Neutral Citation Number: [2019] EWHC 3559 (Admin)

Case No: CO/1190/2019

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 20/12/2019

Before :

MRS JUSTICE MCGOWAN

- -

Between :

The Queen in the Application of Oyebola	**Claimant**
- and -	
Criminal Cases Review Commission	**Defendant**

- -
- -

Mr David Josse QC (instructed by **Public Access**) for the **Claimant**
The Defendant Did Not Appear

Hearing dates: 23/10/2019

- -

Approved Judgment

Mrs Justice McGowan :

1. This is a renewed application for permission to bring Judicial Review proceedings, following refusal by Sir Wyn Williams on 19 August 2019. The claim is brought by Folarin Oyebola, ("the Claimant") against the Defendant, the Criminal Cases Review Commission, ("the CCRC"). The decision under challenge was made by the CCRC and is set out in the Provisional and Final Decision Notices of 11th Oct and 19th Dec 2018.

2. This is the third application to the CCRC in this matter. Previous applications were refused on 5 November 2013 and 14 September 2015.

3. The core submission is that the Defendant has failed to understand the issues raised and has therefore reached a decision which is capable of challenge. The decision not to refer the case to the CACD is said to be unlawful because they are irrational or perverse. The CCRC is said to have failed to comprehend the Claimant's arguments; to have failed to consider material considerations and considered immaterial considerations.

4. The proceedings arise out of confiscation proceedings in the Crown Court. The core submissions of the Claimant relate to the three issues set out in the Final Decision.

5. They centre around the order of Master Price 23 January 2017, the order of Her Honour Judge Kaul QC dated 3 October 2017 and the decision of the Court of Appeal, ("CACD"), dated 13 February 2018.

History

6. The Claimant was convicted in the Crown Court sitting at Wood Green on 16 March 2011 of nine offences related to mortgage fraud. He was sentenced to a total of 4½ years' imprisonment. The prosecution case was that he had misrepresented his identity and given other false information to obtain mortgages on properties which were then rented out for multi-occupation. On 13 April 2012 he was ordered to pay confiscation in the sum of £666,994.97 as a result of the finding that he had benefited to the amount of £1,503,325.78.

7. On 24 February 2012 his renewed application for leave to appeal against conviction was refused by the CACD.

8. On 23 July 2013 his appeal against the confiscation order was allowed to the extent that it was reduced to £601,241.95 and the benefit figure was reduced to £1,108,944.78.

9. On 3 March 2015 the claimant was detained and ordered to serve four years imprisonment in default of satisfying any part of the confiscation order made against him in 2012. He has now served that term.

10. On 3 October 2017 Her Honour Judge Kaul QC found that the available amount was reduced by another £292,430. That reflected the value of a house, 3, Ashbourne Avenue, which had been found not to be part of the claimant's assets in a hearing before Master Price sitting in the Chancery Division on 23 January 2017

11. On 13 February 2018 this was confirmed in the course of the prosecution's appeal to the CACD under s. 31 of the Proceeds of Crime Act 2002.

12. This is the 10th application for judicial review made by this claimant in relation to the convictions and confiscation order arising out of the original trial at Wood Green Crown Court in 2011.

13. A General Civil Restraint Order for two years was made by Cranston J on 7 August 2015.

Material Legislation

14. The CCRC was established by s. 8 of the Criminal Appeals Act 1995. The CCRC may refer a case to the CACD if it considers there is a **real possibility** that the order would be reduced if it were referred **and** this real possibility arises from new information or argument on a point of law which was not put forward at the trial or appeal.

15. The relevant law is set out in the Acknowledgement of Service paragraphs 22-25 and 54-55. It is agreed. The principles were established in *Mills & Poole v CCRC [2001] EWHC (Admin) 1153* in the judgment of Lord Woolf CJ. The test to be applied by this court is a narrow one. Has there been any public law error in the decision of the CCRC? Again set out by Dove J in *R (on the application of Steele) v CCRC [2015] EWHC 3724 (Admin).*

> *19.It follows that whilst I obviously appreciate the deeply held feelings of injustice which clearly still trouble the claimant, the task which I have is a narrow one focused on seeking to identify whether there has been any public law error in the decision which the defendant has reached. As has been emphasised in the authorities (see in particular R v CCRC ex parte Pearson [1999] 3 All ER 498) the decision as to whether or not to refer a case back to the Court of Appeal is clearly, in the light of the statutory language employed in the 1995 Act, a question of judgment for the defendant. It is not the task of the court to retake the decision or exercise the judgment afresh. The question is whether or not in reaching the judgment which the defendant has there is any error of law in terms of a decision which is perverse or irrational or which has, for instance, failed to take account of a material consideration or taken into account a consideration which is immaterial. It is on the basis of these traditional grounds of public law articulated in the Wednesbury case that the exercise of the judgment has to be assessed. For the reasons which I have set out above I am entirely satisfied that there is no arguable error of law, assessed within the narrow compass of the error of law jurisdiction, which is evident in this case.*

Submissions

16. There are nine grounds in the claim in a history which Sir Wyn Williams accurately described as "complicated and tortuous". Mr Josse QC who appears for the claimant has distilled the submissions into three issues. I am immensely grateful to him for the assistance he has provided to the court. In summary, the argument advanced is that the defendant has failed to understand the statutory regime behind confiscation proceedings and the issues raised by the claimant.

Issue 1

17. This issue relates to an amount of £37,000 in relation to a property at 3, Ashbourne Avenue. That property was found by Master Price not to belong to the claimant. Accordingly, the prosecution appealed under s. 31 of POCA to reduce the benefit

figure it was seeking to recover from the claimant by £292,430. As Davis LJ observed in the hearing, [2018] EWCA Crim 246, that was *"solely to the advantage of Mr Oyebola……Yet, Mr Oyebola opposes the Crown's application…….he says it is an abuse of process".* The basis of the claimant's challenge to an application to reduce the amount sought to be obtained from him was based upon the consequential effect on any sentence in default that he might have to serve. As Davis LJ observed, *"but there are two answers to that: first, removal of Ashbourne Avenue would not of itself necessarily have affected the validity of the sentence imposed; and second, and in any event, the default sentence was triggered at the time and had been served."*

18. The claimant argues that he was unrepresented at that hearing and could not adequately put forward his submission. He says that the CACD included in its reasoning things which should have been included. His central complaint is that the CCRC did not understand this point. The claimant takes issue with the use of the word 'refund' in the decision of the CCRC rather than 'reduction'.

Issue 2

19. The claimant argues that the CCRC are also in error in respect of a property, 6, Hanover Lodge. He submits that the defendant cannot have checked the original order to see if that property was mentioned there. He says it was not in the original order and was not included in the judgment. In fact, it was.

20. Further complaint is made about the fact that the CCRC makes reference to the original confiscation order of 13th April 2012. He says there was no order of that date. That ignores the fact that there is a judgment of that date.

Issue 3

21. This concerns the submission that 3 Ashbourne Ave was never sold and that the CACD was in error when it used the realisable asset figure rather than the benefit figure.

The Decision Under Challenge

22. The claimant has, once again, gone through the exercise of trying to re-litigate the findings of the Crown Court, the Court of Appeal and the Commission. He takes issue with the use of language and seeks to demonstrate that it proves a failure to understand the Proceeds of Crime legislation by the CCRC. Such an approach is shown by his complaint about the use of the word 'refund' rather than 'reduction' or a judgment being described as an order.

23. It is obvious that the claimant does not agree with the ruling of the CACD or the decision of the CCRC. He seeks to challenge its analysis of factual issues. The purpose of Judicial Review is not to be permitted to rerun the argument in the hope of a different outcome, it only lies when some illegality, irrationality or procedural impropriety can be demonstrated.

24. The final decision notice is set out at Annex C which appears at page 134 of the bundle. It states as follows

i) Issue one. You consider you are entitled to a refund of the mortgage payments on 3 Ashbourne Avenue in the amount of £37,000. You would not be entitled to any refund of any mortgage payments on the property 3 Ashbourne Avenue. This is because: mortgage payments are reflected in the amount of equity realised upon the sale of the property. The remaining amount of the mortgage will be reduced accordingly, in any event, the source of the mortgage payments paid by you was accepted by the defence at trial as being from a fraudulent source. For these reasons you are not entitled to a refund of £37,000

ii) Issue two. You submit that your original confiscation order did not include the value of the property, 6, Hanover Lodge but this was subsequently included in your appeal in 2013. The CCRC has checked the details of your original confiscation order dated 13 April 2012, 6, Hanover Lodge was included as part of the original confiscation order. This is because although this property was held in the name of a third party, in accordance with your evidence at trial, the court considered that you had established a clear beneficial interest in this property and that of 3 Ashbourne Avenue.

iii) Issue 3. The original value ascribed to 3, Ashbourne Avenue was £298,000 however your confiscation order was only reduced by £292,340. You consider you are entitled to the difference. Whilst 3, Ashbourne Ave was originally assessed as being worth £298,000 it achieved less upon sale (£292,340). Therefore, the Court of Appeal reduced your confiscation order by this amount. You would not be entitled to the difference.

iv) We have thought again about whether there is anything else that we could investigate but have decided that there is nothing that we could investigate that would make a difference to your case. This means we think the court would not change your confiscation order. Brackets there is no real possibility your confiscation order would be further reduced).

25. The matters raised were fully litigated in the CACD, most recently in 2018. As Davis LJ repeatedly observed, to the claimant's benefit. The CCRC has now reviewed this case on three separate occasions. Any complaints the claimant has about the use of language or any arithmetical challenges are not sufficient, even if accurate, to give rise to the prospect of the CACD overturning any of the convictions or altering the terms of the confiscation order. The claimant has already served a prison sentence in default of satisfying the order. Some illusionary reduction would not bring him any recompense.

26. This application is totally without merit and is refused.