- and -	
NICHOLAS AZAM LALCHAN	<u>Appellant</u>

Peter Wilcock QC and Kerry Moore (instructed by **Primrose White Solicitors**) for the
Appellant
Tom Little QC (instructed by **The Crown Prosecution Service**) for the **Respondent**

Hearing dates: 6 April 2022

Approved Judgment

This judgment was handed down remotely by circulation to the parties' representatives by email and release to The National Archives. The date and time for hand-down is deemed to be 10:00am on 27 May 2022.

Lord Burnett of Maldon CJ:

Introduction

1. The issue in this appeal is whether a conviction for an offence which requires the consent of the Attorney General before the proceedings are instituted can stand when no such consent was obtained.
2. Section 27(1) of the Public Order Act 1986 (“the 1986 Act”) provides:

“No proceedings for an offence under this Part may be instituted in England and Wales except by or with the consent of the Attorney General.”

On 22 September 2021, following a trial at the Central Criminal Court, the applicant was convicted of an offence contrary to section 18(1) of the 1986 Act which is in that Part of the 1986 Act. The consent of the Attorney General to the institution of proceedings for that offence had not been obtained. The error was only first noted after conviction but before the applicant was due to be sentenced in January 2022. Consent (or purported consent) on behalf of the Attorney General was given on 29 November 2021. The applicant’s case is that his conviction must be quashed. The respondent, on the other hand, disputes that that is the proper outcome.

3. The application for leave to appeal against conviction has been referred to this court by the Registrar. There is also an application for an extension of time. There is a proper explanation for the delay in lodging the application for leave to appeal. We grant the extension of time sought and we grant leave to appeal.
4. Before this court, the appellant was represented by Mr Peter Wilcock QC, who had not appeared below, and Mr Kerry Moore. The Crown was represented by Mr Tom Little QC, who had not appeared below. We are grateful to counsel for their excellent arguments, both written and oral.

Background

5. The appellant is a man now aged 49. In the first part of 2019 several anti-Semitic and homophobic graffiti were written in permanent marker pen at various bus stops in the London Borough of Barnet. In due course the appellant was identified as the alleged perpetrator. When arrested, he was found to be in possession of leaflets containing writings similar to the graffiti and also of several black marker pens. His USB stick, when examined, contained further such writings. He made no comment in interview.
6. The case was sent to the Crown Court on 21 July 2020. At that stage, the appellant was facing 18 charges of religiously aggravated criminal damage and one charge of having articles with intent to commit criminal damage. On 18 May 2021, an amended indictment, containing five counts, was uploaded to the Digital Case System; and, without objection, on 23 July 2021 the indictment was formally amended by permission of the court. In its final form, the indictment contained two counts of religiously and racially aggravated damage to or destruction of property, contrary to section 30(1) of the Crime and Disorder Act 1998 (counts 1 and 2); counts of destroying property, contrary to section 1(1) of the Criminal Damage Act 1971 and of

having articles with intent to destroy or damage property, contrary to section 3 of the Criminal Damage Act 1971 (counts 3 and 4); and a count of stirring up racial hatred, contrary to section 18(1) of the 1986 Act (count 5). This appeal is concerned only with count 5. The appellant pleaded guilty to counts 3 and 4 but there was a trial on counts 1, 2 and 5.

7. At trial, the appellant did not dispute that he was the author of the graffiti. He gave evidence. His case was that he was not motivated by hostility towards any particular group and that he had not intended to stir up any racial hatred. He said that he was trying to inform people of the “new world order”; that his view was that the Jewish Talmud contained hate speech about those who were not Jewish; and that, in effect, he held various conspiracy theories, including about unidentified flying objects, the Pope, vaccines and the Queen. He had wanted his researches and viewpoints to be made known and available to others.
8. Following a summing up by the trial judge, His Honour Judge Pounder, on 22 September 2021 (of which no criticism can be or is made) the jury convicted the appellant on count 2 (by a majority) and on count 5 (unanimously). They were unable to reach a verdict on count 1 and were discharged by the judge from giving a verdict on that count. Sentence was adjourned with a view to reports being obtained.
9. By letter dated 29 November 2021 the Crown Prosecution Service notified the appellant’s lawyers that the consent of the Attorney General to count 5 had not previously been obtained. The letter also included a written notice dated 29 November 2021 signed by the Solicitor General stating:

“I hereby consent to the prosecution of [the appellant] for an offence contrary to the Public Order Act 1986.”

(Any function of the Attorney General may be exercised by the Solicitor General, we note.)

10. An application to set aside the proceedings relating to count 5 was issued on behalf of the appellant in the Crown Court on 8 December 2021. Thereafter it was appreciated that, since there was a conviction on count 5 on the record, any redress would need to be sought by way of appeal. In the meantime, sentencing stands adjourned.

The Statutory Provisions

11. As set out above, section 27(1) of the 1986 Act provides:

“No proceedings for an offence under this Part may be instituted in England and Wales except by or with the consent of the Attorney General.”
12. That provision appears in Part III of the 1986 Act which relates to offences of racial hatred and comprises sections 17 to 29. Count 5, it will be recalled, involved an offence under section 18(1)
13. The notion of consent being required to be given by the Attorney General or another person prior to the institution of criminal proceedings is neither unique to the 1986 Act, nor new. The Law Commission considered the matter in its 1998 report

“Consents to Prosecution”. It noted that statutory requirements for the Attorney General’s consent for prosecutions dated back to the 19th century. As at the date of the report the Commission listed extant provisions across 67 statutes.

14. In the context of offences concerning distribution of writings involving likelihood of incitement to racial hatred (and so directly analogous to the present case) it had previously been provided, among other things, by section 5A of the Public Order Act 1936, as amended – itself superseded by the provisions of the 1986 Act – that:

“... no prosecution for such offence shall be instituted in England or Wales except by or with the consent of the Attorney General.”

15. The position is addressed generally by the provisions of the Prosecution of Offences Act 1985. Section 25 of that Act provides as follows:

“25 Consents to prosecutions etc.

(1) This section applies to any enactment which prohibits the institution or carrying on of proceedings for any offence except

–

(a) with the consent (however expressed) of a Law Officer of the Crown or the Director; or

(b) where the proceedings are instituted or carried on by or on behalf of the Law Officer of the Crown or the Director;

and so applies whether or not there are other exceptions to the prohibition (and in particular whether or not the consent is an alternative to the consent of any other authority or person).

(2) An enactment to which this section applies –

(a) shall not prevent the arrest without warrant, or the issue or execution of a warrant for the arrest, of a person for any offence, or the remand in custody or on bail of a person charged with any offence; and

(b) shall be subject to any enactment concerning the apprehension or detention of children or young persons.”

Submissions

16. It was common ground before us, and rightly so, that in assessing the consequences of a failure to obtain the consent of the Attorney General before the proceedings were instituted the ultimate task is to ascertain the Parliamentary intention that lies behind section 27(1) of the 1986 Act. That is the central issue here for determination.

17. On behalf of the appellant, it was submitted:

(1) The language of the statutory provisions is clear and expressed in imperative terms.

(2) Settled case law points to the conclusion that where consent has not been obtained before the proceedings are instituted, any subsequent conviction will be quashed: see the judgment in *Angel* (1968) 52 Cr. App. R 280 on a comparably framed provision at section 8 of the Sexual Offences Act 1967, and the judgment in *Pearce* (1981) 72 Cr. App. R 295 on the effect of section 5A of the Public Order Act 1936.

(3) Parliament is to be taken, by the provisions of section 27 of the 1986 Act, designedly to have replicated and confirmed the outcome established to flow from a failure to obtain prior consent under section 5A of the Public Order Act 1936.

(4) It is wrong to treat the requirement for obtaining the prior consent of the Attorney General as either unimportant or a species of procedural technicality.

(5) If failure to obtain consent before proceedings are instituted does not invalidate the proceedings and any resultant conviction (as was the Crown's case) the statutory requirement is effectively rendered void of meaningful content.

18. On behalf of the Crown, it was submitted:

(1) On a proper interpretation of the statutory provisions, the requirement to obtain the consent of the Attorney General prior to the institution of proceedings is not a jurisdictional condition precedent to the validity of those proceedings.

(2) The failure to obtain such consent before count 5 was added to the indictment in the present case was a procedural failure and not a jurisdictional failure.

(3) The trend of modern authority is to treat a procedural failure of this kind as not entirely invalidating the proceedings or any resultant conviction; and the focus nowadays should be on the fairness of the trial and on fairness to a defendant, rather than on technical applications of the concepts of nullity and the like.

(4) The public interest is satisfied where consent to the proceedings is given by the Attorney General at any stage.

Relevant Caselaw

19. In the case of *Angel* the issue was whether the failure to obtain the prior consent of the Director of Public Prosecutions as required by section 8 of the Sexual Offences Act 1967 (set out above) meant that the conviction had to be quashed. That section provided as follows

“No proceedings shall be instituted except by or with the consent of the Director of Public Prosecutions against any man for the offence of buggery with, or gross indecency with, another man... where either of those men was at the time of its commission under the age of twenty-one...”

20. The Court of Appeal (Criminal Division) quashed the conviction. In a judgment which can be regarded as a paradigm of judicial succinctness, Lord Parker LCJ,

giving the judgment of the Court, stated that the statutory provisions were “mandatory” and that the whole of the trial had been a “complete nullity”. Similarly, in *Pearce* (1981) 72 Cr. App. R 295 consent of the Attorney General to a particular count of conspiracy for the purposes of section 5A of the Public Order Act 1936 (set out above) had not been obtained. It was held by the court that consent to a charge of conspiracy to incite racial hatred (although consent had been given in that case to proceedings for the substantive offence) had been a “necessary authority” and that failure to obtain such consent meant that the conviction on the conspiracy charge had to be quashed. Mr Wilcock placed reliance on these authorities.

21. A further illustration of what may be called a strict approach where a procedural requirement has not been met can be found in the case of *Clarke and McDaid* [2008] UKHL 8, (2008) 2 Cr. App. R 2. That was not, we note, a case involving a failure to obtain consent to proceedings. Rather, it was a case where the indictment had not been signed by the proper officer of the court as required by sections 1 and 2 of the Administration of Justice Act 1933. The statutory context was very different from the present. The House of Lords, allowing an appeal from the Court of Appeal, held, after a full review of the authorities, that the Parliamentary intention had been that if there was no signed indictment there could be no valid trial on indictment: see in particular paragraphs 18 and 19 of the opinion of Lord Bingham. We add that Parliament swiftly changed its mind by amending legislation: see section 116 of the Coroners and Justice Act 2009.
22. On the other hand, Mr Little sought to rely on a broader approach taken by the courts in cases where what may be styled as a procedural requirement had not been met. Thus in *Sekhon* [2002] EWCA Crim 2954, [2003] 1 Cr. App. R 34 and *Soneji* [2005] UKHL 49, [2006] 2 Cr. App. R 20 there was a failure to comply with the statutorily imposed time-table relating to confiscation proceedings under the Proceeds of Crime legislation then in force. In each case, the court deprecated use of the terms, “directory” and “mandatory”. Instead, the essential exercise was to ascertain the Parliamentary intention in the event of non-compliance with procedural requirements. In the particular statutory context, it was held that it would not have been the Parliamentary intention to exclude the jurisdiction of the court in relation to the making of confiscation orders “because of procedural defects of a technical nature that caused no injustice to the defendant” (at paragraph 28, per Lord Woolf LCJ, giving the judgment of the court in *Sekhon*). A corresponding approach was taken by the House of Lords in *Soneji*. The statutory confiscation context required a purposive interpretation, and an objective approach to the underlying intent of Parliament pointed against total invalidity of the confiscation orders (per Lord Steyn, at paragraphs 24 and 25 of his opinion).
23. Mr Little further referred to the decision of David Richards J in the (civil) case of *Governor and Company of the Bank of Ireland & another v Colliers International UK plc* [2012] EWHC 2942 (Ch), [2013] Ch 422. In the context of the provisions of the Insolvency Act 1986, it was there held that the failure by the claimant creditors, contrary to the statutory provisions, to obtain the consent of either administrators or court before commencement of proceedings against a company in administration did not invalidate the proceedings. Mr Little submitted that the decision in that case, and other such cases, exemplified the more modern approach, requiring a focus not on the technical law relating to nullity but on the fairness of the trial, on fairness to a

defendant and on the safety of the conviction in a criminal case: see also, for example, *Ashton* [2006] EWCA Crim 794, [2006] 2 Cr. App. R 15 at paragraph 4 of the judgment of Fulford J and *Williams (Malachi)* [2017] EWCA Crim 281, [2017] 2 Cr. App. R7 at paragraph 33 of the judgment of Lord Thomas of Cwmgiedd LCJ.

24. We were also referred to authorities on the question of when proceedings are “instituted” for the purposes of statutory provisions of this nature. No such problem arises in the present case. But Mr Wilcock was at least enabled to submit that the underlying premise of such cases was that if the proceedings in question had indeed been instituted without prior consent of a third party as required by statute, then the proceedings were thereby invalidated: see, for example, *Lambert* [2009] EWCA Crim 700, [2009] 2 Cr. App. R 32 and *Welsh* [2015] EWCA Crim 1516, [2016] 1 Cr. App. R 9.
25. Various recent authorities in fact indicate that it is best to avoid use of the word “nullity” for these purposes. Indeed, as pointed out in *Stromberg* [2018] EWCA Crim 561, [2018] 2 Cr. App. R 5, a criminal conviction and sentence cannot be regarded as truly a “nullity”, since such conviction and sentence stand unless and until they have been quashed by the court (see paragraph 35 of my judgment which also reaffirms the principle that the consequences of a failure to follow a procedural requirement are to be ascertained by reference to the presumed Parliamentary intention).
26. Finally, for the purposes of this relatively brief review of some of the authorities, we would refer to the decision of the House of Lords in *Seal v Chief Constable of South Wales Police* [2007] UKHL 31 [2007] 1 WLR 1910. In that case the statute concerned was the Mental Health Act 1983. Section 139(2) of that Act provided, among other things, that civil proceedings under the legislation should not be brought without leave of the High Court. It was held, by a majority in the House of Lords, that failure to obtain such leave had invalidated the civil proceedings. The legislative scheme and history showed that leave was designed to be a precondition of any effective proceedings. In giving his opinion Lord Bingham stated at paragraph 7:

“The important question is whether, in requiring a particular consideration to be satisfied before proceedings are brought, Parliament intended to confer a substantial protection on the putative defendant such as to invalidate the proceedings brought without meeting the condition, or to impose a procedural requirement giving rights to the defendant if a claimant should fail to comply with the requirement, but not nullifying the proceedings...”
27. Ultimately, analysis of the various cases simply confirms that the assessment of the underlying Parliamentary intention in the event of non-compliance with what may be called a procedural requirement will depend on the statutory provisions and the particular statutory context involved.

Other Materials

28. For completeness we refer to other materials which were drawn to our attention.

29. The Crown Prosecution Service Guidance to Prosecutors on Consents to Prosecute (2018) states that where consent from the Attorney General or Director of Public Prosecutions is required such consent “must” be obtained before the institution of proceedings. It further states that if consent is not obtained the court will be acting without jurisdiction and, if convicted, defendants will ordinarily be entitled to have their conviction set aside on appeal (*Angel* and *Pearce* being cited for this purpose). We agree with Mr Little that those statements cannot be determinative of the outcome for this present appeal. They are not an aid to construction. He argues that the Guidance in this respect discloses a wrong understanding of the law. But at least the existence and terms of that Guidance show how unsatisfactory it was in the present case that count 5 was added to the indictment on amendment without the prosecution appreciating the need for the consent of the Attorney General. That was a serious oversight which was not identified by anyone until after the trial.
30. We were also referred to the Report of the Law Commission on Consents to Prosecution, published in 1998. That contains a valuable discussion of the entire regime relating to consents to prosecution (including the position regarding private prosecutions). In a section of the report dealing with the justifications for the statutory requirement of consent by a Law Officer, it is suggested that, broadly, such consent is required when issues of public policy, national security or relations with other countries are involved. Offences under Part III of the 1986 Act naturally fall under the head of public policy, not least given that such prospective offences will ordinarily involve a balancing consideration between the protection of the public (often minority groups) from insult and discrimination on the one hand and the broad right to freedom of expression on the other hand; and thus stand to affect the life of the community as a whole.
31. During its treatment generally of the practical operation of the consent requirements, the Law Commission had referred to aspects of the evidence of the then Attorney General, Sir Donald Somervell QC, given in 1939 before a Select Committee considering the operation of the Official Secrets Act 1911. Sir Donald had among other things said in his evidence:

“Where Parliament provides that the fiat of the Attorney-General or the Lord Advocate is a condition precedent to a prosecution taking place, it is not their business to get a prosecution. It is their business to exercise their discretion to the best of their ability, it being clear from the fact of their consent being necessary that this is a case where Parliament thinks it particularly important that a discretion should be exercised and that prosecutions should not automatically go forward merely because the evidence appears to afford technical proof of an offence.”

As also noted by the Law Commission, at paragraph 3.19 of the report, the consent decisions of the Law Officers are founded on the two-part test of evidential sufficiency and public interest. The Law Commission took the view that if proceedings were instituted without such consent the subsequent trial was a “nullity”.

32. The Law Commission specifically recommended that the consent provisions of section 27 of the 1986 Act should be retained, in light of concern that a particular

prosecution may be said to violate a defendant's rights under the European Convention on Human Rights: see paragraph 6.62 of the Report.

Discussion and Disposal

33. We have reached the clear conclusion that the appellant's arguments are well-founded and that his conviction on count 5 cannot be regarded as safe.
34. The first consideration is that as a matter of ordinary language, section 27(1) is drafted in imperative terms, requiring compliance. Further, the prohibition is expressly geared to "institution" of proceedings. It is true that the subsection does not explicitly spell out the consequences of failure to obtain consent before proceedings are instituted. But the natural implication, from the language used, is that the proceedings are to be regarded as invalidated if consent is not obtained before the proceedings are instituted. Moreover, such an interpretation achieves a desirable certainty and uniformity of outcome.
35. This interpretation, in our judgment, is strongly supported by the wording of section 25 of the Prosecution of Offences Act 1985. For that section, by subsection (2), explicitly validates the arrest or remand of a person for any offence even where consent to the institution of proceedings has not been obtained. It is an obvious corollary that all other steps were *not* intended to be validated. Put another way, it is hard to see why the inclusion of section 25(2) was considered necessary if the proceedings are, as Mr Little argues, valid anyway.
36. Mr Wilcock also placed reliance on the principle of statutory interpretation outlined in the House of Lords decision in *Barras v Aberdeen Steam Trawling and Fishing Co. Limited* (1933) AC 402. He submitted that where Parliament had legislated in 1986 using language directly comparable to the language which had been the subject of the Court of Appeal decision in *Pearce*, by reference to section 5A of the Public Order Act 1936 (as amended), Parliament is to be presumed (even if rebuttably so) to have intended that the language of section 27(1) of the 1986 Act was to have a meaning and effect comparable to that found in that decision in *Pearce* (and consistently also with the decision in *Angel*). While we acknowledge the potential limitations on the deployment of the *Barras* principle, so called, as outlined in cases such as *Farrell v Alexander* [1977] AC 59 (see the speech of Lord Simon at pages 90E – 91C), we accept that this point lends some further force to the appellant's arguments.
37. Next, the legal authorities also point to precisely the same conclusion. The decisions in *Angel* and in *Pearce*, even if not concerned directly with section 27(1) of the 1986 Act, are clearly in point and support the appellant's arguments: as do authorities such as *Lambert and Welsh* (cited above).
38. Further, any assessment by reference to the principles stated in *Sekhon* and *Soneji* – the search for whether the purpose of section 27(1) of the 1986 Act was that a prosecution commenced without consent should be invalid – also requires the same conclusion.
39. In his written argument Mr Little sought to categorise the failure in this case as a procedural failure, not a jurisdictional failure, and "accordingly" that the proceedings on count 5 were not a nullity. But to label a failure as "procedural" tells one nothing

about the consequences of failure to follow the procedure, the search for the statutory intention explained in *Soneji*. There is no general assumption that a failure to comply with procedural requirements can be categorised as a “mere technicality”. There are many failures in many statutory contexts which can be described as “procedural” but which can nevertheless be fatal to the institution or carrying on of proceedings. Nor do we think it is correct to say that there is any “modern approach” that means that the only matter that ought ever to concern a court is the fairness of the proceedings or the presence or lack of prejudice to a defendant. This was not the point being made either in *Williams* or in *Stromberg*. As so often, context is all. The question thus reverts to what the Parliamentary intention is to be taken as having been in the event of non-compliance, having regard to the language, purpose and (where applicable) history of the legislative provisions in question. Consideration of the fairness of proceedings or prejudice to the defendant will only arise if, on construction of the statutory provision in hand, the conclusion reached is that the purpose was not that an act done in breach of the statutory requirement should be invalid.

40. In the present case, both the language of the section and the statutory context and purpose tell strongly against dismissing the requirement of section 27(1) of the 1986 Act as in effect, a mere technicality. The requirement is not even “internal” to the validity of the Crown Court proceedings (as, for example, in *Clarke and McDaid*). Here the requirement is for the consent of the Attorney General, who is to be taken to be the guardian of the public interest. There are cogent reasons why the prior consent of a Law Officer was intended to be a condition precedent (the language used by Sir Donald Somervell: see paragraph 33 above) for proceedings to be valid. Those reasons, as a justification for the need for prior consent, were conveniently summarised in the 1998 Report of the Law Commission. Indeed, it can properly be inferred from the language of section 27(1) of the 1986 Act that one part of the Parliamentary intention was not simply to protect a putative defendant from undesirable *conviction*, it was to protect a putative defendant from undesirable *prosecution*. Accordingly, the ordinary meaning and implication of the provisions of section 27(1) of the 1986 Act are supported by purposive considerations.
41. A further difficulty in the argument on behalf of the respondent is this. It was accepted on behalf of the respondent that the consent of the Attorney General was needed at some stage. But at what stage? In the course of oral argument, it was at one time suggested by Mr Little that consent could be given at any stage before the Crown Court was functus. That seems entirely arbitrary (indeed the Crown Court in the present case would have been functus as to conviction once the jury had delivered their verdicts and been discharged). When this was put to Mr Little in argument, he reverted to saying that consent could be obtained at any stage, including after conviction and sentence. But that is flatly contrary to the actual language of section 27(1) of the 1986 Act, which is expressly geared to the time when the proceedings are “instituted”. Moreover, as Mr Wilcock submitted, the approach advanced by the respondent in effect renders the ostensible requirement of obtaining the consent of the Attorney General before proceedings are instituted devoid of any meaningful content or purpose. We agree. The respondent’s arguments in truth involve not merely an unacceptable diminution of the Attorney General’s role in this context, but *de facto* removal of that role. The requirement that consent be obtained before proceedings are instituted reveals that it was the purpose of the provision that proceedings commenced

without consent should be invalid. No other conclusion is consistent with the statute, as enacted.

Conclusion

42. We therefore have this position. The natural and ordinary meaning of the statutory language, set in context, strongly supports the appellant's case. Purposive considerations strongly support the appellant's case. The weight of previous legal authorities strongly supports the appellant's case. Since all the arrows point in the same direction that is the direction we propose to follow. Accordingly, since the consent of the Attorney General was not obtained before the proceedings (in the form of count 5) were instituted those proceedings were invalid. It follows that the conviction on count 5 was itself invalid. The conviction on that count therefore must be adjudged unsafe and be set aside. The appeal is therefore allowed.

Venire de Novo

43. In the event of the court reaching that conclusion, the Crown applied for the issue of a writ of venire de novo on the ground that no valid trial on count 5 took place. That would enable a fresh trial to take place. Mr Wilcock realistically did not seek to oppose that. He did, however, draw our attention to the observations of Edis J in *Gordon Smith* [2015] EWCA Crim 1663, giving the judgment of the court, at paragraph 12; and Mr Wilcock raised a possible query as to this court's jurisdiction in the present case to issue a writ of venire de novo.
44. We do not consider there is any matter going to the jurisdiction of this court to issue a writ. The proceedings in the Crown Court were not entirely invalid. The only invalidity, as we have decided, concerned the proceedings pursuant to count 5 introduced by amendment in the Crown Court and the conviction on that count. The oversight in this case in failing to obtain the prior consent of the Attorney General to the introduction of count 5 was a very serious and regrettable failing. But that has now been addressed: the Attorney General gave consent on 29 November 2021, and the validity of that consent is not in question. That being so, we conclude that it is appropriate for a writ of venire de novo to be issued. We so direct.