Neutral Citation Number: [2023] EWHC 943 (Admin)

Case No: CO/2617/2021

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

Tuesday, 25th April 2023

Before:
MR JUSTICE FORDHAM

- -

Between:

THE KING (on the application of HESAMEDIN NAVABI)	**Claimant**
- and -	
CROWN COURT AT DURHAM	**Defendant**
-and-	
NATIONAL PROBATION SERVICE	**Interested Party**

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- -

The **Claimant** in person
The **Defendant** and **Interested Party** did not appear and were not represented

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Hearing date: 25.4.23
Judgment as delivered in open court at the hearing

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Approved Judgment

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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THE HON. MR JUSTICE FORDHAM

Note: This judgment was produced and approved by the Judge,
after using voice-recognition software during an ex tempore judgment in a remote hearing.

MR JUSTICE FORDHAM:

Introduction

1. As he has put it in his oral submissions at today's hearing, the Claimant has come to the High Court asking it to ensure justice, by the exercise of its supervisory jurisdiction. On 7 July 2020 the Claimant was sentenced by HHJ Singh ("the Judge") in the crown court, to a term of imprisonment of 24 months suspended for 2 years with 3 "requirements": (i) a curfew requirement; (ii) a rehabilitation activity requirement (for a maximum of 30 days); and (iii) an electronic monitoring provision. Under the Suspended Sentence Order, "breaches" were reserved to the Judge. On 23 December 2020 the crown court issued a Summons for claimed failure to comply with the Suspended Sentence Order. The Summons was preceded by a "breach warning" letter dated 14 December 2020 and witness statements (dated 23 December 2020) from two probation officers. Their evidence was that they had met with the Claimant on 11 December 2020 as part of the supervision of the Suspended Sentence Order, and he had made a threat to one of them. That threat was said to constitute the "breach". After a first hearing on 12 January 2021, the "breach" matter was considered by the Judge at a hearing in the crown court on 11 February 2021. By this time, there were further witness statements from the two probation officers (dated 22 January 2021). At the 11 February 2021 hearing, the Judge ordered that the suspended sentence should continue and marked the "breach" with a 7 day residence order (requiring the Claimant to live and sleep at a designated address for 7 days). The Judge then ordered the Claimant to pay prosecution costs in the sum of £285. The Claimant has told me today that he did promptly pay those costs.

These Judicial Review Proceedings

2. The Claimant has subsequently sought to pursue a judicial review challenge to the Order of 11 February 2021, impugning that Order and raising arguments about the lawfulness of the Summons of 23 December 2020 and the Crown Court's actions in entertaining that Summons. He has filed various applications with this Court as follows. The first is an application by Form N461 for permission for judicial review, issued on 30 July 2021. The second is an application by Form N244 dated 15 October 2021, seeking to rely on the probation officers' original witness statements dated 23 December 2020. What happened at that stage in these proceedings is that on 10 December 2021 Julian Knowles J refused permission for judicial review on grounds of (a) delay and (b) lack of arguability. The Claimant's third application is by Form N244 dated 20 April 2022, seeking to reopen the claim. What happened at that stage was that on 9 August 2022 HHJ Kramer refused an extension of time for the Claimant to make (or "renew") an application for reconsideration at an oral hearing of the issue of permission for judicial review. That was refused by HHJ Kramer because of (a) the nature and circumstances of the delay in pursuing the renewal and (b) the compelling reasons of Julian Knowles J in refusing permission for judicial review. The fourth application is by Form N244 dated 25 August 2022, seeking to set aside the decision of HHJ Kramer. What has happened since then is that on 14 February 2023 HHJ Gosnell directed listing for an on notice hearing to be conducted, to be listed today as a remote hearing by BT Meet Me. There has been no participation by the Defendant or the Interested Party. I am satisfied that the mode of telephone hearing was appropriate and involved no unfairness or breach of the principles of open justice. The case and its start time were published in the Court's cause list, together with an email

address usable by any member of the press or public who wished to observe the hearing. Over the course of a full 45 minutes I was able to hear oral submissions addressed to me by the Claimant. I have read all the material in the case and was able to put to him questions that I had.

Legal Points Raised

3. The substance of the legal challenge which the Claimant wishes to make by way of judicial review involves various legal points. He says that the breach proceedings, the Summons and/or the Order, were unlawful in public law terms. That includes arguments about abuse of power, abuse of process, incompatibility with the applicable statutory scheme, human rights incompatibility (Article 6 ECHR), unreasonableness and unfairness. This is because, the Claimant says:

   i) The proceedings and actions referenced the Criminal Justice Act 2003 Schedule 12, which had been repealed and replaced on 1 December 2020, with the coming into force of the Sentencing Act 2020.

   ii) The proceedings and actions concerned a single first breach, after the option had been taken of writing a warning, so that referral to the crown court without a further breach was legally improper.

   iii) The threat towards the probation officer found to be the breach did not constitute a "non-compliance" with any of "the community requirements" of the suspended sentence and could not "appear" to be such a non-compliance.

   iv) The pre-Summons witness statements of 23 December 2020 were duplicative in content and could not therefore constitute reasonable evidence.

   v) The Claimant had been placed under pressure at the initial hearing on 12 January 2021, when he had tried to raise these legal points.

   vi) He did not "plead" to the "breach" at the hearing on 11 February 2021, but simply said nothing.

   vii) The order for costs was unreasonable and unsupported by evidence.

Discussion

4. I will assume in the Claimant's favour that I have the jurisdiction to consider, head-on, the viability of his proposed claim for judicial review, together with the question of an extension of time for an application to renew permission into open court. I will consider the position in the round. I have considered all the material before the Court, including the further evidence adduced in October 2021. I am conscious that it could be said that the Claimant has achieved his renewal hearing by the 'back door'.

5. I am not prepared to allow the application of 5 September 2022 and set aside the Order of HHJ Kramer of 9 August 2022. I will explain the reasons why.

Arguability

6. Julian Knowles J thought that the claim for judicial review was not an arguable one, even leaving aside the question of delay. Arguability is an important threshold requirement at the permission stage of judicial review. HHJ Kramer found the conclusion of Knowles J compelling. So do I. The Claimant appeared in the crown court on 11 February 2021. He was represented by Counsel. The transcript records Counsel correcting an error as to the date of the breach which was being put to the Claimant. The transcript then clearly records the breach being put by the Clerk of the Court with the corrected date. It is right that the transcript does not then pick up any word or words spoken by the Claimant. What it does is clearly to record the Judge saying:

> ***Yes. Thank you. The breach has been re-put. He denied it initially. Now he has admitted the matter.***

7. The Claimant asserts that he "remained silent". But it is perfectly clear that the Claimant responded positively in the court room to acknowledge that he did accept the breach, with the corrected date. It is also perfectly clear that that was understood by everyone at the hearing. And it is perfectly clear that the Claimant knew that that was being understood. The barristers were on screen on CVP. The Claimant was standing in the court room. The Judge and Clerk were in the court room too. The Claimant had the and took the prior opportunity to speak to his barrister. Nobody detected any lack of clarity. The Claimant – who later spoke directly to the Judge in relation to costs – did not indicate that there had been any lack of understanding. The Judge decided to mark the accepted "breach", with a seven day residence order, and otherwise the Suspended Sentence Order simply continued as before. The prosecution asked for costs, which was not resisted by the Claimant's Counsel, and the Claimant himself asked the Judge:

> ***Can I pay now?***

8. In these circumstances – underpinned by the transcript – it is quite impossible for the Claimant now to seek to claim that there was no "breach"; and that the "breach" proceedings or court order were unlawful or an abuse of process on any of the legal grounds now sought to be put forward. It is also quite impossible for him to claim that the costs order was unlawful or unreasonable. Procedural unfairness and Article 6 ECHR are relied on by him but it is plain that there has been no breach of those procedural standards.

9. The point is reinforced by the fact that the Claimant says he had the legal points in mind and says he had started to raise them in January 2021, and the case was adjourned. At the further hearing, that means there was every opportunity for the Claimant, himself and through his Counsel, to defend the breach on these or any other grounds. He did not do so. He knew that he did not do so. The Claimant told me today that he mentioned the legal points at the hearing on 11 February 2021. But I cannot accept that. The transcript is available and the Claimant has relied on it. It does not record the legal points being taken, or mentioned. The Claimant accepts that he realised at the time that his response at the hearing was understood to be his acceptance of the breach. He did not say at the time that he did not accept the breach.

10. I asked the Claimant what his grounds of appeal to the Court of Appeal were. He was able to retrieve his skeleton argument to the Court of Appeal. I have been able to

consider that document with the Claimant. A number of the points in this case were taken in it. The Claimant says he did very well and explained everything. What is missing is any contention from the Claimant that he did not accept the "breach". It is clear that this contention has been raised by the Claimant only on receipt of the transcript, because the transcript writer did not pick up any word or words spoken by the Claimant. If the Claimant's position had been that he "never accepted the breach", he would have said that at the hearing, and after the hearing, when making points about fairness and the safety of the conviction as he did in that skeleton argument. The other points are present but this one is conspicuously and revealingly absent.

11. There is no realistic prospect of success on judicial review. That is the end of the case. Even if I decided every other point in the Claimant's favour, the lack of arguability of the claim is fatal.

Delay in Seeking Judicial Review

12. Julian Knowles J was moreover, in my judgment, right to refuse permission for judicial review on the grounds of delay. The Claimant's position is that following 11 February 2021 he made an application to the Court of Appeal Criminal Division ("CACD") seeking to appeal. I have just made reference to the skeleton argument which he filed with the CACD. This step was explained in a Statement of Case in these proceedings dated July 2021. The Claimant tells me today he made his application to the CACD in mid-February 2021. What happened was that he received a letter dated 6 May 2021 from the CACD. That latter told him that the attempted appeal had been rejected on jurisdictional grounds since the finding of breach did not constitute a "conviction", and that the impugned costs order related to the "breach". The CACD letter refers to the transcript. In the letter the Claimant was told of the availability, in principle, of judicial review. He was told about the Administrative Court's Judicial Review Guide which is available online. He was also told that he should make the CACD letter of 6 May 2021 available to the Administrative Court, if he were now pursuing judicial review.

13. The Claimant accepts that he received the CACD letter on 15 May 2021. His judicial review proceedings were sought to be commenced at the very end of July 2021. His claim form (Form N461) had sought to portray the date of the challenged decision is "6 May 2021". That would have put his judicial review claim within 3 months. But it is simply wrong. The challenge was to the Judge's order of 11 February 2021, as the Claimant today accepts. Even assuming, in the Claimant's favour, that he can rely on his attempted appeal to excuse his failure to act promptly in seeking judicial review up to 15 May 2021, the fact is that he did not act promptly after 15 May 2021. He waited for more than a further two months. His answer today is that he needed time to think about it, and to think about whether judicial review really was available. I cannot accept that this constitutes a good reason for the delay or for an extension of time. Overall there has been a delay and lack of promptness which would require an extension of time and, in my judgment, there is no ground for granting that extension. That is also fatal to the claim being granted permission for judicial review.

Delay in Seeking Renewal

14. Finally and in any event, HHJ Kramer was also right, in my judgment, to refuse an extension of time for the application to renew permission into open court. On this

aspect of delay, the Claimant's position is that he did not receive the Order of Julian Knowles J because it was posted to his home address, and he was by then in prison after being arrested and refused bail in November 2021. His explanation had been that he wrote to the Court on 17 January 2022 from prison, to ask what had happened to his claim for judicial review. In the subsequent correspondence, he learned on 1 February 2022 of the paper refusal of permission. He says he acted "very promptly" and in "restricted" circumstances after that. He attempted on 5 February 2022 to make a renewal application, and made further attempts after that. But he was only able to regularise the position – including addressing "help with fees" on 4 April 2022 when he was back at home. The deadline to make a renewal application was 21 December 2021. The Claimant's difficulty is that he had given his home address to this Court. The Court served the Order to that address. The Claimant told me today that in November 2021 he wrote to the Administrative Court in Leeds to say "post everything to me at the prison address", meaning prison. That is completely new. It is inconsistent with what the Claimant says in his grounds dated April 2022. That statement tells a different story. I cannot accept that there was a letter to the Court in November 2021. By the time the Claimant contacted the Court, by letter of 17 January 2022, the Order had been made. In all the circumstances of the case, the order of HHJ Kramer refusing an extension of time for the renewal application to be made into open court was in my judgment unimpeachable, particularly given the compelling position relating to the non-viability of the claim, to which HHJ Kramer referred.

Conclusion

15. For these reasons and in all the circumstances, and to cover all of my conclusions, I will make an Order as follows. I will formally record that I: (i) refuse the application to set aside HHJ Kramer's order; (ii) dismiss the application for permission for judicial review; and (iii) refuse an extension of time for the claim for judicial review. There will be no order as to costs. By way of an endnote I simply record that the case, ultimately, is about an Order which imposed a 7 day residents order and no curfew, together with £285 of prosecution costs.

Certificate

16. After delivering this judgment, the Claimant has asked me to issue a certificate that there is a point of law of general public importance. The purpose of that is an envisaged attempt to make an application to the Supreme Court. I am entirely satisfied that this case turns on the particular facts and circumstances and that there is no point of general public importance. I do not need to consider other aspects (this being a permission-stage ruling). I will simply refuse the application and need say no more.

25.4.23