9th April 2009

Waltham Forest Magistrates' Court - R v Stratton

The High Court – Queens Bench Division - The Queen on the Application of Edwin Stratton v Waltham Forest Magistrates' Court: CO 10629/2008

Defendant's submission contesting the application from the CPS to commit the defendant for trial before the question of Abuse of Process can be determined by the High Court – Waltham Forest Magistrates' Court 9 April 2009

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1. Mr Stratton is currently conducting his defence through an application for a Judicial Review for a Stay of the criminal proceedings. This ongoing process was agreed with the Magistrates' Court and the CPS at the preliminary hearing. Having been refused on the papers, the Claimant (Stratton) has renewed his application for Judicial Review, and has had notification that the High Court will advise him of a date for this hearing within approximately 5 weeks.

2. The CPS now invites the Magistrates to consider that the initial refusal of permission for Judicial Review signifies that the action has to all intents and purposes failed, and that this Court ought to commit him for trial without delaying to await the final determination of the High Court to be made after hearing evidence at the oral hearing.

3. The defendant makes the following submissions on this assertion:

   (i) that to engage the committal process at this juncture would be an error of law that would fatally undermine the defendant's legitimate right to due process with respect to his Abuse of Process application. Further, it would usurp the authority of the High Court and would in itself instigate a further matter for a Judicial Review.

(ii) it would be wrong to say that the initial refusal in any way concludes the defendant's Abuse of Process claim either legally or in substance.
(iii) if the Magistrates are nevertheless prepared to accede to the CPS's application, that they would be obliged to consider the Abuse of Process argument themselves as a preliminary matter (as indeed the Deputy High Court Judge appears to be (mis)directing them to so do).

4. In respect of the first (and 3rd) submission; the defendant asserts that the magistrates must not seek to engage a second legal process that would interfere with the processes of the High Court whom are seised of the matter.

5. With respect to the second submission;

   a. The oral hearing stage (now in the process of being scheduled) is an integral part of the application process, as indeed is the right of appeal available to the Court of Appeal should the High Court ultimately refuse permission for Judicial Review. It is wrong in principle for the CPS to pre-empt the outcome of the oral hearing to the permission stage, or seek to undermine the legitimate defence available to the defendant in this court at this stage in the proceedings.
   b. Even if the question of the merits of the likelihood of success of the defendant's Judicial Review was one which the magistrates might properly be directed to consider (which is refuted), the preliminary refusal of the Deputy High Court Judge ought not to be given any weight in assessing the prospects for this case. This assertion vests in the fact that there are serious errors on the Notification of the Judge's Order which are beyond contention; to wit, firstly the Order reveals the Deputy Judge to have wrongly identified the CPS to be the Defendant to the action, and secondly that he wrongly assumes that the substance of the claim to be that the CPS ought not to have brought this prosecution.

6. With respect to the third submission; there is clear legal authority that only the High Court can hear an Abuse of Process for a

Mackeson type of application. *R v Horseferry Road Magistrates' Court, Ex parte Bennett* [1994] 1 AC 42, HL Lord Griffiths said;

> "Although it may be convenient to label the wider supervisory jurisdiction with which we are concerned with in this appeal under the head of abuse of process, it is in fact a horse of a very different colour from the narrower issues that arise when considering domestic criminal trial procedures. I adhere to the view expressed in *Reg v Guildford Magistrates' Court Ex parte Healy* [1983] 1 W.L.R. 108 that this wider responsibility for upholding the rule of law must be that of the High Court ….."

The CPS has presented the High Court with an ill-founded view that the Magistrates' Court is the proper jurisdiction for such a hearing. The defendant has refuted that possibility; should the Magistrates' Court now decide to commit the defendant, then it follows that the full Abuse of Process argument must first be heard here as a preliminary matter, notwithstanding that the ruling would doubtless be challenged by any party to these proceedings.

7. It appears possible that the High Court have misunderstood the basics of Stratton's case because of the errors in identifying the parties on their (the CPS's) Acknowledgement of Service, which presumably also accounts for their counsel's mistaken assertion at paragraph 1 to his submission contesting the claimant's application for permission for Judicial Review, and resultantly, all of the observations made on the Judge's Notification Order.

8. The CPS also puts forward the spurious argument that the so-called medical necessity defence to cannabis defences is a non-starter because of the cited case law. The defendant has made the point that this is irrelevant to his case as he does not purport to make such a claim or base his defence in any way on the premise of medical necessity whatsoever.

9. As the High Court is '**seised of the matter**', the defendant asks this court to continue to adjourn these proceedings until the full Judicial Review processes determine this matter in favour of Mr Stratton or otherwise.