IN THE HIGH COURT OF JUSTICE
CO/3768/2015
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

13 August 2015

BETWEEN:

THE QUEEN

(On the application of Lord Janner of Braunstone QC)

Claimant

-and-

Westminster Magistrates Court

Defendant

The Crown Prosecution Service

Interested Party

This application for interim relief is founded in a claim lodged and served on 10th August 2015 in which the Claimant challenges the 7th August 2015 decision of the Defendant Chief Magistrate (District Judge Riddle) that the Claimant is fit to attend Court so as to be sent for trial to the Crown court.

The claim pleads that his decision was unlawful and/or irrational under three heads. First, his factual finding was not on the evidence open to him, second he failed to give any or any proper consideration to an alternative method by which the Crown could begin proceedings, that is by application to a High Court Judge for a voluntary bill of indictment (" a voluntary bill") which would not require the attendance of the accused, and third that enforced attendance would be a breach of the accused's Convention rights.

The argument in play before us is on a basis so narrow as to render unnecessary an exegesis of the route to this court. A précis suffices.

The Claimant has been charged with offences which must be tried in the Crown court and by some means the case must progress to it. The statutory provision for such is the Crime and Disorder Act 1998, infra, contemplating an appearance by the accused at the magistrates' court from which he would be sent to the Crown Court.

On 7th August counsel for the Crown and for the Claimant (who did not appear and was not required so to do) addressed the Defendant in the light of agreed oral expert evidence as to the latter's health. Drs Poole and Warner are agreed that his dementia is so advanced as to preclude his understanding of or contribution to legal proceedings. Dr Poole fears a ...'catastrophic reaction' (a medical term of art to which we return below) and likely distress irritability and anger were he brought to court.

Both doctors addressed fitness to attend in the context of the Claimant's contribution to the legal process as well as his potential discomfort and distress.

The ruling challenged.

The Defendant ruled:

"We have heard uncontradicted evidence from experts. In the context of today's hearing he is likely to be distressed. Catastrophic distress, what it means is that the defendant may well become intolerant of the proceedings and may indeed leave. I further understand that it will have no long term effects, this is significant....[the Claimant] is fit to attend for the brief nature of these proceedings…all that is required is that he attend this court……for a comparatively brief time, he will be free to go should he become distressed and with good will on both sides this can be achieved in minutes. …..the medical view is that it won't do him any good, but a broader test as far as the court is concerned is what is in the interests of justice. Distressing though it is, [the Claimant] is fit to attend for the brief nature of these proceedings"

He adjourned the case until Friday 14th August 2015 when the Claimant is required to attend.

The legal framework.

The Crime and Disorder Act 1998 where relevant reads:

S51 No committal proceedings for indictable-only offences.
(1)Where an adult appears or is brought before a magistrates' court ("the court") charged with an offence triable only on indictment ("the indictable-only offence"), the court shall send him forthwith to the Crown Court for trial—

(a) for that offence, ……..……..

There exists no power in the Magistrates Court to proceed in the absence of the accused.

Discussion and conclusion.

The sole question for the Defendant on the 7th August 2015 was whether the Claimant were fit to attend court for the hearing. We are not persuaded that the Defendant failed or failed adequately to consider an alternative, the application for a voluntary bill. He was not concerned with how the CPS had commenced proceedings or with the availability of any alternative. In any event, the availability of an alternative has no relevance to whether an accused be fit to attend court.

The Defendant's task was to consider and apply the legal framework which governs the sending of an accused from the Magistrates to the Crown court. There is no necessity at that stage for an accused to contribute to proceedings since a sending to the Crown Court does not require his qualitative input.

The factual findings by the Defendant were squarely within the range of reasonable responses open to him and were findings which a reasonable person properly directing himself in law could have made. They acknowledged the nature and procedural importance of the hearing, and the principle of open justice in the presence of the accused.

The Defendant was astute to the difference between long and short term effects. He concluded that even were the Claimant to suffer a 'catastrophic reaction', that is become distressed, irritable or angry, wave his arms about, become intolerant of the situation and leave the room, none of those reactions was certain and each would be transient. It will not be necessary for the Claimant to remain in court for the entirety of proceedings which in any event are likely to be brief. The Defendant was also content to accommodate the difficulties the Claimant endures, explaining that if the Claimant wished to leave court upon becoming distressed he would be permitted so to do so once he had made the formal appearance necessary.

The European Convention on Human Rights

The Claimant seeks to invoke Articles 3 and 8 of the Convention, claiming that an appearance would be in breach of his rights under each. No such argument was addressed to the Defendant.

It is simply unarguable that Article 3 is engaged. There is no question of torture, or of inhuman and degrading treatment or punishment. As has been pointed out, breach of Article 3 requires a *"minimum level of seriousness"* (Gorodnichev v Russia (2007) Application No 52058/99 paragraph 100), or a *"minimum level of severity"* (Pretty v UK (2002) 35 EHRR 1 para 52). A high level of suffering is usually required, variously described as *"…intense …"* (Iovchev v Bulgaria (2006) Application No 41211/98, para 133 and Pretty, para 52, or *"… serious …"* (R (Limbuela) v SSHD [2006] 1 AC 396 at [8], per Lord Bingham,.

To establish a breach of Article 3 the Claimant must show he has suffered the ill-treatment he alleges, and that it amounts to a violation of Article 3: Grant v MOJ [2011] EWHC 3379 (QB) para 73. The evidence comes nowhere near achieving that. Even were any reaction by the Claimant to justify the worst fears of the experts, it would be very short lived and, as a consequence of his condition, rapidly forgotten.

Article 8 is engaged. No parade of learning is necessary to establish that. It provides "everyone has the right to respect for his private and family life, his home and his

correspondence." The Claimant asserts that the decision that he is fit to attend court will interfere with this right. .

However, Article 8 is a qualified right and must be weighed against other considerations. In this context they include the obvious and strong public interest in ensuring those summoned to court attend when required. Equally, there is a compelling public interest in public justice. The Court must not become a place of avoidable spectacle, but it is very important that the route to justice should be public.

The Defendant was clearly conscious of that, even if the argument before him did not focus on Article 8. Given the nature of the distress feared, and its short duration and that arrangements can minimise the effect on the Claimant, we unhesitatingly conclude that the balance comes down in favour of the Claimant's attendance, for the brief period required.

The Defendant was not wrong in his decision. This judgement, which is that of the court, is that interim relief is refused.