



Neutral Citation Number: [2020] EWHC 2646 (Admin)

Case No: CO/427/2020

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

Sitting as at Leeds Combined Court Centre
1 Oxford Row
Leeds LS1 3BG

Date: 13/10/2020

Before :

MR JUSTICE JULIAN KNOWLES

Between :

ALISTAIR BROGAN
- and -
NOTTINGHAM CROWN COURT
-and-
THE CHIEF CONSTABLE OF
NOTTINGHAMSHIRE

Claimant

Defendant

Interested
Party

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

Hearing date: 6 October 2020

Approved Judgment

The Honourable Mr Justice Julian Knowles

1. This is a renewed application for permission to seek judicial review following refusal on the papers by Steyn J. The Claimant, Alistair Brogan, seeks to challenge the dismissal of his appeal at Nottingham Crown Court (Mr Recorder King and justices) on 20 July 2018 against his conviction at Mansfield Magistrates Court on 5 April 2018 for the offence of failing to supply information regarding a driver's identity as required, contrary to s 172(3) of the Road Traffic Act 1988. He was fined and ordered to pay costs and the victim surcharge, and his licence was endorsed with six penalty points.
2. The Defendant Crown Court is neutral as to the application (as is normal). The Chief Constable, whilst not formally identified as an Interested Party on the Claim Form, was in fact served with the papers and has filed an Acknowledgement of Service resisting the application for permission. He argues the application is out of time and that in any event the appropriate method of challenging the dismissal of the appeal should have been by way of an application for a case to be stated for the opinion of the High Court.
3. I held a remote hearing on 6 October 2020. Mr Brogan addressed me in person, having filed extensive documentation and written submissions. Neither the Defendant nor the Interested Party appeared. I reserved my decision, indicating that I would put it in writing. This I now do.

Factual background

4. On 28/7/17 a car of which the Claimant's wife was the registered keeper was photographed by a speed camera on the A638 Great North Road, Ranskill, Nottinghamshire, travelling at excess speed.
5. According to a witness statement from Alix Walker, a file submission officer with Nottingham Safety Camera Partnership employed by Nottinghamshire Police, on 4/8/17 a combined notice of intended prosecution/s 172 notice was sent to Mrs Brogan by first class post. This required Mrs Brogan, if she was not the driver, to tell the police who the driver was. The Claimant maintains that this was never received and that it was not until a reminder was sent on or about 4 September 2017, and received by his wife a few days later, that they became aware of the matter.
6. There then followed lengthy correspondence between both Mr and Mrs Brogan and the Nottingham Safety Camera Partnership. Neither of them admitted to being the driver and neither of them said who the driver was. On 19 September 2017 Mrs Brogan said she definitely was not driving and that her husband might be able to assist. A s 172 form was then sent to the Claimant on or about 22 September 2022. The Claimant wrote in response saying that because of the passage of time he was unsure who was driving and that it might have been 'an associate'.
7. Further correspondence ensued which it is not necessary to detail. In due course the Claimant and his wife were both summonsed for the s 172(3) offence of failing to supply information. Contrary to assertions in the Claimant's written submissions, they were not prosecuted for driving at excess speed. Mrs Brogan was acquitted by the magistrates but, as I have said, the Claimant was convicted.

8. The Claimant then appealed to Nottingham Crown Court, but his appeal was dismissed, as I have said.
9. The Claimant then attempted to appeal to the Court of Appeal (Criminal Division) and lodged the relevant NG form with the Crown Court. Of course, the Court of Appeal only has jurisdiction in relation to trials on indictment and so had no jurisdiction in relation to the Claimant's case. The only remedies open to the Claimant were to apply to the Crown Court for it to state a case for the opinion of the High Court or (in theory at least, a matter to which I shall return) to apply for permission to seek judicial review.
10. However, and this was most unfortunate, in July 2018 an email was sent to the Claimant by an official at Nottingham Crown Court saying, 'I have been directed by His Honour Judge Rafferty QC to forward your request for a further appeal to the Court of Appeal'. This created the impression in the mind of the Claimant that he had been given permission to appeal; of course, whatever the learned judge directed, it could not have been that, because he had no power to grant permission to appeal. The Claimant also sent an appeal form to the Court of Appeal on or about 9 August 2018.
11. There then followed over a year of correspondence between variously, the Claimant, the Crown Court, and the Administrative Court Office (ACO). There was correspondence about transcripts and whether these would be at public expense. The Claimant's application for a fee waiver for transcripts was eventually refused.
12. On 30 September 2019 the Claimant emailed the ACO enquiring about the progress of his appeal and maintaining that His Honour Judge Rafferty QC had granted permission. The ACO replied on 2 October 2019 saying they had no record of the case.
13. The Claimant then complained to Nottingham Crown Court. A response from a court official on 17 October 2019 explained that the form which was sent to the Court of Appeal on the judge's direction in July 2018 had been returned the same day by the Criminal Appeal Office because the Court of Appeal had no jurisdiction. The Crown Court said it had then sent the form to the ACO. Also, and importantly, this letter clearly informed the Claimant that any appeal would have to be to the Administrative Court.
14. After a further letter of complaint, the Claimant received a response on 21 October 2019 from the Operations Manager at Nottingham Crown Court again informing him clearly that any appeal would have to be to the Administrative Court. There is also among the papers an email from the ACO to the Claimant on 24 October 2019 saying it had no record of his case.

This claim for judicial review

15. The claim form (completed by the Claimant himself) was filed on 31 January 2020 and issued on 6 February 2020. The grounds, in summary were that:
 - a. The case was an abuse of process;

- b. The case is unsafe and time barred;
 - c. The trial was unfair;
 - d. The prosecution failed to provide 'true and physical evidence' to prove the Claimant was the driver;
 - e. 'Not following the law – Road Traffic Act 1988 & s 7 Interpretation Act'.
16. Steyn J refused permission on 19 June 2020. Her reasons, in summary, were that:
- a. CPR 54.5(1) requires an application for judicial review to be filed promptly and in any event not more than three months after the grounds for making the claim arose. The claim form was filed 15 months out of time. Even allowing for the confusion which had arisen, by October 2019 the Claimant was aware no case had been filed. It then took him more than three months to lodge his claim form. She said there was no good reason to extend time and so refused permission on that ground.
 - b. Secondly, the decision of the Crown Court can only be challenged by way of case stated, not judicial review.
 - c. No arguable grounds of review had been put forward. The Claimant's appeal to the Crown Court proceeded properly.

My decision

17. For the reasons given by Steyn J, the substance of which I respectfully agree with, and for the following reasons, I refuse permission to seek judicial review.
18. Dealing first with whether the claim is out of time, it plainly is. By October 2019 the Claimant knew that no appeal had been filed with the proper court and that he had to apply to the Administrative Court. Given the very lengthy period since his appeal had been dismissed by the Crown Court, it was incumbent on him to move quickly once he had been clearly and unequivocally told which Court to appeal to. In the event, he waited more than three months to file his claim and so was in breach of the time limit in the Civil Procedure Rules even taking time as having started to run on 24 October 2019. There is no good reason why that was, and I therefore refuse permission on that basis alone. I accept, as I have said, that what happened in July 2018 after the Claimant's appeal was dismissed in the Crown Court was unfortunate, and that the Claimant was led to believe that he could appeal to the Court of Appeal. But ultimately the onus was on him to identify the right appeal route, by taking legal advice if necessary, and he did not do so but let matters drift for a very long time.
19. Secondly, judicial review is not in this case the correct method of challenge to the Crown Court's decision. The Claimant should have asked the Crown Court to state a case for the opinion of the High Court. The question of case stated versus judicial review in the context of appeals to the Crown Court has been considered in several cases. In *B v Carlisle Crown Court* [2009] EWHC 3540 (Admin), Langstaff J said at [14]-[17]:

“14. Again, in the case of *Chester (Alan Ronald) v Gloucester Crown Court* CO/368397, Lord Bingham CJ and Thomas J considered an application for judicial review arising out of appeal proceedings before the Crown Court. That was a case in which what was in issue was the quality and sufficiency of the evidence before the court for establishing a conviction.

15. What Lord Bingham CJ said was this, which is of material assistance in the present case:

‘It would not be a fatal objection to the application for judicial review that the matters would be more appropriately pursued by way of case stated, but the unsatisfactory procedural situation is exacerbated by the fact that we have absolutely nothing whatever from the Crown Court to indicate the basis upon which it reached its decision or even to indicate that it proposes to play no part in resisting this application, although we understand that notice has been given to it of the pending application and that informal indications have been given that it seeks to play no part.

It is very highly desirable, when a magistrates' court or a Crown Court is the subject of an application for judicial review, that it should make its position clear, if only by a letter indicating that it does not propose to resist the application. In this case however we do have a note from the case worker who was in court representing the Crown Prosecution Service, which appears to substantiate Mr Chester's version of events.”

16. It is plain from the observations of the Lord Chief Justice in that case, first, that judicial review is not necessarily inappropriate, though, second, that appeal by case stated would normally be the preferable way of proceeding, particularly where matters of evidence are concerned; and, third, that the procedural advantages of the case-stated procedure are such as to make it undoubtedly more appropriate in most cases where an applicant has been dissatisfied by the *result* of an appeal from the Magistrates' court to the Crown court.

17. I conclude upon the basis of these authorities that this court does have power to consider an application brought by way of judicial review in circumstances such as those I have described, but I have concluded that it is necessary for this court to exercise any power which it possesses sparingly. It should not become the position that applications for judicial review are regarded as an alternative to a proper route of appeal which would ordinarily be

by case stated, in particular if a question as to a matter of law or matter of evidence, or sufficiency of evidence, arose. It would be a sad day if appellants generally felt that they could appeal indirectly, by judicial review, a decision of the Crown Court, which, after all, is provided as the route of appeal from the Magistrates' Court and has no onward appeal to the Court of Appeal. It must therefore be in exceptional circumstances, in general terms, that judicial review is appropriate at all; and indeed it will usually be the case that applications which ought to be brought (if at all) by case stated, and are brought by way of judicial review, may find that permission is refused at the permission stage.”

20. Agreeing with Langstaff J, Sir Anthony May P said at [29]:

“... I agree in particular with what he has said about the bringing of judicial review proceedings to challenge a decision in the Crown Court on appeal from the Magistrates. There is no room to appeal from such a decision other than by case stated, and attempts to challenge such a decision by judicial review are normally inappropriate and should be firmly discouraged.”
21. The drawbacks of judicial review as a method of challenge to Crown Court decisions in most cases are apparent from the Claimant’s case. Many of the Claimant’s submissions attack as erroneous in point of law rulings he said the Recorder made at his appeal. Whilst in his pleadings the Claimant makes various assertions about what the Recorder said or ruled, there is no actual record or note of these. If the Claimant had proceeded by way of case stated he could have invited the Recorder to set out these issues of law, and his rulings, for the opinion of the High Court. As it is, there is nothing before me which clearly sets out the points at issue.
22. The Claimant also attacks the sufficiency of the evidence against him. But, again, there is no record of the reasons for dismissing the appeal; what facts were found; what the evidence was; or what legal principles were applied. There is, in short, no material on which a judicial review could proceed. If there had been, as there should have been, an application for a case to be stated, and a case had been stated, then all of these matters would have been before the Court.
23. I should make clear that I have carefully considered the way in which the Claimant has put his case in his written submissions and orally. Some of his criticisms relate to how the magistrates dealt with the original trial. But as I sought to explain during the hearing, the hearing at the Crown Court was a fresh hearing on a ‘blank piece of paper’. It was for the prosecution to prove their case afresh, as if the magistrates’ hearing had never happened. There is nothing which begins to suggest that the appeal in the Crown Court was not fairly and properly conducted.
24. For these reasons, I refuse permission.