



Neutral Citation Number: [2024] EWHC 2177 (Admin)

Case No: AC-2023-LON-003774

IN THE HIGH COURT OF JUSTICE

KING'S BENCH DIVISION

ADMINISTRATIVE COURT

Royal Courts of Justice

Strand, London, WC2A 2LL

Date: 20th August 2024

Before :

MR JUSTICE SWEETING

Between :

STEPHEN PIGOTT

Applicant

- and -

CROWN PROSECUTION SERVICE

Respondent

Stephen Pigott for the APPLICANT

Anna Keighley (instructed by Crown Prosecution Service) for the RESPONDENT

Hearing dates: 4th July 2024

Approved Judgment

This judgment was handed down remotely at 10.30am on [date] by circulation to the parties or their representatives by e-mail and by release to the National Archives (see eg <https://www.bailii.org/ew/cases/EWCA/Civ/2022/1169.html>).

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THE HONOURABLE MR JUSTICE SWEETING:

Introduction

1. On the 3rd of May 2005 at the Canterbury Crown Court the applicant (Mr Pigott) pleaded guilty to offences of cheating the revenue and money laundering. The fraud (of the type often referred to as a “carousel fraud”) involved a loss to the Revenue estimated to be in excess of forty million pounds. On 9 September 2005, following the trial and conviction of his co-defendants he was sentenced to a total of eight years imprisonment.
2. On the 30th of November 2007 HHJ Williams made a confiscation order in the sum of £1,535,595.19, being the realisable amount (having earlier, in May 2006, found that the benefit from the applicant's criminal conduct was £27.3m). The delay in resolving the confiscation proceedings was largely attributable to the applicant’s divorce and the need to conclude ancillary relief proceedings in the Family Court. The confiscation sum included identifiable assets such as houses, watches and cars as well as hidden assets of £1,000,000.
3. The Crown Court imposed a default term of 10 years imprisonment, subsequently reduced on appeal, in November 2009, to 8 years. The appeal was otherwise unsuccessful. The Court of Appeal upheld the confiscation order in the amount certified by the Crown Court.
4. Shortly after the Court of Appeal had handed down its judgment Mr Pigott absconded. A warrant was issued for his arrest and his licence was revoked so that he was subject to recall to prison to serve the remainder of the term imposed in May 2005. In fact, he lived abroad for some 10 years between 2009 and 2019 only being apprehended when he returned to this country for his daughter's wedding and was stopped by a police officer in relation to unconnected matters.
5. The receiver sought to realise the tangible assets identified in the confiscation order which produced a total of £88,040, notwithstanding that a value of £498,887.60 had been placed upon those items in the confiscation proceedings. The applicant had made earlier payments of £9,500 giving a total sum recovered towards satisfying the order of £97,540. The balance of £1,401,347.60 remains outstanding and has been steadily accruing interest.
6. By an application notice dated the 18th December 2023 Mr Pigott seeks a certificate of inadequacy (“CoI”) under section 83 of the Criminal Justice Act 1988 (“the 1988 Act”) on the basis that his available and realisable assets are insufficient to satisfy the outstanding sums. Although the confiscation provisions of the Act were repealed and replaced by the Proceeds of Crime Act 2002 they continue to apply to offences committed before the 24th of March 2003, as is the case here.
7. This is the second application made by Mr Pigott for a CoI, the first application having been heard by Swift J. on the 26th October 2021 and dismissed as being totally without merit. On that occasion the applicant was represented by counsel but appeared as a litigant in person before me. He has nevertheless had assistance with the preparation of his case in the period leading up to the hearing, from leading counsel, amongst others. His oral submissions by video-link from prison were clear and articulate.
8. Mr Pigott blamed his former legal representatives for his failure to secure a CoI when he appeared in front of Swift J, contending that his barrister had proceeded without taking his instructions and in the face of the judge’s clear indication that the explanation as to his assets and the material provided to evidence it were totally inadequate. It

appears that no opportunity has been afforded to those who were representing him on that occasion to comment on these allegations as to their conduct.

The Legal Framework

9. Under the provisions of section 83 of the 1988 Act it is for the applicant to satisfy the court to the civil standard of proof that his realisable property is inadequate for the payment of any amount remaining to be recovered under the confiscation order. If it is so satisfied the court must issue a certificate to that effect giving its reasons for doing so. The process is in two stages since once a certificate has been granted the applicant must then apply to the Crown Court which made the confiscation order to seek a variation. It is then for the Crown Court to determine whether the order should be varied and if so by how much.
10. The principles underpinning certificates of inadequacy are to be found in the judgment of the Court of Appeal in *Adams v Crown Prosecution Service (CPS)* [2017] EWCA Civ 185 (27 March 2017) (bailii.org) quoting from its earlier decision in *Glaves v Crown Prosecution Service* [2011] EWCA Civ 69 (03 February 2011) in which the court approved a summary of the law by, then, Mr David Holgate QC, sitting as a deputy judge of the High Court, in *In re B* [2008] EWHC 3217 at [74]:

“(1) The burden lies on the applicant to prove, on the balance of probabilities, that his realisable property is inadequate for the payment of the confiscation order (see O’Donoghue, Re [2004] EWCA Civ 1800 (04 November 2004) (bailii.org), per Laws LJ at para 3).

(2) The reference to realisable property must be to “whatever are his realisable assets as a whole at the time he applies for the certificate of inadequacy. If they include assets which he did not have when the confiscation order was made, that is by no means a reason for leaving such fresh assets out of consideration” (IBID and see also Re Philips [2006] EWHC 623 (Admin).

(3) A s.83 application cannot be used to go behind a finding made at the confiscation hearing or embodied in the confiscation order as to the amount of the defendant’s realisable assets. Such a finding can only be challenged by way of an appeal against the confiscation order (see Gokal v Serious Fraud Office [2001] EWCA Civ 368 (16 March 2001) (bailii.org), per Keene LJ at para 17 and 24).

(4) It is insufficient for a defendant to say under section 83 “that his assets are inadequate to meet the confiscation order, unless at the same time he condescends to demonstrate what has happened since the making of the order to realisable property found by the judge to have existed when the order was made” (see Gokal para 24 and Re O’Donoghue at para 3).

(5) The confiscation hearing provided an opportunity for the defendant to show that his realisable property was worth less than the prosecution alleged. It also enabled the defendant to identify any specific assets which he contended should be treated as the only realisable property. The section 83 procedure, however is intended to be used only where there has been a genuine change in the defendant’s financial circumstances. It is a safety net intended to provide for post confiscation order events (see McKinsley v Crown Prosecution Service [2006] EWCA Civ 1092 (25 July 2006) (bailii.org) per Scott-Baker LJ at paras 9, 21-24, 34 and 35).

(6) A section 83 application is not to be used as a “second bite of the cherry”. It is not an opportunity to adduce evidence or to present arguments which could have been put before the Crown Court Judge at the confiscation hearing (para 38 of Gokal and paras 23, 24 and 37 of McKinsley)”.

11. Accordingly a section 83 application cannot challenge findings made during the confiscation hearing, or embodied in the confiscation order, in relation to the defendant’s realisable assets. Such challenges can occur only through an appeal against the order. It is for the applicant to demonstrate what has happened to the realisable property which the court found to have existed when the order was made and to explain why what has taken place since constitutes a genuine change in his financial circumstances.

Mr Pigott’s Application

12. Mr Pigott described his position as amounting to “a paradoxical quandary” because he had been trying to avoid prison, and was now serving a default sentence, for not paying money he did not have. He said that he had never had £1,000,000 of hidden assets and that all of his assets had been disposed of some 15 years ago.
13. The current application was, he argued, distinct from the previous one, dismissed by Swift J. in 2021 so that no question of issue estoppel or res judicata arose. The earlier application was rejected due to insufficient information, particularly regarding assets acquired while he was outside of the UK. Consequently, the court did not at any point address issues related to the asset schedule and the present application focused on matters left unresolved in the 2021 proceedings.
14. The reasons for the shortfall in the tangible assets were set out in his witness statement. In summary he explained that factors contributing to the shortfall included that:
 - a. Certain assets were transferred to his wife during ancillary relief proceedings.
 - b. Some assets were sold at significantly reduced prices, often to related parties or through distressed sales.
 - c. A number of items were reported as lost, stolen, or damaged, resulting in no recovery.
 - d. Certain assets, particularly high-value watches, did not belong to him.
 - e. There were difficulties in accessing funds held in overseas bank accounts due to legal and logistical constraints.
15. Further Mr Pigott maintains that there are no (or no longer) hidden assets. The only accounts held in Dubai were at Masreq Bank and were fully disclosed to the authorities. These accounts were used to receive and spend payments by way of loan from John Shaw an individual identified by the court as a key figure in the underlying fraud. Shaw provided financial support for the Mr Pigott’s living expenses in Dubai, necessitating the opening of accounts to manage these funds. He also denies any ownership or control over the bank accounts of the companies Qualinford, Esso/Mic Tech, and Artiste Com/Altatec. The funds received from these companies, in the form of specific payments, were also, he said, used to repay the loans from John Shaw.
16. He admitted fleeing the jurisdiction by relocating to Thailand in 2009. While abroad, he said that he had secured employment with a Mr. Sylvester's web design company in Bangkok. His income from this position, which he estimated to have been between £400 and £600 per month, was sufficient to cover basic living expenses. To supplement this income, he relied on financial assistance from a network of friends and family, including his ex-wife, Helene Pigott. She has provided a sworn statement detailing the

nature and extent of her financial support, as well as contributions from Mr Pigott's parents. On his return to England he lived in his former matrimonial home. Thus he claimed to have amassed no substantial after-acquired assets since the imposition of the confiscation order.

17. Accordingly Mr Pigott submitted that all previously identified assets had been exhausted and there were no further resources available to him so that he should be granted a certificate of inadequacy.

The Crown Prosecution Service Response

18. The Respondent submitted that it was not open to Mr Pigott to make a further application. The principle of finality is a cornerstone of the legal system, and it is equally applicable, albeit under a different nomenclature, to criminal proceedings such as confiscation order applications. While the technical doctrine of *res judicata* is a creature of civil law, the overarching concept of preventing parties from re-litigating matters that have already been determined is fundamental to the efficient and just administration of justice. In the criminal context this is encapsulated in the concept of abuse of process.
19. The court's power to prevent such abuse is broad and discretionary. In determining whether to apply the principle of finality or issue estoppel in a particular case, the court will adopt a merits-based approach, considering a range of factors. These include the public interest in finality, fairness to the parties and the specific circumstances of the case; none of which assisted the applicant.
20. The cornerstone of the original confiscation order was the finding of hidden assets valued at £1 million. The allegation that a substantial portion of this sum was diverted to a third party should have been raised during the initial confiscation proceedings, or was necessarily determined in those proceedings and could not be introduced at this stage by an application for CoI.
21. Ms Keighley argued that the applicant's credibility was seriously undermined by his history of dishonesty, including the use of false identities. This continuing pattern of behaviour cast doubt on the veracity of his current claims and the sufficiency of the supporting evidence provided. It was still essentially a matter of assertion on his part. There remained a dearth of corroborative material, particularly in relation to the applicant's financial circumstances during the period when he absconded.
22. She submitted that the applicant's application was without merit and should be dismissed. It represented an attempt to reopen a matter that has already been subject to judicial determination whilst the lack of credible supporting evidence meant that it was fundamentally flawed.

Conclusion

23. I do not conclude that Mr Piggott should be precluded from applying for a certificate on the basis that the application is an abuse of process. The circumstances in which his earlier application was dismissed did not involve any consideration by the court of all the material which is before me and it must be open to a party in his position to rely on new information and evidence in making such an application. Whilst the Respondent argued that all of the explanations now put forward could have been advanced in 2021 and so were not "new" in that sense, for these purposes I take at face value Mr Pigott's evidence that in 2021 he was following advice, when he was represented. On any view the application made then was advanced on extremely thin grounds and the present

application has at the very least been expanded with some supporting evidence (as the Respondent accepted).

24. Plainly an attempt to simply reargue an application where there had been no significant change in the nature of the argument or the underlying material on which it is based as between an earlier hearing and an extant application would be an abuse of process, but that is not this case. That means that the application should be entertained by the court (notwithstanding the hearing before Swift J.) but it does not mean that the issues raised were not, on analysis, necessarily considered at the confiscation hearing or relate to matters which could have been raised earlier. That goes to the question of whether this application is essentially an impermissible attack on the confiscation proceedings as well as to Mr Pigott's credibility.
25. The fact that the tangible assets did not realise the value attributed to them is not in itself a reason for granting a certificate. As Swift J. observed:

"... The fact that the receiver has realised only a proportion of the amount anticipated in respect of the known assets is only one part of the evidential picture."

26. Mr Pigott's account, in this application, of his income, assets and location after he left the United Kingdom is not consistent with the very different account he gave to the Probation service in 2021.

"Mr Pigott tells me that following his departure from the UK, initially he headed to Spain due to one of his daughters 'going missing', he reports staying there for around ten days and once he located her, she returned to the UK and he travelled to Berlin. He subsequently had spells in the Middle East/Hong Kong and Sydney..."

Mr Pigott resides with his long term partner, whom he plans to re-marry in the near future. He also referred to having a house in London, although he tells me this property is owned by his partner. Employment, training and education Mr Pigott tells me he is a Co-Manager of a Web Design company with four offices in different locations; Sydney, Hong Kong, Singapore and Bangkok. He described how he is responsible for managing the Hong Kong office which he now manages from the UK. Due to Covid, the Hong Kong office has been reduced from eight employee's to four. In addition to the above, Mr Pigott has previously worked in the music industry as a Writer /Arranger and Producer for which he continues to receive royalties.

According to Mr Pigott, he, and his business partners have not drawn a salary since early 2020 at the start of the Covid pandemic. Prior to Covid, Mr Pigott states he would typically draw a salary of around £3000 each month. In addition to the above, Mr Pigott also receives between approximately £12,000 - £15,000 annually in royalties and income from several private pensions. He reports no out-goings with his home being owned outright so he 'manages to keep afloat'. Mr Pigott states he has 'a few more' pensions due in the next few years."

27. The Prosecution case in relation to hidden assets was advanced on the basis of copious evidence as to the flow of monies to Mr Pigott in Dubai, his residence there, his part in setting up shell companies to channel money, his use of serial false identities, large receipts to his own accounts and a web of concealment and dishonesty. He was aware in 2003, on his own evidence, of the alleged loan arrangement and diversion of monies

in repayment. The confiscation proceedings took place in 2007. Either the explanation he now gives was considered by the court or the failure to advance it then is a powerful indication that it is not truthful. In the circumstances there is no obligation on the court to simply accept what Mr Pigott now asserts unless it is substantiated by reliable evidence. What exactly became of the large sums which undoubtedly came his way as a result of the fraud remains opaque. I conclude that the hidden assets remain hidden; Mr Pigott has not established that they are dissipated or unavailable to him. His case at times appeared to take issue with the Crown Court's finding that they were ever his assets, a submission that is not available to him.

28. For these reasons I refuse the application for a certificate.