

Neutral Citation No: [2023] NICA 57

Ref: McC12272

*Judgment: approved by the court for handing down
(subject to editorial corrections)**

ICOS No: 2022/76595/02

Delivered: 06/09/2023

IN HIS MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

DPP

Complainant/Respondent

v

KEVIN NIXON

Defendant/Appellant

**Mr Nixon appeared as a litigant in person
Mr Henry (instructed by the Departmental Solicitor) for the Complainant/Respondent)**

Before: McCloskey LJ and Kinney J

Ex tempore judgment

McCLOSKEY LJ (delivering the judgment of the court)

Introduction

[1] The court does not require any oral argument on behalf of the Public Prosecution Service ("PPS"). Having reviewed everything we are content that the written argument from the PPS is sufficient for our purposes. Furthermore, having reviewed everything, we have no reason to delay giving judgment in this case and accordingly we will proceed to give our judgment now.

[2] Before referring to the contours of the application before this court, a brief resume of the history of the proceedings is appropriate.

[3] Kevin Fitzpatrick Nixon whom we shall describe as the appellant was the subject of a summary prosecution alleging that he had committed two offences. First, speeding contrary to Article 43 of the Road Traffic Regulation (Northern Ireland) Order 1997. Second, failing to provide information about the driver of a vehicle contrary to Article 177 of the Road Traffic (Northern Ireland) Order 1981.

[4] It is unnecessary to rehearse the details of the proceedings before the Magistrates' Court. We have noted all that has been said about that and have taken it

fully into account. The prosecution progressed to a hearing. At the stage of the hearing, the appellant agreed that the prosecution evidence could be adduced in the written form in which it had been assembled and served. This evidence, in material part established that a speed camera was positioned on the Aughrim Road, Magherafelt on 6 May 2022. It recorded a Citroën Dispatch vehicle registration number MCZ 6887 travelling at 52 mph in a 40-mph zone. The appellant was the registered owner of the vehicle. A formal notice was sent to him asking him to confirm that he was the driver and if not, to provide the details of the driver at the relevant time and place and on the material date. That notice was dated 9 May 2022. Leaving to one side the detail of what transpired thereafter, the important and incontestable fact is that the appellant did not comply with the notice. In short, he provided no information about the driver of the vehicle.

[5] The hearing before the Magistrates' Court, to which I have already referred, took place on 24 November 2022. The appellant attended. He made submissions to the court. He was found not guilty of the speeding offence, but guilty of the offence of failing to provide information about the driver contrary to Article 177. The appellant exercised his right to challenge this conviction by appeal. This gave rise to a notice of appeal dated 7 December 2022. A case management phase before the County Court then materialised. Again, we do not need to detail the various evidence of that phase. We have rather taken fully into account all of the information available to this court.

[6] In the event, on 29 March 2023, the appeal was heard. On this occasion the evidence was adduced in live oral viva voce form and not it would seem in the form of agreed documentary material. The prosecution witnesses, according to what is before this court, attended. They gave evidence under oath. The appellant attended once again. He cross-examined these witnesses. The appellant himself did not give evidence and so far as this court is aware he called no witness or witnesses on his behalf. The outcome of the appeal was that the conviction was affirmed, and the appeal was therefore dismissed.

[7] This brings us to the application before this court. That application comes about in the following way. The appellant made a written application to the County Court Judge requesting that he state a case on certain points of law for the opinion of this court. The judge refused to do so. The appellant's response to that has been to bring an application before this court. It is possible that the PPS is not aware of the content of the application. For that and other reasons I refer to the notice that is before the court. It describes the application as an application on the part of Kevin Nixon to compel the judge in question to state a case for the opinion of the Court of Appeal under Article 61 of the County Courts (Northern Ireland) Order 1980. This application before this court is the appropriate application to bring in the situation of a person such as the appellant in the circumstances prevailing. The notice constituting the application is dated 25 May 2023.

[8] In his application to the County Court to state a case for the opinion of this court, the appellant identified seven issues or grounds. The judge determined the application in the following way. He stated:

“It is difficult to decipher from the application lodged by the applicant his questions to be stated but insofar as the applicant’s proposed points one to six are concerned, they clearly raise no point of law and are both frivolous and unreasonable and simply highlight that the applicant is unhappy with the outcome of his appeal. In addition, I can discern no other points of law from the remainder of the applicant’s submission as regards point seven, the applicant has simply misunderstood the law. The applicant was charged with speeding and also, as is common, the offence under Article 177. The speeding charge was withdrawn as the prosecution could not prove that case on the basis that they did not know that the applicant was the driver, hence the offence under Article 177. This raises no question of law.”

[9] In his application to this court the appellant has provided a somewhat more elaborate version of the application that he made to the County Court Judge and in his oral submissions to the court this morning he has both elaborated upon and illuminated the central pillars of the application which we are required to determine.

[10] In substance, the question for this court is whether the County Court Judge has arguably erred in law in his decision refusing to state a case for the opinion of this court on the basis of his assessment that most of the points raised are frivolous and unreasonable. This court has conducted a detached and independent audit of all of the materials which have been assembled and a dispassionate and independent audit of the sustainability in law of the decision of the County Court Judge under challenge. We have considered all of the written materials provided by the appellant. We have further considered all of the oral submissions which he has made to this court, and we have also taken into account the written submission on behalf of the PPS.

[11] We have, in the usual way, conducted this appeal in open court and also of course on the basis of all of our individual preparations in chambers and in our studies. I draw attention to that because one of the appellant’s complaints is that the courts below did not engage fully with everything that was assembled and advanced on his behalf. There is no legal system in the world in which a court can engage fully with every single detail. Long hours, late nights, weekends and supposed holiday periods are expended by judges in studying every case, preparing for hearings and compiling judgments and rulings/orders. The hearing is but one part of the process. It is of course a very important part, but it is undertaken in the real world. The legal system would grind to a halt if there was a judicial duty to address every single factual

and legal issue raised in every case. That is not realistic, it is not viable, but more important it is not a requirement of the rule of law.

[11] We have no hesitation in concluding that the decision of the County Court Judge is entirely sustainable in law. The appellant has failed to establish any grounds upon which this court should depart from that decision in whole or in part. Accordingly, the application before this court by notice dated 25 May 2023 is dismissed and the decision under challenge of the County Court Judge is affirmed.