

Neutral Citation Number: [2015] EWHC 333 (Admin)

CO/12066/2013

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

Royal Courts of Justice
Strand
London WC2A 2LL
Wednesday, 4 February 2015

Before:

LORD JUSTICE TREACY

MR JUSTICE LEWIS

Between:

MR EDMOND PURNELL

Claimant

- v -

ESSEX MAGISTRATES

Defendant

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(Official Shorthand Writers to the Court)

The **applicant** appeared in person
MR JACK ANDERSON (instructed by **Treasury Solicitor**) appeared on behalf of the
Defendant
JUDGMENT (Approved)

LORD JUSTICE TREACY: I will ask Mr Justice Lewis to give the first judgment.

MR JUSTICE LEWIS:

1. This is a claim for judicial review of a decision of 3 July 2013 of the Essex Magistrates. By that decision, the court ordered the Claimant, Mr Edmond Purnell, to pay an outstanding fine of 90 or serve 5 days' imprisonment in default of payment. That order of imprisonment was suspended if the Claimant paid 5 a week, the first payment to be made on 5 July 2013.
2. The background can be stated shortly. In about March 2013 the Claimant was issued with a fixed penalty notice for failing to wear a seatbelt whilst driving. The fine was 60 but was increased, it seems, to 90 as it was not paid within 28 days.
3. On 3 July 2013, there was a hearing before the Essex Magistrates at Southend Magistrates' Court. It was that court which made the order under challenge.
4. On 9 August 2013, a letter was sent by the magistrates' court to Mr Purnell fixing a hearing for 4 September 2013 as he had not paid the 5 a week and was 10 in arrears. The letter stated that the court could review matters at that hearing.
5. On 28 August 2013, Mr Purnell issued a claim form. In section 3, he gave details of the decision he wished to review as follows:

"Failure of the Essex Magistrates to consider properly [the] claimant's financial circumstances before imposing a suspended prison sentence."
6. He identified the date of the decision under challenge as that of 3 July 2013.
7. Two grounds of challenge were advanced. First, it was said that the Defendant, the Essex Magistrates, had failed to consider his financial means and, secondly, that they had erred in law as they had not allowed or processed the Claimant's appeal to the Crown Court in accordance with section 108 of the Magistrates' Court Act 1980. That second alleged error was also said amount to a breach of Article 6 of the European Convention on Human Rights.
8. The Claimant also sought an interim injunction to prevent the enforcement process continuing as he considered that he faced the prospect of imprisonment.
9. On 29 August 2013, Mr Justice Kenneth Parker considered the application for an interim injunction on the papers. He refused to stay the hearing scheduled to take place before the magistrates on 4 September 2013 as the Claimant would have the opportunity of making his representations about the amount that he could be required to pay at that hearing.

10. The Claimant sought to have that refusal reconsidered at an oral hearing. There was some confusion as initially it was thought that Mr Justice Kenneth Parker had refused permission to apply for judicial review and that the form for making a renewed application for permission should be used. In fact, it was a request to reconsider the refusal of interim relief.
11. In any event, a hearing was held on 3 September 2013 in the High Court before Collins J. Mr Purnell attended that hearing. The Court considered the evidence adduced by Mr Purnell and the submissions that he made at that hearing.
12. Collins J ordered that the Defendant should not impose a sentence of imprisonment on the Claimant but should consider all of his debts and make a decision on the total of what was due and then decide what it was reasonable to order.
13. On 4 September 2013, the Defendant reduced the fine in relation to the fixed penalty for not wearing a seatbelt to 60 and, according to Mr Purnell in his written documents, also reduced two other fines to 60 each, making a total of 180. It allowed those fines to be paid at the rate of 10 a month, an amount that Mr Purnell could afford.
14. Mr Purnell in his documents has made some criticism of administrative action taken by the fines office in implementing the decision of the magistrates. No claim for judicial review is brought in relation to that matter, and the facts and those allegations are not part of the present proceedings.
15. Given that the magistrates had reconsidered the issue, and reduced the fine, and had inquired into the Claimant's means and decided what he could pay, that should have been the end of this judicial review claim. The Claimant had come to the High Court challenging a decision to impose a suspended sentence without assessing his means. He had had an oral hearing in the High Court and obtained an order requiring the magistrates not to send him to prison and to reconsider the matter. The Magistrates' Court had done so. It had reduced the amount of the fine and considered Mr Purnell's financial situation.
16. However, it appears that Mr Purnell wished to continue his judicial review claim for some reason. It is uncertain whether he informed the Administrative Court Office of the fact that the Magistrates' Court had dealt with the order and had assessed his means. He certainly was obliged to do so. Claimants are under a duty to disclose all material facts to the Court.
17. In any event, the case papers were placed before a judge. Lang J granted permission to apply for judicial review on 15 April 2014. Paragraph 2 of the order required the Defendant to provide the court with a written record of proceedings together with any relevant court summonses or orders within 35 days.
18. The Defendant considered that the claim was now academic as the remedy sought had in effect already been granted. The Defendant did not therefore comply with the order of

Lang J. The Defendant should have complied. Until the proceedings were discontinued or dismissed, the obligation on the Defendant was to comply with the order. In any event, the Defendant has now put in detailed grounds and a witness statement explaining its view of events and has applied for an extension of time. We extend time for compliance with the order of Lang J and extend time for service of detailed grounds and evidence, to 8 January 2015.

19. The Claimant had decided that he still wishes to continue with his claim. He accepts that the Magistrates' Court has now considered his financial circumstances -- which was the first ground of challenge. However, he still wishes to contend that he has a right under section 108 of the Magistrates' Court Act 1980 to appeal against the decision of 3 July 2013 to the Crown Court.
20. We consider that this claim is academic and serves no useful purpose. Furthermore, the claim that Mr Purnell has a right of appeal under section 108 of the Magistrates' Court Act 1980 is misconceived.
21. First, the primary purpose of the judicial review was to challenge the decision of 3 July 2013. That is the decision identified in the claim form as the one under challenge. It was the imposition of a suspended sentence for non-payment of the fine without an assessment of financial means that was the subject of the claim. That is also clear from the application for interim relief.
22. The order of 3 July 2013 has now been reviewed and a proper, lawful assessment of means carried out. There is no purpose whatsoever in continuing this claim for judicial review.
23. Secondly, the arguments in relation to a right of appeal are misconceived. Part III of the Magistrates' Court Act 1980 deals with the enforcement of amounts of money owing to a court as a result of a conviction or order. Section 76 provides for the issuing of a warrant of distress to enable the debt to be enforced against money or goods owed by the debtor. There is also provision for committing a person to prison in certain circumstances: see section 76(2) and (3) of the Magistrates Court Act 1980. There is a power to fix a term of imprisonment but to postpone its enforcement on conditions, including conditions as to payment: see section 77 of the Magistrates' Court Act 1980. There are stringent safeguards as to when a warrant committing a person to prison can be issued: see section 82 of the Magistrates' Court Act 1980. For present purposes, the relevant section is section 82(3) of the Magistrates' Court Act 1980 which requires an inquiry by the court into the person's means in that person's presence.
24. The Claimant alleges that he has a right of appeal under section 180 of the Magistrates' Court Act 1980 to the Crown Court. That is not correct. He has misread section 108 of the Magistrates' Court Act 1980. That section provides that a person convicted by a Magistrates' Court may appeal to the Crown Court against sentence, if he pleaded guilty, and against conviction and sentence if he pleaded not guilty. Sentence is defined in

section 108(3) of the Magistrates Court Act 1980 as including "any order made on conviction by a magistrates' court" (subject to certain exceptions).

25. That means any order made in consequence of conviction. It does not include an order made at a different time and for a different reason from the conviction: see *R v St Helens Justices ex parte Jones* [1999] 2 All ER 73 and the cases referred to there including, in particular, *R v Harman* [1959] 2 Q.B. 134.
26. An order fixing a term of imprisonment for non-payment of a fine is not an order made upon conviction. It is not an order made in consequence of conviction. It is made at a different time, and for a different reason. The Claimant was not therefore entitled to appeal against the order of 3 July 2013 to the Crown Court under section 108 of the Magistrates' Court Act 1980.
27. The Claimant also contended that failure to process the appeal under section 108 of that Act involved a breach of Article 6 of the European Convention on Human Rights. First there is no right to appeal under section 108 of the 1980 Act against the decision taken in this case. Secondly, there is, in any event, no breach of Article 6. The question of the enforcement of the order could have been considered by the Magistrates' Court at the hearing on 4 September 2013 - as is clear from the letter sent by the court to Mr Purnell on 9 August 2013. That would normally be sufficient to ensure a fair trial in accordance with Article 6 of the Convention. In any event, the Claimant could, in appropriate circumstances, bring a claim for judicial review of the decision to impose a term of imprisonment and to suspend it without a means inquiry. Indeed, in this case, the Claimant took advantage of that opportunity and did bring proceedings. He had an oral hearing before the High Court on 3 September 2013 seeking interim relief in connection with the hearing scheduled for 4 September 2013. The judge ordered that the sentence of imprisonment should not be enforced and that the magistrates should consider the claimants debts and in the light of that determine what steps were reasonable. The Magistrates' Court did so on 4 September 2013. There has been no breach of Article 6 of the Convention on the facts of this case.
28. For all those reasons, this claim for judicial review is dismissed.