IN THE COURT OF APPEAL

CRIMINAL DIVISION

CASE NO: 2021 02067 B1

NCN: [2022] EWCA Crim 922

Royal Courts of Justice
Strand
London
WC2A 2LL

Thursday 9 June 2022

Before:

THE VICE PRESIDENT OF THE COURT OF APPEAL (CRIMINAL DIVISION)
LORD JUSTICE HOLROYDE

MR JUSTICE GRIFFITHS

HIS HONOUR JUDGE DREW QC

REGINA
v
ANDREW JONATHAN CHUBB COOPER

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The Applicant appeared in person
MR D TRAVERS QC & MR D COLLINS appeared on behalf of the Respondent

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J U D G M E N T
(Approved)

THE VICE PRESIDENT:

1. This applicant, Mr Andrew Cooper, farms land in North Devon. On 7 April 2021, in the Crown Court at Exeter, he pleaded guilty to an offence of contravening a Stop Notice contrary to regulation 26 of the Environmental Impact Assessment (Agriculture) (England) (No 2) Regulations 2006. We shall hereafter refer to the relevant provisions of those Regulations simply by reference to the appropriate regulation number. At a sentencing hearing on 21 June 2021 the applicant was ordered to pay a fine of £7,500, with 5 months' imprisonment in default, and to pay prosecution costs of £24,000 and the appropriate surcharge. A few days later he applied for an extension of time (57 days) to apply for leave to appeal against his conviction. In essence, his grounds of appeal contended that the judge had wrongly ruled that a defence which he wished to advance was not available to him in law and that the judge had wrongly made a number of rulings to the effect that evidence on which the applicant wished to rely was irrelevant and therefore inadmissible. The single judge, who considered the applications on paper, refused them, for reasons which he explained in writing. The applicant now renews his applications to the full court.
2. The Stop Notice was issued by Natural England on 20 October 2017, but relevant events go back much further in time.
3. Between 1992 and 2012 the applicant received payments under a Countryside Stewardship Agreement in respect of the relevant fields. He did so on the basis of twenty annual claims, in each of which he certified that the fields had not been cultivated.
4. By regulation 2 "uncultivated land" means land which has not been cultivated in the previous fifteen years. By regulation 4, a person shall not carry out an uncultivated land project (that is a project to increase the productivity for agriculture of uncultivated land) without first obtaining a screening decision from Natural England.
5. In 2012 the applicant asked for a screening decision. His application stated that the land had last been cultivated in 1992. Natural England's decision was that consent would be required for the works which the applicant wished to carry out. The applicant applied for, but did not obtain, such consent.
6. Regulation 31 (so far as is material for present purposes) provides that a person may appeal to the Secretary of State, in accordance with the regulation, against a screening notice, a Stop Notice, or a remediation notice.
7. By regulation 31(2):

> "An appeal may be brought on any of the following grounds—
>
> (1) that Natural England did not have power to serve the relevant notice, or to include a particular requirement in it;
> (2) that there has been some material irregularity, defect or error in, or in connection with, the relevant notice; or
> (3) that any of the requirements of the relevant notice are unreasonable."

8. The Secretary of State on determining the appeal may affirm, vary or revoke the relevant notice.
9. Regulation 31(8) states:

> "Where an appeal is brought against a screening notice or a Stop Notice (unless the notice is withdrawn by Natural England) all the requirements contained in it have effect until such time as the Secretary of State revokes the notice or varies the requirements."

10. The applicant exercised his right of appeal against the screening decision. On 26 June 2013 his appeal was dismissed by the Secretary of State.
11. In April 2014 a remediation notice was issued. The applicant appealed against it. His appeal was dismissed by the Secretary of State.

12. The applicant thereafter made an application for leave to apply for judicial review. It was refused. He renewed the application to an oral hearing. It was again refused, and was certified by the judge as being totally without merit.
13. In May 2016 a further remediation notice was issued after Natural England learned that a field on the farm had been ploughed. The applicant appealed against that Notice to the Secretary of State, who dismissed the appeal in August 2017.
14. In the following month it appears that another field was ploughed. A further remediation notice and a Stop Notice were served, as we have said, on 20 October 2017. The applicant appealed to the Secretary of State against those Notices in November 2017. The Secretary of State ultimately dismissed the appeal, but not until December 2019.
15. In the meantime, in March 2018, Natural England learned of further cultivation of land covered by the Stop Notice. In March 2019 they commenced criminal proceedings. Three charges were brought in the magistrates' court. The applicant elected trial on the charge of contravening a Stop Notice contrary to regulation 26. The other two charges, which alleged breaches of regulation 22 and were triable only summarily, were adjourned in the magistrates' court to await the outcome of the trial on indictment.
16. The particulars of the offence charged on indictment were as follows:

> "Andrew Cooper, on and before 31 July 2018, failed to comply with the requirements of a Stop Notice dated 20 October 2017, in that he:
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> (1) Grazed the fodder crop in field 7770
> (2) Ploughed all or part of field 7770
> (3) Ploughed all or part of field 7251
> (4) Rolled and planted all or part of field 7770
> (5) Rolled and planted all or part of field 7251
> (6) Applied lime and/or other substances so as to prepare all or part of field 7770 for planting.
>
> The said actions increased the productivity of the land for agriculture, contrary to the requirements of the Stop Notice."

17. There were a number of hearings in the Crown Court, not all before the same judge. The applicant pleaded not guilty. It appears that he wished to argue before the jury that the Stop Notice was invalid. He was legally represented in the early stages of the Crown Court proceedings and in the preparation of this application, but he represented himself at the Crown Court hearings which are relevant for present purposes and has done so again today, addressing the court, if we may say so, both courteously, clearly and forcefully.
18. At a pre-trial review on 14 October 2019 the judge ruled as a matter of law that the Stop Notice was valid and, absent some significant new evidence, could not be challenged at the trial. That ruling was confirmed at a further pre-trial review on 11 June 2020, at which stage the trial was due to be heard on 8 February 2021.
19. Later on 11 June 2020 the applicant rang the solicitor representing the prosecution and indicated that he wished to change his plea to guilty. Arrangements were made for a hearing on 17 July 2020, but on 14 June the applicant sent an email indicating that he would maintain his not guilty plea.
20. At a further pre-trial review on 29 January 2021, the applicant again argued that the Stop Notice was invalid. The judge, His Honour Judge Johnson, again ruled as a matter of law that it was valid. He refused an application to stay the proceedings as an abuse of the process. He made rulings as to the admissibility of certain evidence and as to the issuing of witness summonses on the basis that there would be no issue before the jury as to the validity of the Stop Notice.
21. The trial was not able to proceed on the expected date of 8 February 2021, but a further pre-trial review was held. The judge again confirmed the ruling that the Stop Notice was

valid and could not be challenged at the trial, which was then listed for 6 April 2021. On that date the judge refused a further application to stay the proceedings as an abuse.

22. On 7 April 2021, as we understand it shortly before a jury was to be empanelled, the applicant indicated that he would plead guilty. He was offered time to consider his position but asked to be rearraigned and entered a guilty plea. Sentencing was adjourned, as we have said, to 21 June 2021.
23. On the day of the sentencing hearing the applicant renewed his abuse of process application, which Judge Johnson again refused. The sentencing hearing then proceeded.
24. The applicant has put forward a number of grounds of appeal. Most of them turn on the central issue of whether the judge was wrong in law to rule that the validity of the Stop Notice could not be challenged in the criminal proceedings. The applicant seeks to overcome the hurdle of his own guilty plea by contending that the judge's incorrect ruling on the central issue, and incorrect consequential rulings as to admissibility, forced him to plead guilty against his clear wish to contest the charge. We therefore consider that central issue first.
25. In Boddington v British Transport Police [1999] 2 AC 143, the House of Lords overruled a decision in the court below to the effect that the validity of a byelaw or of an administrative act done pursuant to it were outside the jurisdiction of a criminal court. The House of Lords referred to a strong presumption that Parliament would not legislate to prevent a challenge to validity. Lord Irvine, Lord Chancellor, made clear, however, at page 160C that Parliament may legislate against such challenges, for example in the interests of certainty, and that it was therefore always necessary to examine the statutory context to decide whether a criminal court had jurisdiction to rule on a defence based on arguments of invalidity. Lord Irvine referred in particular at page 161G to whether the relevant statutory scheme provided a clear and ample opportunity for a defendant to challenge the legality of the relevant subordinate legislation or administrative act before being charged with an offence.
26. In Stannard v The Crown Prosecution Service [2019] 1 WLR 3229, a defendant charged with an offence of failing to comply with a community protection notice wished to argue that the notice was invalid and therefore could not be enforced against him. A District Judge (Magistrates' Courts) ruled that the defendant could not rely on a challenge to the validity of the notice as a defence to the charge of breaching it. The defendant appealed by way of case stated to the Divisional Court, which held that he could have challenged the notice by an appeal procedure under the relevant legislation, or by an application for judicial review, and that Parliament could not have intended that he could instead rely on invalidity as a defence to the criminal charge. The Divisional Court therefore dismissed the appeal, holding that the notice remained valid and enforceable unless and until varied or set aside by one of the permissible procedures.
27. In the present case there are compelling reasons why a similar conclusion should be reached. The applicant has been able to challenge the Stop Notice both by way of appeal to the Secretary of State and by way of judicial review, though it is clear that he has had no grounds of challenge on which he could succeed. There has, therefore, been a clear and ample opportunity for the applicant to challenge the validity of the Stop Notice before he was prosecuted for breach of it. It would be contrary to the purpose of the legislation to avoid the need for validity to be challenged by a procedure which enabled the Secretary of State to determine it with the advantage of the specialist knowledge of his department and instead to leave the determination to a criminal court. It would also create a perverse incentive for a person who did not wish to comply with a Stop Notice or remediation notice to ignore the statutory procedure and instead raise issues of validity as a defence to any criminal charge. To allow the validity of the notice to be challenged in the criminal proceedings would be contrary to the plain words of regulation 25(4), which states that:

> "A Stop Notice ceases to have effect if—

(1) a notice withdrawing it is served under paragraph (3);
(2) Natural England, or the Secretary of State on appeal, decides that the prohibited work is not a significant project; or
(3) Natural England, or the Secretary of State on appeal, grants consent for the prohibited work."

It would also be contrary to the plain words of regulation 31(8), which we have cited earlier in this judgment. Furthermore, as the respondent points out, the applicant's argument, if successful, would lead to the absurd conclusion that a Stop Notice was simultaneously both valid, because of those regulations, and invalid, because of a verdict of not guilty. We cannot accept that Parliament intended such an outcome. It is, in our view, plain that Parliament intended that, in accordance with general principles, a Stop Notice would remain valid and enforceable unless and until it was set aside or varied by the Secretary of State on an appeal, or by the High Court on an application for judicial review.

28. For those reasons, it is, in our view, clear that the judge was correct to rule as a matter of law that the Stop Notice was valid when issued and throughout the period covered by the indictment and that it was not permissible for the applicant to seek to challenge its validity as a defence to the criminal charge of contravening it.
29. The applicant's principal ground of appeal therefore has no prospect of success. As we have indicated, many of the other grounds of appeal stand or fall with that principal ground. Rulings as to admissibility and as to the attendance of witnesses made on the basis that there could and would be no issue at trial as to the validity of the Stop Notice were made on the correct legal basis, and the challenges to them must also fail. Whilst we understand the applicant's belief in the significance of evidence and witnesses which he feels he was denied, the key point is that evidence in a criminal trial can only be adduced if it is relevant to a live issue in the case. We would add that we see no substance in the applicant's argument that in a number of respects the respondent has improperly manipulated the court process.
30. We can deal briefly, as did the single judge, with the remaining grounds of appeal.
31. First, the judge was entitled to grant special measures for certain potential witnesses and did not thereby deprive the applicant of the opportunity to cross-examine them. In any event, the applicant pleaded guilty.
32. Secondly, the adjourned proceedings in the magistrates' court arise under a different regulation and raise different issues and cannot affect the decision on this renewed application. Again we see no substance in the complaint of improper manoeuvring on the part of the respondent.
33. Thirdly, we see no substance in the complaints about disclosure or about the fact that the prosecution was brought against the applicant alone rather than against him and his wife on the basis that they farm in partnership. The Stop Notice was issued against the applicant and it was he who was in breach of it.
34. The applicant has very recently put forward additional grounds. He has not sought leave to vary his grounds of appeal, but in fairness to him we have considered them in any event. We see nothing in them which assists the applicant. As we have indicated, the judge's ruling on the central issue was correct in law. The applicant, as we understand it, now accepts that he had acted in contravention of the Stop Notice, his principal argument being that the Stop Notice was invalid. In the light of the judge's ruling, he chose to plead guilty. It is important to emphasise that the judge's ruling was a ruling as to the central issue in the case. It was not an order forbidding the applicant from having a trial. The applicant cannot even arguably bring himself within any of the exceptions to the general rule that there is nothing unsafe about a conviction based on a plea of guilty. If he had chosen instead to maintain his not guilty plea, the judge would have been bound to direct the jury that as a matter of law the Stop Notice was valid, but it would have been for the jury to decide their verdict.

35. Each member of this court has considered afresh the arguments put forward by the applicant. We have reached the same conclusion as did the single judge. The application is misconceived and is without legal merit. There is no arguable basis on which the applicant's conviction can be said to be unsafe.
36. There does not appear to be any good reason why the applicant should be granted an extension of time. The time limit for appealing against conviction began on the day when he pleaded guilty, not at a later date when he changed his mind. In any event, no purpose would be served by granting an extension of time because an appeal could not succeed.
37. The applications for an extension of time and for leave to appeal against conviction accordingly fail and are refused.

(Submissions re: respondent's application that the applicant should contribute to some extent towards its costs in responding to the renewed application for leave to appeal followed)

(The court adjourned for a short time)

THE VICE PRESIDENT:

38. Following our ruling refusing the renewed applications, Mr Travers QC on behalf of the respondent has invited us to consider making an award of costs in the respondent's favour. We are grateful to him for his very helpful brief submissions and in particular for his realism as to the sums involved.
39. We bear very much in mind that the respondent is a publicly funded body and we readily acknowledge the assistance which the court has gained from the documents and submissions put before us by the respondent. This is, however, a hearing which was listed as a renewed application, and although the court in such circumstances sometimes directs an appearance by a respondent, it specifically did not do so in relation to this case. In that sense the respondent's attendance today is voluntary.
40. It can undoubtedly be said against the applicant that he chose to pursue the application notwithstanding a warning on the form which he completed when first giving notice of appeal that an unsuccessful application to renew might result in an adverse order for costs. It seems to us the applicant could not have any legitimate complaint if an order were made against him.
41. We note, however, that at the conclusion of the proceedings in the Crown Court the judge, who had had conduct of the case for a considerable time, placed a strict limit on the amount which he ordered the applicant to pay towards a much larger sum claimed by the respondent. He did so on the basis of his being satisfied as to the very limited means of the applicant. There is nothing before us to suggest today that the applicant is any more able to afford the payment of costs now than he was just over a year ago when the judge was dealing with the matter in the Crown Court.
42. On balance, we have come to the conclusion that no order should be made for the payment of costs to the respondent.