Neutral Citation Number: [2021] EWCA Crim 1193

Case No: 202002584 B5

IN THE COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM TRURO CROWN COURT
HIS HONOUR JUDGE LINFORD
T20197020

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

Case No: CO/5082/2019

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 30/07/2021

Before :

PRESIDENT OF THE QUEEN'S BENCH DIVISION
MRS JUSTICE MCGOWAN DBE
and
MR JUSTICE SAINI

- -

Between :

JEROME DOUGLAS	**Applicant**
- and -	
REGINA	**Respondent**

- -
- -

Jemi Akin-Olugbade (instructed by **Hetheringtons**) for the **Applicant**
Benjamin Douglas-Jones QC (instructed by **Crown Prosecution Service**) for the **Respondent**

Hearing dates : 20 April 2021

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Approved Judgment

Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email, release to BAILII and publication on the Courts and Tribunals Judiciary website.

Dame Victoria Sharp P:

Introduction

1. This is the judgment of the court.

2. Jerome Douglas, the Applicant, seeks leave to appeal out of time against his conviction for the offence of unauthorised possession of a specified item (a mobile phone) inside a prison. He pleaded guilty to this offence on 8 May 2019 but before he was sentenced it was argued on his behalf before His Honour Judge Linford ("the Judge"), sitting in the Crown Court at Truro, that the Applicant ought not to have been prosecuted for this offence. This submission was based on the fact that the Applicant had in fact been convicted of this very offence and sentenced to 21 days' additional imprisonment by way of an independent prison adjudication held on 19 March 2019. It was accordingly submitted that the Applicant should be permitted to vacate his guilty plea. The Applicant had yet to serve this additional imprisonment because he was still part of the way through a 10 year sentence for drugs offences at this time.

3. In a succinct written ruling handed down on 28 August 2020 ("the Ruling"), the Judge rejected the application. In summary, the Judge held that the independent adjudicator's decision to proceed to sentence the Applicant was void *ab initio* and of no effect and that there was no plea in bar. He also went on to quash the decision of the independent adjudicator. He imposed an 18 month sentence of imprisonment on the Applicant in respect of the unlawful possession of the mobile phone within a prison.

4. The Applicant argues that the Judge was wrong to reject the plea in bar. It is said that this was a clear case of *autrefois convict*, and that the adjudicator was lawfully seised of the matter when he sentenced the Applicant. For the Crown it was submitted that the Judge was correct to reject the plea in bar but wrong to quash the adjudicator's decision because he had no jurisdiction to do so under s.45(4) of the Senior Courts Act 1981. The Crown however invites us to reconstitute ourselves as an Administrative Court and to quash the adjudicator's decision. The Applicant agrees with the Crown that the Judge had no power to make a quashing order.

5. The application for leave to appeal was referred to the Full Court and we heard detailed and very helpful arguments from Mr Akin-Olugbade for the Applicant and Mr Douglas-Jones QC for the Crown.

The Facts

6. Between December 2017 and December 2018 large quantities of Class A drugs were moved from London to Cornwall for supply to users through an operation involving a county line known as "Billy" ("the Billy line"). In early 2019, Devon and Cornwall police ("the police") were investigating the Applicant's possible involvement in the Billy line. At this time the Applicant was imprisoned at HMP Wandsworth ("the prison").

7. More specifically, the police had obtained intelligence that the Applicant was in possession of a mobile phone ("the phone") and suspected the Applicant was using the phone in prison in connection with the Billy line. The police informed the prison of this intelligence. The information was provided in email correspondence dated 25 February

2019 from DC Mark Summerfield, of the Police Intelligence Development Unit, to PC Steve McDonnell of the Metropolitan Police (PC McDonnell is a Prison Intelligence Officer). The police also sent an intelligence package to PC McDonnell. This intelligence package included information concerning the Applicant using the phone for contact with numerous people involved in the Billy line. PC McDonnell confirmed on 25 February 2019 at 13.41 that the prison had received this intelligence material and said that the prison's security governor stated that the Applicant's cell would be "spun" in the coming days.

8. At 07:05 hours on 27 February 2019 a team was assigned to carry out this police intelligence-led cell search on Cell A3-017, the cell occupied by the Applicant. The team asked the Applicant to perform a squat "... as per the governor[']s instructions". The Applicant was unable to do so. He was wearing a long T-shirt and two pairs of underpants. He initially denied wearing two pairs. He then complied with a request to remove the outer pair, leading officers to find the following concealed items: (1) a quantity of "herbal substance", which had been concealed in the "waist band of the lining"; (2) a blue Zanco mobile phone; (3) black USB phone charger; (4) a lighter; and (5) a pouch of opened tobacco in which three SIM cards were concealed.

9. On 27 February 2019, DC Summerfield wrote to Mr George Pugh, the Security Governor of the prison. He informed him that on that day security staff at the prison had searched the Applicant's cell at the instigation of Devon and Cornwall Police due to well-graded intelligence that the Applicant was in possession of a mobile phone and he described what was found. He said that the search of the Applicant's cell was coordinated with warrants executed by Devon and Cornwall Police and the Metropolitan Police at various addresses in London. The Security Governor was informed in this letter that the Applicant was believed to be involved in a "county lines" drug network in Cornwall and DC Summerfield requested that seized items be released to Devon and Cornwall officers. He explained that an application would be submitted to produce the Applicant (or to conduct a legal visit) for interview in respect of the drug offences "... and possession of the illegal items with[in] the gaol".

10. Accordingly, the prison, through the Security Governor, was clearly aware that possession of the phone was a matter being pursued by the police as part of their wider drugs investigation in to the Billy Line.

11. On 28 February 2019, a prison officer issued the Applicant with Form DIS 1 – "Notice of Report". It contained a summary of the items found and informed him that he was alleged to have committed an offence of having in his possession an unauthorised article, contrary to Rule 51(12)(a), Prison Rules 1999. It was set out that the Applicant's case would "... not be heard before 09.30 [h]ours on 01/03/19". The DIS 1 was said to relate to Charge No. 3001110 (see below as to this number). The officer completing the DIS 1 was required by the *pro forma* instructions to "[c]ontinue on Page 3 if necessary". The evidence is that that Page 3 was not completed, and no separate DIS 1 Forms were created for the three charges, albeit a prison official appears to have assigned separate charge numbers to:

    (1) the herbal substance: Charge No. 3001110 ("the herbal substance -110 charge");

(2) the Zanco phone, USB phone charger and 3 SIM cards: Charge No. 3001072 ("the phone/SIM -072 charge"); and

(3) the lighter and tobacco: Charge No. "30117" ("the tobacco -117 charge").

12. On 1 March 2019, Governor Dionne Jones recorded on a Form DIS 3 – "Record of adjudication hearing" that the Applicant had been charged with an offence of having in his possession an unauthorised article, "[a] quantity of herbal substance," contrary to Rule 51(12)(a), Prison Rules 1999 ("Charge No. 3001110"). We note that there is only one DIS 3 and it does not purport to relate to the phone/SIM -072 or the tobacco -117 charges. The Governor recorded:

a) in Section 1: the charge had been laid within 48 hours of discovery of the alleged offence and the first hearing had started on the day following the charge;

b) in Section 2 ("Referral to the Police (Governor or Director Only)"): the charge had been referred to the police;

c) in Section 3: the Applicant:

(a) attended the hearing;

(b) understood the charge;

(c) did not require assistance;

(d) had no questions;

(e) had received the DIS 1 at least 2 hours before the start of the adjudication hearing;

(f) had had enough time to prepare for the hearing;

(g) did not prepare a witness statement for the hearing;

(h) was fit; and

(i) pleaded guilty;

(4) in Section 4: he did not wish to call any witnesses;

(5) in Section 5: he asked for legal help – "advice";

(6) in Section 6:

(a) the "ALO [Adjudication Liaison Officer] had read out [the] DIS 1";

(b) the Applicant understood it and had no questions for the "RO"; and

(c) the charge was "of a sufficiently serious nature to warrant additional added days": accordingly, the charge would be adjourned for an independent adjudicator to consider them.

13. In Section 2 of the DIS 3 "Referral to the Police (Governor or Director Only)", where Governor Dionne Jones confirmed (by a tick) that the charge had been referred to the Police, the following mandatory consideration is set out:

> "At this point you must consider whether the charge is serious enough to refer to the police (PSI 47/2011 Annex A Paragraphs 2.17 –2.19**). If it is to be referred, adjourn and record the reason in Section 6. Do not refer to the independent adjudicator at this stage but await the police decision**. If it is not referred to the police, or if the police confirm that no prosecution is to take place, consider whether the charge is serious enough to refer to the independent adjudicator (PSI 47/2011, Annex A paragraphs 2.20 –2.25) (normally determinate sentence prisoners only). If it is referred, adjourn and record reasons for referral in Section 6. Arrange for the independent adjudicator to hear the charge within 28 days. Remember that any incorrect referral cannot subsequently be returned for hearing by the governor. If it is not referred proceed with the hearing".
>
> (our emphasis)

14. PSI 47/2011 Annex A § 2.18 includes the following important instructions which are to the same effect as Section 3 of DIS3:

> "The decision on referral to the police is for the adjudicator, taking account of the individual circumstances of the case [subject to forthcoming reporting crime guidance]. **If the charge is referred the adjudication hearing must be adjourned until the outcome of any police investigation is known. The case should not be referred to an independent adjudicator at this stage,** since the 28 days time limit for an IA to open a hearing may expire before the police/Crown Prosecution Service reach a decision"
>
> (our emphasis)

15. Despite the fact that the prison was well aware that the police had instigated the search as part of an intelligence operation (and were intending to interview the Applicant) and despite the Governor herself recording that the matter had been referred to the police, the Governor referred the charges to an independent adjudicator.

16. On 19 March 2019 the matter came before the independent adjudicator, District Judge Gillibrand ("the DJ"). The DJ recorded on the DIS 3 (that is on the same form that Governor Jones had completed as described above) that the Applicant had pleaded

guilty to each of the charges (we note they featured here separately on the DIS 3 for the first time) and that he had imposed the following concurrent sentences on the Applicant as follows: (1) the phone/SIM -072 charge: 21 additional days (2) the tobacco -117 charge: 7 additional days; and (3) the herbal substance -110 charge: 5 additional days. The DJ does not appear to have noticed that the matter had been referred to the police.

17. On 9 April 2019, the CPS authorised charging the Applicant with the offence of possessing a specified item, namely the phone, without authority. On 11 April 2019, the police charged the Applicant by postal requisition, with conspiring to supply cocaine, a Class A drug, contrary to s.1(1) of the Criminal Law Act 1977 and possessing the phone, an item specified in s.40D(3B) of the Prison Act 1952, without authority, contrary to s.40D(3A) and (5) of the 1952 Act. He was required to attend Highbury Corner Magistrates' Court on 18 April 2019. On 3 May 2019, the Magistrates' Court sent the Applicant's case to the Crown Court at Truro.

18. On 14 May 2019, the Applicant appeared at the Crown Court at Truro. He pleaded guilty to possessing the phone without authority. He pleaded not guilty to the conspiracy count. Sentencing for possession of the phone was adjourned pending the conclusion of his trial for conspiracy to supply drugs. Following his trial, on 3 September 2019, the jury failed to reach a verdict in respect of the Applicant concerning conspiracy. The jury was discharged insofar as he was concerned.

The Ruling

19. On 21 August 2020, the Applicant applied to the Crown Court to vacate the guilty plea to the count of possessing the phone without authority. He sought to enter a plea in bar on the ground he was *autrefois convict*.

20. On 28 August 2020, the Judge rejected the application to vacate the Applicant's plea. He said at paras 7-8 of the Ruling:

> "There can be no doubt at all that if the proceedings before District Judge Gillibrand were validly held and concluded this defendant would have good grounds for arguing that he was being convicted and sentenced twice for the same offence and the doctrine of 'autrefois convict' would apply as a bar to the continuation of the current proceedings. There is, in my view, absolutely no doubt whatever that the adjudication should not have taken place. The referral agreement referred to by counsel makes it clear that in circumstances such as those that pertain here the adjudication proceedings should have been opened but adjourned pending the police investigation".

21. The Judge was here referring to the Crime in Prison Referral Agreement ("the Agreement"), a joint publication of HM Prison and Probation Service, National Police Chiefs' Council and the Crown Prosecution Service, which concerns referrals to the police where an investigation might be appropriate, and which sets out at para 7 that "when an incident is referred to the police, internal disciplinary charges should be laid in the ordinary way within 48 hours of the incident and an adjudication opened but it should be adjourned pending police investigation".

22. The Judge does not seem to have been referred to the instructions we have set out at [13] and [14] above and determined the application simply on the basis of the Agreement.

23. The Judge considered *R v Robinson* [2017] EWCA Crim 936; [2018] QB 941 (discussed further below) and found that, at the date of the adjudication, the Applicant had not been charged. He was "merely being investigated, criminal proceedings were not 'on foot and extant' and accordingly *Robinson* can be distinguished". However, the Judge found the "rules" of the Agreement "... are clear in that where the incident is referred to the police (note not charged by the police but referred) the adjudication should be adjourned pending police investigation" (Judge's underlined emphasis).

24. In this regard, the Judge explained that there "... can be no difference between the prison referring the matter to the police and the police being [seised] of the matter via another route. In my view the hearing before the independent adjudicator and his disposal was void and of no effect and there can be no plea in bar".

25. The Judge concluded that the 21 additional days that had been added to the Applicant's sentence should be removed. He also quashed the adjudication.

26. On 14 September 2020, following a retrial, the Applicant was acquitted of conspiracy to supply Class A drugs, on the jury's failure to return a verdict. HHJ Linford sentenced the Applicant to 18 months' imprisonment (for the mobile phone possession offence), consecutive to the 10-year sentence that he was already serving.

The Law

27. Both parties made detailed reference to *Robinson*. The facts were as follows. The appellant was a serving prisoner. He absconded from prison while serving a term of 40 months' imprisonment for burglary. He was arrested and charged with escaping from lawful custody before being returned to prison. There, he was charged with an offence against discipline, namely escaping from prison, contrary to rule 51(7) of the Prison Rules 1999. The appellant pleaded guilty to the disciplinary charge without informing the independent adjudicator that he had already been charged with a criminal offence, and was sentenced to 14 days' imprisonment, to run consecutive to the sentence of imprisonment he was serving. He subsequently appeared in the Crown Court on the charge of escape from lawful custody. When he asked counsel representing him whether any issue of *autrefois convict* arose, he was advised that it did not, since, based on Court of Appeal authority, an adjudicator dealing with an offence of prison discipline was not a court of competent jurisdiction. The appellant pleaded guilty. Unaware of the sentence which had been imposed by the independent adjudicator, the recorder sentenced him to three months' imprisonment, consecutive to his current sentence. The appellant applied for permission to appeal against conviction and sentence on the grounds that he had been dealt with twice in respect of the same offence.

28. It was held, granting the application for leave, that a decision of an independent adjudicator to adjudicate on a charge of escape under rule 51(7) of the Prison Rules 1999 when the prisoner was being, or had already been, prosecuted for escaping from lawful custody was a breach of the prison discipline procedures set out in Prison Service Instruction 47/2011 and exposed the prisoner to double jeopardy; that such a decision was so wrong in law as to be in excess of jurisdiction and therefore void *ab initio*

(applying *Webster v Lord Chancellor* [2016] QB 676, para 44); that, therefore, since he had, albeit unwittingly, proceeded with his adjudication whilst criminal proceedings against the prisoner were extant the decision of the independent adjudicator was void.

29. In those circumstances, the CACD held it was necessary for the court to reconstitute itself as a Divisional Court of the Queen's Bench Division in order to entertain a claim for judicial review of the adjudicator's decision.

30. In relation to the test to be applied in determining whether an adjudicator acted in excess of jurisdiction the Court in *Robinson* referred to the three criteria referred in *Benham v United Kingdom* (1996) 22 EHRR 293 and which had been adopted in *Webster*. In this regard, Haddon-Cave J at [17]-[18] said as follows in *Robinson*:

> "17. We were helpfully referred by Mr Douglas-Jones to *Webster v Lord Chancellor* [2016] QB 676, para 44 in which Sir Brian Leveson P said:
>
> > "The court went on to adopt the distinction drawn by the House of Lords in *In re McC (A Minor)* [1985] AC 528 between custody decisions which are, on the one hand, voidable because they are wrong in law by reason of errors within jurisdiction and, on the other hand, those which are void ab initio and ex facie because they are so wrong in law as to be outside or in excess of jurisdiction. These were summarised in *Benham v United Kingdom* (1996) 22 EHRR 293, para 25: "In its judgment [i e that of the House of Lords], a magistrates' court acted in excess of jurisdiction in three circumstances only: (1) if it acted without having jurisdiction over the cause; (2) if it exercised its powers in a procedural manner that involved a gross and obvious irregularity, or (3) if it made an order that had no proper foundation in law because of a failure to observe a statutory condition precedent".
>
> 18. In our view, the decision of the independent adjudicator, through no fault of his own, was so wrong in law as to be outside or in excess of jurisdiction. The first two of the three criteria referred in Benham v United Kingdom (1996) 22 EHRR 293 set out above, apply in this case".

The Submissions

31. The main submission of Mr Akin-Olugbade for the Applicant was that the Judge made an error of law because the Agreement has no statutory authority and is, therefore, incapable of "voiding" an otherwise lawful criminal process. Additionally, he submitted that despite the relevant adjudication forms being unclear, the correct conclusion when they are read as a whole is that the referral was to the independent adjudicator, not the police.

32. Mr Akin-Olugbade relied upon *Robinson* as authority that prison adjudications, such as that faced by the Applicant, which involve punishment by loss of liberty, amount to 'criminal proceedings'. These prison criminal proceedings were for the same offence in fact and law as that issued by the Crown Prosecution Service. Accordingly, it was

argued that the Applicant's conviction for which he was sentenced at Truro Crown Court was for an offence for which he had previously been convicted and sentenced on 19 March 2019. It was said that he is entitled to rely on a plea in bar.

33. Strong reliance was also placed on *R (on the application of O'Brien) v Independent Adjudicator* [2019] EWHC 2884 (Admin) for the detailed consideration given in that case to the legislative background to the management of prisons. Relying upon the statutory scheme, Mr Akin-Olugbade stressed in his oral submissions that as a matter of jurisdiction the Governor and the adjudicator enjoyed the power in law to do what they did and hence the adjudication cannot have been unlawful.

34. For the Crown, Mr Douglas-Jones QC supported the Judge's reasons in his Ruling save for the order made by the Judge quashing the Adjudication. He submitted that on 1 March 2019 the Governor erred in adjourning the adjudication for prison charges to be considered by the independent adjudicator. He also argued that the decision of the adjudicator flowing from referral was based on factual misunderstandings and failure to make obvious inquiries and was accordingly void, applying the principles in *Robinson* and *Benham*. In his oral and written submissions, he focussed less on the Agreement than the Judge had his Ruling, and more upon the failures of the Governor and DJ to follow the instructions cited at [13] and [14] above.

Discussion

35. In our judgment, the Judge was right to dismiss the application for essentially the reasons given by the Crown.

36. The key issue is whether the proceedings before the DJ were validly constituted and held. We accept Mr Akin-Olugbade's submission that if they were, the Applicant has an unanswerable *autrefois convict* plea in bar. However, in our judgment, those proceedings were not valid.

37. The starting point is that the Governor erred on 1 March 2019 in adjourning the adjudication for prison charges to be considered by the independent adjudicator. It is significant in our judgment that the Governor had herself recorded in the DIS 3 that the matter had been referred to the police. That record was, in itself, factually wrong. The investigation concerning the phone was not merely a matter which had been *referred* by the prison to the police, it was part of an intelligence-led *police investigation*. The prison had ample information in this regard. However, even on her own incorrect understanding of the position she was required not to refer the matter to an adjudicator pending the police investigation. Her referral was accordingly void *ab initio.*

38. That finding is enough to deprive the DJ of jurisdiction to consider the matter referred to him. He was not seised of a valid and lawful referral. However, even putting that matter to one side when, on 19 March 2019, the DJ proceeded to sentence the Applicant, it was clear on the face of the DIS 3 form that the matter had been referred to the police. Had he considered that entry he would have made basic enquiries. They would have revealed the police investigation. It is clear that the DJ would then not have proceeded to sentence the Applicant.

39. We agree with the Crown that given these errors (and as in *Robinson*) the decisions of the Governor and the DJ were "... so wrong in law as to be outside or in excess of

jurisdiction". In terms of the *Benham* criteria (see [30] above), in our judgment each of the Governor and the DJ acted without having jurisdiction over the cause, and exercised their powers in a procedural manner that involved a gross and obvious irregularity.

40. Each of their decisions was based on a serious misunderstanding or failure to appreciate the facts well known to the prison. It is well-established that a public law court will intervene when a decision-maker misunderstands, or proceeds in ignorance of, an established and relevant fact: see *Begum v Tower Hamlets* [2003] UKHL; [2003] 2 AC 43- at [7] and *Fordham, Judicial Review Handbook* (7th Edition) at 49.3.2. The pending nature of the police investigation in this case was a highly material fact.

41. As explained in *Robinson*, there are sound policy reasons for ensuring that prisoner adjudications should not be allowed to prevent or disable the Crown Court from proceeding to exercise its proper jurisdiction in relation to the criminal law.

42. For completeness we should record that we have considered the detailed reliance placed by Mr Akin-Olugbade for the Applicant on the *O'Brien* case but do not consider it assists in resolving the issue in this application. The fact that by primary legislation Parliament has invested the Secretary of State, and not the courts, with the general superintendence of prisons including disciplinary proceedings does not touch upon the matters we have to decide.

43. In this regard, it is correct that in certain circumstances possession of a mobile phone is a matter which may be addressed within the prison adjudication system. It is also correct that purely as a matter of *formal* jurisdiction, a governor has the power to refer a charge such as that faced by the Applicant to the independent adjudicator and the adjudicator has the *formal* power to deal with it. Those points do not however answer the question before us: on the *facts*, was the referral and the determination lawful?

44. It is for the courts to decide whether a governor and adjudicator acted lawfully in exercising an accepted jurisdiction in the circumstances of any particular case. Once it is determined that they acted unlawfully it is right, under conventional public law principles, to say they acted outside their jurisdiction. The submission on behalf of the Applicant proceeds on the erroneous basis that as long as the Governor and adjudicator formally in law had the power to take the actions that they did, that is the end of the inquiry. In fact, they can err (as in this case) when they have exercised that power in an unlawful manner.

The Agreement

45. For completeness, we address the Judge's approach. As appears above, the Judge (based on the arguments before him) approached matters from the perspective of the Agreement. He was in our judgment plainly right in his approach to the Agreement. He explained that there can be no difference between the need to adjourn an adjudication when a matter has been referred to the police, and a case when the police have become seised of the matter by another route. There is no material difference between the two situations and any other conclusion would lead to absurd results. These are both situations where the police and CPS must have priority for obvious reasons.

46. Although we have not decided this application on the basis of the Agreement, we do not accept Mr Akin-Olugbade's submissions as to the lack of relevance of the Agreement. In our judgment, the Agreement is a document which has relevance in public law terms because it determines between relevant actors how the prison service and the police/prosecuting authorities are to interact in situations such as the present. As we have noted, the parties to the Agreement are HM Prison and Probation Service, National Police Chiefs' Council and the Crown Prosecution Service. As its recitals make clear, it reflects a common understanding as to how these parties will interact even if as between them it is not intended to create legal rights and obligations. These recitals also expressly refer to it as creating a "national minimum expectation for all signatories". The police and the CPS were entitled to proceed on the basis that the prison would take into account the facts of which it had been made aware and adjourn the internal disciplinary process in accordance with the Agreement.

Quashing

47. Section 45(4) of the Senior Courts Act 1981 ("the 1981 Act") is in the following terms:

> "(4) Subject to section 8 of the Criminal Procedure (Attendance of Witnesses) Act 1965 (substitution in criminal cases of procedure in that Act for procedure by way of subpoena) and to any provision contained in or having effect under this Act, the Crown Court shall, in relation to the attendance and examination of witnesses, any contempt of court, the enforcement of its orders and all other matters incidental to its jurisdiction, have the like powers, rights, privileges and authority as the High Court."

48. The scope of s.45(4) of the 1981 Act was considered in *In re Trinity Mirror plc and others (A and another intervening*) [2008] QB 770. The Court held that "... the ambit of section 45(4) of the Supreme Court Act 1981 did not extend to protect children from the consequences of the identification of their father in the criminal proceedings before the Crown Court". The Court explained at [30] that "[u]nless the proposed injunction is directly linked to the exercise of the Crown Court's jurisdiction and the exercise of its statutory functions, the appropriate jurisdiction is lacking". And at [31] : "[t]he order was not incidental to the defendant's trial, conviction and sentence. The court with jurisdiction to make this order, if it were ever appropriate to be made, is the High Court".

49. Based upon this case law, it was common ground that a quashing order in respect of a decision of an independent adjudicator in the context of his prison disciplinary function is beyond the power conferred on a Crown Court judge as a matter "incidental to its jurisdiction". We agree. Applying Sir Igor Judge P's words from *In re Trinity Mirror plc and others (A and another intervening)* at [31], the quashing of the adjudication conviction and sentence was not "... directly linked to the exercise of the Crown Court's jurisdiction and the exercise of its statutory functions". It was "not incidental to the defendant's trial, conviction and sentence".

50. However, on the basis of our conclusion that the adjudication was void, as in *Robinson*, we reconstitute ourselves as a Divisional Court, we abridge time, dispense with formalities and allow the claim for judicial review of the decision of the independent adjudicator and quash that decision of 19 March 2019 insofar as it related to the phone/SIM -072 charge and the sentence of an additional 21 days.

Conclusion

51. The application for leave to appeal out of time is refused.