



Neutral Citation Number: [2024] EWHC 160 (Admin)

Case No: AC-2023-LON-00195

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 31 January 2024

Before:

MATTHEW BUTT KC SITTING AS A DEPUTY JUDGE OF THE HIGH COURT

Between:

THE KING

on the application of

TARUN PURI

-and-

CHIEF CONSTABLE OF THAMES VALLEY POLICE

Claimant

Defendant

Will Martin (instructed by **Aston Bond**) for the **Claimant**
John-Paul Waite (instructed **Thames Valley Police Legal Services**) for the **Defendant**

Hearing date: 16 January 2024

Approved Judgment

This judgment will be handed down remotely at 10.30am on 31 January 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Matthew Butt KC:

Introduction

- 1 The Claimant was the subject of a caution for possession of Class B drugs administered by an officer of the Defendant on 19th July 2018.
- 2 Over three years after the caution was administered, the Claimant alleged that he discovered the implications of this matter being on his record. He later sought to have the caution removed by the Defendant and when this was unsuccessful, he brought this claim in judicial review. Permission was refused by Rory Dunlop KC sitting as a Deputy Judge of the High Court on 17th October 2023.
- 3 The Claimant renews his application for permission to bring a claim in judicial review, to extend time for bringing that claim and to rely upon expert evidence.
- 4 The Defendant opposes the claim and submits that there is no good reason to extend time and that permission should be refused.
- 5 On 19th July 2018 the Claimant, who was an 18 year old university student at the time was out and about in the early hours of the morning smoking cannabis. He was stopped by officers and searched. Within his backpack, the police found cannabis grinders and a watch case which contained what the officer described as a large quantity of green herbal matter which he knew to be cannabis.
- 6 The Claimant was arrested and taken to Maidenhead Police Station where his detention was authorised. The custody sergeant recorded that the Claimant “appears not quite with it, but fit and well. Disclosed dyspraxia, appears to need an appropriate adult”. He was seen by a health care professional (HCP) at 02:00 who recorded that he was calm, polite and engaging. He was assessed as fit to be detained and interviewed. The HCP said that an appropriate adult was not required.
- 7 The Claimant was seen by a duty solicitor at 04:30. Privilege has been waived and a statement served in support of this claim. The solicitor (Mr Tahir) states that the Claimant admitted the offence of possession of class B drugs in consultation. He advised him to answer questions in interview. As to the consequences of accepting a caution, Mr Tahir unsurprisingly cannot recall the exact advice he gave. His notes however reference that the offence was “cautionable” and he says that he generally advises clients that a caution is preferable to a conviction and it is something which might crop up on a Disclosure and Barring Service (DBS) check. The Claimant does not accept that this advice was given to him but I find the evidence of his former solicitor unsurprising in this regard.
- 8 The Claimant was interviewed under caution at 04:36 when he admitted the offence of possession of Class B drugs. The custody record indicates that the process of administering the caution took place between around 04:56 and 04:58.
- 9 In February 2022, the Claimant applied for a job as a chess tutor. He was not offered the job after a DBS check revealed his 2018 caution. The Claimant says that this was the first time he learned that the caution would be kept on his record and could be disclosed. There was correspondence between parties and after this the Claimant formally applied (on

different grounds to the instant claim) for the caution to be expunged in September 2022. He appealed the Defendant's refusal of the same in December 2022. Following receipt of an expert report (see below) the Claimant made a further application to the Defendant for the deletion of his caution in February 2023. This was again refused as was a further attempt to appeal that refusal. On 14th May 2023 the Claimant was told by the Criminal Records Office (ACRO) that his claim had been considered on three separate occasions and that no further appeal would be considered.

- 10 A claim in judicial review dated 14th June 2023 was filed. The claim form includes an application for permission to rely upon expert evidence. The expert evidence in question is a statement from Dr Jasmine Murray a chartered psychologist. Dr Murray states that the Claimant suffers from Dyspraxia. She expresses various opinions which include that "it is reasonable to conclude that Tarun would not have understood the caution even if he had read it" and that the Claimant should have had an appropriate adult with him at the police station.
- 11 The Claimant argues therefore that there is good reason to extend time. He submits that he did not know of the need to bring a claim at all due to the Defendant's failure to explain the implications of the caution to him which is the very issue at challenge in this claim. It is argued that the merits of the claim are strong when one considers the time taken to administer the caution, the expert evidence of Dr Murray and the vulnerability of the Claimant. Any prejudice caused to the Defendant is said to be speculative at present and in any event is better dealt with as part of the substantive hearing than as an aspect of the delay argument.
- 12 The Defendant points first to the heavy delay in this case. The legal advice which the Claimant received from his solicitor is said to contradict any claim that he did not know the caution might arise on a DBS check. In any event, the Defendant points out that on his own case, the Claimant took seven months from the date that he learned that his caution would be disclosable on a DBS check before he formally applied for its deletion by ACRO. The court is also asked to consider that by July 2024 the caution in question will not be disclosed, even under an enhanced DBS check. It is said that this will render the claim all but academic.
- 13 I must decide whether there is good reason to extend time. This is of course a broader question than whether there is a good reason for the Claimant's delay. That decision is informed by any prejudice to the Defendant, by the merits of the claim, and by consideration of the public interest see, for example, *Maharaj v National Energy Corporation of Trinidad v Tobago* [2019] UKPC 5; [2019] 1 WLR 983.
- 14 I do not consider that any satisfactory explanation has been given for the considerable delay in this case. The Claimant's argument that the Defendant should not profit from a failure by his officers to explain the terms of the caution is defeated by the fact that his solicitor would have explained that a caution might show up on a DBS check at the time. There was the further delay of seven months between the Claimant learning the content of his DBS check and the first formal steps he took to challenge his caution. This claim was made over a year after the Claimant says he learned the caution was on his record.
- 15 There is considerable prejudice to the Defendant caused by the delay. I accept what is set out in the summary grounds of defence that "there is no prospect of [the Defendant] being

able to adduce evidence from an officer who remembers events on the night in question”. That the Defendant would be unable some six years after the event to call any evidence in response to the claim is a predictable consequence of the delay. It is very difficult to see any sensible way in which the prejudice could be cured.

- 16 I do not consider the merits of the case to be strong. The Claimant argues that this case is “on all fours” with *Stratton v Chief Constable of Thames Valley Police* [2013] EWHC 1561 Admin, however, I consider *Stratton* to be a case confined to its facts. The judgment does not set out why time was extended in that claim and the facts were materially different to the instant case. Not only did the Defendant’s officers in *Stratton* not use a form which set out the relevant information about the consequences of accepting a caution (the correct form was used in this case) but the court found that the Claimant had enquired about what impact accepting the caution would have on her employment and then signed a form which simply said the caution would be used if she offended again.
- 17 As to the apparent timing of the caution (between 04:56 and 04:58 suggesting, argues the Claimant, that the process was rushed), in my judgement it is very difficult to draw any firm conclusions from the timings recorded within the custody record without being drawn into speculation.
- 18 Whilst the Claimant seeks to rely on the expert evidence of Dr Murray, which I have considered *de bene esse*, this must be read alongside the legal advice the Claimant likely received. The Claimant denies that he was told of the implications of accepting a caution by his solicitor but his counsel accepts he cannot go behind the statement of Mr Tahir. It would be basic advice for any solicitor to have given their client on these facts.
- 19 I do not consider that the public interest favours granting an extension of time. Had the Claimant not been cautioned, it is likely that he would have been prosecuted for (at least) possession of Class B drugs. The Claimant accepts that there is no realistic prospect of this occurring now should the caution be expunged. Furthermore, as a result of the delay which the Claimant is responsible for, this claim will shortly (by July 2024) be rendered if not academic then of limited practical importance (as after six years the caution will no longer be disclosed). Both of these matters tell against time being extended in the public interest.
- 46 For these reasons, I refuse permission to apply for judicial review.