Neutral Citation Number: [2021] EWCA 1479

Case No: 2021/0910

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE COUNTY COURT AT CENTRAL LONDON
HIS HONOUR JUDGE LETHEM
E00KT566

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 29/07/2021

Before :

LORD JUSTICE BEAN
and
LORD JUSTICE NUGEE

- -

Between :

THE ROYAL BOROUGH OF KINGSTON-UPON-THAMES
Claimant/Respondent

-and-

JAMES SLATER
Defendant/Appellant

The Appellant did not appear and was not represented
Francis Hoar for **the Respondent**

Hearing date: 29 July 2021

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Approved Judgment

Lord Justice Nugee:

1 This is an appeal by Mr James Slater against an Order made by HHJ Lethem (**"the Judge"**) sitting in the County Court at Central London on 9 April 2021. By that order Mr Slater was committed to prison for 9 months.

2 The background can be taken from the Judge's conspicuously clear judgment:

> *"11. The reality, therefore, is that, in a period from 2017 onwards, the defendant approached numerous people (over 16 in number) suggesting that the works of repair or refurbishment were required in respect of their properties. On some occasions, he took money in advance and did commence those works. The evidence suggests that, having commenced works, he used that as a platform to obtain further monies from the various residents, but, in all cases, the work remained unfinished and, in many cases, the work had been done to such a poor standard that in fact it had to be redone at extra cost to his victims.*
>
> *12. The other tranche of public affected by Mr Slater were those who paid money in advance and in respect of whom Mr Slater did no work whatsoever. In order to give some indication of the scale of this issue, there were in July of last year some £35,5000 owing to various people. By December that had risen to £42,860. Indeed, I understand that the sums involved have gone up significantly higher, though I do not take those into account in terms of sentence because they have not been the subject of the application. The allegations in this case amount to just shy of £50,000. That is a significant amount that this defendant has extorted from unsuspecting members of the public.*
>
> *13. That course of conduct is aggravated by two factors. The first is that I am told that the defendant received a sentence of 6 months imprisonment in respect of proceedings brought by the OFT in 2015. In other words, within a relatively short period of time after receiving a sentence for a similar offence, he embarked upon the course of action that has led to these proceedings today. In short, the previous sentence of 6 months had no deterrent or little deterrent effect upon him."*

3 The judgment set out the aggravating features, including an interim enforcement order in January 2019:

> *"14. The second aggravating factor is that HHJ Saggerson made an interim enforcement order on 1 January 2019 which became final on 1 February 2019. Part of that order read as follows:*
>
> *"The second defendant must provide redress to consumers pursuant to sections 217, 219A and 219B of the Enterprise Act 2002 as amended in that the second defendant must, by no later than 4pm on Monday 4 February 2019:*
>
> *(i) pay the sum of £800.00 to David Molesworth;*

(ii) pay the sum of £5540.00 to Richard Douglas Gerrard;
(iii) pay the sum of £6850.00 to Richard and Judith West;
(iv) pay the sum of £2000.00 to Ronald Young;
(v) pay the sum of £1350.00 to Adrian Shannon;
(vi) pay the sum of £1780.00 to Arthur Fenn;
(vii) pay the sum of £2100.00 to Louis Samuels;
(viii) pay the sum of £3300.00 to Chris Wilson;
(ix) pay the sum of £450.00 to Paul Robert;
(x) pay the sum of £700.00 to Jerome Houslax;
(xi) pay the sum of £950.00 to Jummin Dai; and
(xii) pay the sum of £9700.00 to Julia Wagstaff."

4 The judgment then set out the terms which Mr Slater was ordered to comply with as follows:

> *"The defendant was also forbidden from harming collective interests of consumers by breaching section 49 of the Consumer Rights Act, section 52 of the Consumer Rights Act, regulations 6 and 10 of the Consumer Protection from Unfair Trading Regulations 2008 and breaching the requirements of professional diligence in regulations 3(3) and 8 of the Consumer Protection from Unfair Trading Regulations. That involved him failing to carry out roofing or building works with reasonable care and skill and within a reasonable time."*

5 The Judge took account of the fact that 16 people were affected by the matter, and also took into account the OFT committal and the defendant's previous convictions.

6 The Judge concluded that he could proceed in the defendant's absence, being satisfied that Mr Slater was not going to attend court voluntarily. This was on the basis of his history of failing to attend court voluntarily, and his disengagement from the proceedings.

7 The Judge posed himself the question whether he should adjourn and issue a warrant for Mr Slater's arrest so that he could be brought to court at some time in the future, or whether he should proceed to consider the matter. He decided that although it was a step to be taken only in the most extreme circumstances, he was going to proceed to sentence. If he adjourned and Mr Slater were arrested and brought to court, there was a possibility, if not a probability, that it would come before another judge; and equally a possibility, if not a probability, that Mr Hoar might not be available to assist the Court. That would be unsatisfactory and less than optimal given that he had himself dealt with the matter throughout, and Mr Hoar had also been involved throughout and had the relevant information at his fingertips.

8 The alternative of proceeding to sentence meant that once arrested Mr Slater would be taken to prison. If a suspended sentence or non-custodial sentence were a likelihood, that would be a very weighty consideration. That was not however the case: it was almost inevitable that Mr Slater would spend a significant time in

prison. The difficulties that might have been present were therefore to a certain extent abated.

9 The Judge then proceeded to sentence, without mitigation. His conclusions can be found at [23] and [24]:

> *"23. In deciding sentence, I return to the observations that I have made. This is a particularly egregious and continuing breach of a court order that was made in order to protect the public. It takes place against the background of similar conduct where a 6-month sentence of imprisonment has not had the requisite deterrent effect. I must of course bear in mind the matters that I have had regard to in relation to coronavirus.*
>
> *24. In the circumstances the sentence that I impose upon the defendant is an immediate custodial sentence of 9 months. In the circumstances he will serve 4½ months of that sentence."*

10 It is apparent that the sentence was imposed for each breach on each count, consisting individually of failure to pay sums of money and other failures to pay legal costs and matters relating to Mr Sexton, all to run concurrently, so that the total sentence imposed was one of 9 months.

11 Mr Slater appealed, as he was entitled to do, without needing to obtain permission to appeal.

12 The grounds set out in his notice of appeal (prepared by himself) read as follows:

> *"I wasn't aware that the court case had gone ahead without me, see[ing] as I had supplied the correct court documents showing I was mentally unwell to stand court, but these were overlooked and a 9 mth custodial sentence was given out.*
>
> *I had 3 weeks to appeal this, but I was not given any information that the case was heard or the outcome.*
>
> *Apparently someone came to our address and couldn't gain access due to dogs outside the property, the communal letterbox was broken so didn't want to leave the paperwork.*
>
> *My question is why wasn't correspondence through email as [it was] earlier – all paperwork has gone to my wife's email up until now?*
>
> *And yet once the appeal time is over they find it fine to send the paperwork to the broken communal letterbox as I received it on 11.5.21.*
>
> *I have spoken to my doctor yesterday and she has advised I'm not well enough to go into custody at this time, I need time to get well with medication and support that I'm getting.*

I'd be very grateful if you could look into this for me. I'm supplying the three doctor's letters that were supplied earlier."

13 As can be seen these grounds cover three matters: (1) he says he was not aware of the proceedings, and had supplied the right documents; (2) he then deals with the service of the order; and (3) he says he has spoken to his doctor, and she has advised that he was not fit to go into custody.

14 In a subsequent email he repeats his grounds, and at the end says:

"I'm not against the court's decision but I'm pleading for the sentence to be deferred or suspended".

He says he was waiting for two placements – one where they do drink and drugs tests and counselling, and the other a rehabilitation place where he was expected as a live-in patient.

15 I agree with the submissions of Mr Francis Hoar, who appeared for the respondent, the Royal Borough of Kingston-upon-Thames, that in the circumstances these grounds are not in truth an appeal against the conviction but against the sentence.

16 We have this morning, shortly before the Court sat, received a communication from Mr Slater in which he has said that he was informed yesterday that he had tested positive for Covid-19 and was advised to isolate for 10 days. In those circumstances, he says that he cannot attend Court although he wants to.

17 The first question therefore is whether we should adjourn the hearing of this appeal.

18 Having discussed the matter with Bean LJ, I agree that the adjournment application which is in effect made by his communication is not one with which we should agree. In the Appellant's notice we have a good idea of the points he wishes to urge.

19 I should say that Mr Hoar expressed some scepticism about what Mr Slater has said about testing positive, but we are not in a position to inquire into that and I will assume that he is being entirely truthful in what he says.

20 The reason I take the view that an adjournment is inappropriate is that the appeal is not in truth an appeal against conviction, nor does he question the imposition of, or length of, the sentence – indeed, I have to say that it appears from the material before us that the sentence imposed was entirely justified and well within the reasonable band of sentencing decisions that a Court can come to. In truth, Mr Slater is asking for the sentence to be suspended, varied, or deferred on medical grounds. That was something which the Judge fully appreciated that Mr Slater might wish to do. He expressly said that he was proceeding to sentence:

"on the basis that, of course, when Mr Slater is arrested, it will be open to him to come to court and seek to have his sentence varied."

21 He was right about that: CPR r 81.10(1) allows a defendant against whom a committal order has been made to apply to discharge it, and r 81.10(3) provides that the Court hearing such an application should consider all the circumstances and make such an order under the law as it thinks fit. That, I have no doubt, would entitle the Judge to discharge the order, or suspend the order, or make some other order in accordance with the applicable principles.

22 It is apparent from a decision of this Court, namely *Swindon BC v Webb (trading as Protective Coatings)* [2016] EWCA Civ 152, that applications for discharge should if possible be heard by the judge who made the order in the first place: see per Tomlinson LJ at [24]:

"Ordinarily an application for discharge should where possible be listed before the judge who imposed the order for committal."

23 Our decision therefore is to dismiss the appeal, not on the basis that there is not anything in what Mr Slater says but because everything Mr Slater says can be put before the Court on an application to discharge, and that is the appropriate route for him to apply to have his sentence suspended or otherwise varied.

24 I add two things. We asked Mr Hoar whether Mr Slater is entitled to legal aid. We have not been able to get to the bottom of that but he is entitled to apply and if he is entitled he should take advantage of that.

25 The other thing is that whether the application is made by him or by his solicitor, the evidence before the judge as to the availability of rehabilitation or other available placements should be a great deal fuller than it has been before us, and supported by appropriate documentation.

26 There is one other matter to record which is that we had before us two applications to adduce further evidence. One concerned the witness statement of E Okunola, the solicitor acting for the respondent and concerned the circumstances under which Mr Slater was served with the order for committal. In my view that should be admitted as it directly concerns the grounds of appeal. It does not in fact appear to me that Mr Slater needs an extension of time for lodging his Appellant's notice, although I would also formally grant Mr Slater any necessary extension.

27 The other was a witness statement from Mrs Margaret Ferris which was to the effect that Mr Slater was still carrying out his activities in April of this year. I would formally admit that evidence although it does not make any difference given the way in which have disposed of the appeal. I should also make it clear that that evidence, or any further evidence as to Mr Slater's activities, may be relied on if and when Mr Slater applies to discharge the committal.

28 For the reasons I have given, the appeal will be dismissed. There will be no order for costs. I direct that a transcript be made available and supplied to both parties at public expense.

Lord Justice Bean:

29 I agree.