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Neutral Citation Number: [2022] EWHC 1853 (Admin)

Case No: CO/363/2022

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

Tuesday 19th July 2022

Before:

MR JUSTICE FORDHAM

Between:

**THE QUEEN on the application of ZHOLIA
ALEMI**

Claimant

- and -

CROWN COURT AT CARLISLE

Defendant

- and -

CROWN PROSECUTION SERVICE

**Interested
Party**

The **Claimant** appeared in person

The **Defendant** and **Interested Party** did not appear and were not represented

Hearing date: 15.7.22

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.

.....
THE HON. MR JUSTICE FORDHAM

Note: A non-confidential version of this judgment was released on 18th July 2022, together with the Court's Order, to be followed by a deemed hand-down of the judgment on 19th July 2022.

MR JUSTICE FORDHAM:

Introduction

1. This was an in-person hearing of a renewed application for permission judicial review. Permission was refused on the papers by Heather Williams J (“the Judge”) on 18 May 2022. The judicial review claim had been filed on 2 February 2022. The “decisions” which are challenged in the claim documents are the decisions by which the Claimant was convicted by a jury in the crown court, and the sentence which was imposed on her by the trial judge on 18 October 2018. There is also an application for an extension of time. The Claimant appeared in person. The Claimant filed various papers with the Court, which I have read, including a skeleton argument for this hearing. The Claimant requested that the claim be treated as two distinct applications for permission for judicial review: one in respect of the convictions and the other in respect of the sentence. I confirm that I have considered these two aspects of the case separately. I offered, and agreed with the Claimant, that it would be better to put my judgment into writing.

The CACD

2. The Claimant’s case was considered by the Court of Appeal Criminal Division (“CACD”) at a hearing on 26 March 2021. She had made applications for permission to appeal against conviction and against sentence. Following a refusal on the papers by the single judge, the Claimant had made a renewed application for permission to appeal in both of the respects. She also sought an extension of time. In its judgment the CACD made clear that, had the appeal been viable, it would have granted the extension of time. The judgment of the Court is [2021] EWCA Crim 507. For the reasons given in the CACD’s judgment, permission to appeal against conviction and against sentence were refused. An HMCTS letter dated 20 April 2021 to the Claimant explained that persons who consider that they have been a victim of a miscarriage of justice may apply to the Criminal Cases Review Commission inviting the Commission to refer the case back to the CACD for reconsideration.

Section 29(3)

3. The trial at which the Claimant was convicted and after which she was sentenced was a “trial on indictment”. In its Acknowledgement of Service, the Interested Party referred to section 29(3) of the Senior Courts Act 1981. It provides that this Court has no jurisdiction in “matters relating to trial on indictment”. The Interested Party’s contentions were: that section 29(3) has the effect that this Court has no jurisdiction to consider a judicial review challenge to convictions or sentences at a trial on indictment, since these are an integral part of the trial process; and that the appropriate challenge was to the CACD which has been pursued by the Claimant unsuccessfully.

The Judge

4. In refusing permission for judicial review on the papers, the Judge found that the matters raised in these judicial review proceedings are plainly matters “relating to trial on indictment”. The Judge said that the judicial review grounds “relate directly to the evidence adduced at [the Claimant’s] trial on indictment, the conduct of the trial, and the decisions made in relation to her conviction and sentence”. As the Judge also explained, the case law that the Claimant had put could not assist her because they are

about the crown court's appellate capacity or matters "distinct" from trial on indictment "such as reporting restrictions and excepting directions". As the Claimant acknowledges, the Judge decided not to certify the claim as "totally without merit". That was in circumstances where the Claimant would have no further redress since this is a "criminal cause or matter". That course taken by the Judge has enabled the Claimant to appear at an oral hearing before another High Court Judge, to try and persuade this Court to allow the judicial review claim to proceed.

The Claimant's Position

5. In her written and oral submissions, the Claimant recognises that this Court's jurisdiction is limited by section 29(3). As she explained to me, she is looking for a way forward in relation to the points which she wants to raise. She wants to find a route to having her conviction quashed, if possible. She recognises that she has served her sentence. She had explained, in writing and orally, concerns which she has about the way in which her case was dealt with in the crown court and also the way in which case was dealt with in the CACD. She recognises that this Court does not have jurisdiction to supervise the process or outcome in the CACD.
6. At the heart of the submissions which she developed before me orally, the Claimant emphasised a document dated 8 October 2018. The Claimant has a number of other points, all of which I have considered, but I am satisfied that she has chosen the strongest one in terms of trying to persuade the Court that it has jurisdiction notwithstanding section 29(3). The document had been sent by the Claimant to the crown court judge dealing with the trial. It was referred to by the trial judge in the transcript the next day. At that point the trial judge had not yet empanelled a jury. The trial judge said: "I did receive a document from Miss Alemi concerning trial in private (in regard to her diagnosis of Asperger's)". The Claimant's Leading Counsel responded: "Please ignore it".
7. The Claimant relies on the duty of fairness, the right to a fair trial, Article 6 ECHR, and her legal rights as a person with a disability. She says she should have been able to give evidence "in private", or by way of special arrangements or special measures, in light of the diagnosis to which her document of 8 October 2018 and the trial judge referred. She tells me that nowadays the diagnoses would be understood and expressed as "high functioning autism". The Claimant says that the CACD misunderstood the position on this key point. In the CACD judgment at §17, dealing with application for permission to appeal against conviction, the Court said that the Claimant had asserted that:

... she did not give evidence at trial because she was under a disability, making it very stressful for her to give evidence in public, and she had not been permitted to give evidence in private. We observe no such application was made. The [trial] judge had no evidence of any relevant disability, nor for that matter to way. It may be that there would be a case in which a defendant might give his evidence or her evidence in private, at least in part. We cannot immediately bring such a circumstance to mind. It certainly did not exist in this case.

The Claimant says that the reference to the trial judge having "no evidence of any relevant disability" is wrong, as is reflected in the fact that – in the transcript – the trial judge had referred to having received the 8 October 2018 document from her.

8. The Claimant says that, at least arguably, this sort of issue is not "related to trial on indictment". That means the Court's jurisdiction is not excluded under section 29(3).

In support of that, she made two key points. I will encapsulate their essence in my own words:

- i) The first point was about timing. The Claimant says the timing of consideration of arrangements for the giving of evidence and special measures is a matter which precedes trial on indictment. For that reason the issue raised does not “relate to” trial on indictment. It is something earlier than the trial on indictment.
- ii) The second point was about a bigger picture. The Claimant says the nature of the right to a fair hearing is that it is a universally applicable requirement. Fairness and the right to a fair trial are required in all proceedings. Therefore, the issue raised is not distinctly a matter “relating to” trial on indictment. It is something bigger than the trial on indictment.

For one or other or both of those reasons, the Claimant invites me to find that this Court – at least arguably – has jurisdiction in this case, notwithstanding section 29(3). She asks me to grant permission for judicial review.

The Context

9. The Claimant explained to me at the hearing the implications, from her perspective, of her diagnosis of high functioning autism. She explained its implications for participation in legal proceedings, including these judicial review proceedings. She paid tribute to the ACO staff in Manchester for the way in which they accommodated her requests for reasonable adjustments. The Claimant explained to me that one of the important features of this judicial review case from her perspective is that she would wish that these proceedings and their outcome could benefit others, in future, who are within the legal system and who have autism. She explained to me the shortcomings, as she sees them, of the statutory and policy arrangements regarding autism. She also pointed to what she told me was a statistical over-representation in our prisons of people with autism.

My Position

10. I cannot grant permission for judicial review in this case. That is because I agree with the Judge. Beyond argument, this Court has no jurisdiction. This case is squarely caught by section 29(3) and by the caselaw on section 29(3). The jurisdiction which arises in this case, regarding the issues which have been raised, was one which belonged squarely to the CACD. That jurisdiction has been invoked and the four judges of the CACD have ruled on the issues which were put forward. I make clear that I can see no arguable residual common law jurisdiction which could be invoked with success by the points raised in the present case.
 - i) Any question about the arrangements which could have been made or should have been made relating to the Claimant’s position as the defendant in the crown court trial (trial on indictment), in the way in which she might be permitted to give her evidence, was squarely a matter which “related to” that trial on indictment. It was about the conduct of the trial.
 - ii) The Claimant is right about the universality of procedural fairness and fair trial rights, as being applicable in all legal proceedings. But that does not alter the

fact that these legal proceedings were a crown court “trial on indictment”. Decisions relating to the running of the trial, in order to secure fairness and a fair trial for the Claimant as the defendant in that trial, were matters directly relating to trial on indictment.

11. When I pause to consider whether section 29(3) means – in a case such as the present – that there is a gap in the protections provided by judicial review, I cannot find such a gap. The criminal justice system has been designed with protections. It has been designed with a division of labour. There is a principled reason for the exclusion of the High Court’s judicial review jurisdiction in relation to matters such as these, in cases such as this. If there has been an unfair trial on indictment, a convicted defendant has the legal entitlement to make an application to the CACD for permission to appeal. There is the legal entitlement to have the application considered on the papers by a single judge. There is the legal entitlement to renew the application to the Full Court, if permission to appeal is refused by the single judge. This case illustrates the pursuit of those avenues. They were unsuccessful. The High Court on judicial review does not supervise the CACD, and nor should it. The judicial review Court is not a concurrent jurisdiction, so that a convicted defendant at a crown court trial can choose the High Court or the CACD or both. Sometimes there are cases where the High Court does have a judicial review jurisdiction but where there is the “alternative remedy” of an appeal route. In those cases, the judicial review court will usually refuse permission for judicial review because of the alternative remedy. But here the position is even more emphatic. There is a statutory exclusion which operates, for good and principled reasons.

Conclusion

12. For these reasons, which are substantially the same as those of the Judge, I have refused the Claimant’s renewed application for permission to appeal, with no order as to costs. The question of an extension of time does not arise.