

In the High Court of Justice
Administrative Court

BETWEEN:

MAURICE J KIRK

Claimant

and

CARDIFF MAGISTRATES' COURT

Defendant

STATEMENT OF GROUNDS FOR JUDICIAL REVIEW

1. The Claimant is the Defendant in case number 1000470237 at Cardiff Magistrates Court.
2. In this case the Claimant was charged with a single account of common assault on a member of staff at Cardiff Crown Court.
3. It is the Claimant's case that the alleged offence was attempting to serve documents on the court by handing them to a member of staff. The member of staff was reluctant to accept the papers and the Claimant attempted to place the papers in the member of staff's pocket. The member of staff pushed the Claimant away and as a consequence the Claimant fell and suffered an injury to his ankle and to his already damaged hip/pelvis.
4. It was, however, the Claimant who was charged with an offence.
5. In the circumstances the Claimant was confident that he would not be found guilty of the alleged offence.
6. As a consequence of his injury, however, the Claimant suffered a worsening of the degenerative hip condition in respect of which he was awaiting a hip replacement operation.
7. As a further consequence of his deteriorating health the Claimant was prescribed strong analgesic medication including morphine derivatives that affected his cognitive capacities.

8. In the circumstances the Claimant became incapable by reasons of health of perusing an ongoing action for damages against the South Wales Police and he produced various medical reports to the High Court in Cardiff in support of this position. As a consequence the case was adjourned in order to allow the Claimant to have his hip replaced and to regain his health.
9. The Claimant was also pursuing an Appeal against a judgement of the Recorder of Cardiff, His Honour Judge Nicholas Cooke QC made on 24th June 2010 where the learned Judge found the Claimant to be in contempt of court. Following receipt of the same medical reports the Honourable Court of Appeal also adjourned the proceedings in order to allow the Claimant's health to improve to the point where he could attend court and proceed with the case.
10. Yet further the Claimant stood charged with a public order offence to be heard in Barry Magistrates Court following an incident where he remonstrated with individuals causing damage to his property. Again it was the Claimant who was charged with an offence. Again, following the receipt of medical evidence the Court adjourned the proceedings in order to allow the Claimant to recover his health.
11. The only court that did not respond to the Claimant's Application by granting an adjournment on the grounds of the Claimant's poor health was the Defendant.
12. On 25th October 2010 the Claimant wrote to the Defendant indicating that he was in poor health, was too ill to attend Court and referring to the fact that other cases had been adjourned on the basis of his health. He asked for the matter to be listed for a trial in December/January 2010, anticipating that by this time his health would be improved. He also asked that the case be transferred to a court away from Cardiff because he considered the case to be part of a more serious and wider civil dispute between himself and staff at Cardiff Courts.
13. In this letter the Claimant referred to the medical reports that he believed had already been sent to the Court. These reports had been used in the Claimant's successful applications for adjournments in other courts.
14. The letter also indicated that it had been drafted by friends of the Claimant since the Claimant was 'most unwell'.

XX The following medical reports were handed to the district judge in the first hearing , on 27th August 2010, in the presence and understanding of the independent witness of the alleged offence, a Mr Francis Werren, who had already delivered his signed 4th August 2010 witness statement, containing conflicting evidence, to the Crown Prosecution Service offices, Cardiff. This same statement was also sent by the Claimant to the CPS by post.

Due to the illness of the Claimant it was directed by the court a solicitor was to be allocated for cross examination only.

Medical reports handed to the District Judge on 27th August 2010

1. 3rd August 2009 report by Dr Tegwyn Williams, Caswell Clinic, Bridgend, stating evidence of a relevant mental disorder.
2. October 2009 final report by Dr Tegwyn Williams stating 'significant brain damage'.
3. 18th September 2009 dated report by Professor Wood stating 'significant brain damage' and relevant mental disorder.
4. 22nd June 2010 report by Dr J Azami stating refusal to operate due to withheld records.
5. 2nd August 2010 report by Dr B Roper, GP, to HHJ Cooke QC to obtain records.
6. 10th August 2010 report by Dr Roper to specifically requesting court adjournment.

The district judge was informed of three further reports, under preparation and later sent to Cardiff courts.

7. 3rd September 2010 report by Dr Nuala Kennan
8. Sept 2010 report by Dr Helen Bright
9. 7th September 2010 report by Dr Liz Miller

Extract

In addition, Maurice Kirk's health varies from day to day and he is not physically fit enough to be able to manage to attend court on consecutive days for the duration of a court case.

Prognosis

Without surgery, Maurice Kirk's pain will worsen, requiring progressively larger doses of morphine sulphate. Following surgery, Maurice Kirk is likely to be able to resume many of his activities of daily living and to be able to manage without major morphine based painkillers.

15. At the time the Claimant believed that all relevant medical reports had been sent to the court by his friends although a further report from his General Practitioner was to be sent to the Court by the Medical Practice.
16. The Defendant did not grant an adjournment and the case was heard in the Claimant's absence on 2nd November 2010 where a Deputy District Judge considered the Claimant's Applications but proceeded to find him guilty in his absence and issued a warrant for his arrest. In addition to the medical evidence already available to the court, the Claimant's GP had also provided an updated medical report indicting that the Claimant was unable to defend himself whilst under the influence of such strong analgesic drugs.
17. When the Claimant contacted the Defendant to find out what had occurred he was informed by the court staff that his medical reports had not been available to the Deputy District Judge because they had been faxed to the court only on the day of the Hearing.
18. The Claimant entered into correspondence with the court, but receiving no reply he formally wrote to the court on 13th December 2010 requesting that the Conviction of 2nd November and the warrant be 'set aside'.
19. On or about 22nd November 2010 the Claimant received an e-mail from a Ms Rosalind Joyce, a Case Progression Officer at the Cardiff Magistrates Court stating:

With reference to your telephone call last week, I have spoken to a Legal Manager who has confirmed that an application to set aside the decision made on the 2nd November 2010 will have to be made at the High Court and cannot be dealt with at the Magistrates Court, the warrant issued on the 2nd November 2010 will remain outstanding and you are advised to surrender to this warrant as soon as possible. As you are aware I explained these points to you last week so this is confirmation.

20. The Claimant did not accept that this stated position was correct and continued to communicate with the court by telephone and e-mail requesting them to deal with his Application.
21. When it became clear to the Claimant that the Court would not deal with his Application he instructed solicitors who formally wrote to the court on 24th January 2011 requesting that the Claimant's Application be listed at the earliest opportunity.
22. The Claimant's Application was then listed for a hearing before the District Judge on 22nd February 2011.
23. By a letter dated 31st January the Defendant stated that

“It would be inappropriate to consider re-opening the case until Mr Kirk is before the Court. However the court will list the case for an application to be made to withdraw the warrant issued on 2nd November.”
24. On 22nd February 2011 the District Judge indicated that he would deal with both the Claimants' applications (i.e the application to set aside the Claimant's conviction and re-open the case and the application to withdraw the warrant). The District Judge dismissed both applications.
25. On examining the Court record it appeared that although the Claimant's Medical reports were not available to the Deputy District Judge at the start of the Hearing on 2nd November 2010 when he made his decision to proceed, they became available later and were considered by the Deputy District Judge who then upheld his original decision to proceed. It was not clear from the note on the Court File precisely what medical evidence had been considered.
26. The District Judge concluded that the Deputy District Judge had examined the medical evidence and decided that the matter should proceed in the Claimant's absence. He was not prepared to interfere with this exercise of discretion by the Deputy District Judge.
27. The Claimant avers that District Judge failed to take into account relevant information including that the Claimant had been unable to attend the Hearing of 2nd November 2010 by reasons of ill health and that other Courts had accepted the same medical evidence as providing sufficient reason to adjourn those proceedings.

28. Further or in the alternative in making his decision the District Judge assigned too much weight to the fact that the Deputy District Judge had decided to proceed in the Claimant's absence.
29. In the premises the Claimant avers that the District Judge Fettered his discretion and did not apply the proper test for determining Applications under 142 Magistrates Court Act 1980 as set out in *Hayward & Ors, R v [2001] EWCA Crim 168 (31st January, 2001)*, *Jones, R v_ [2002] UKHL 5 (20th February, 2002)* and *R (Morsby) v Tower Bridge Magistrates' Court [2007], EWHC 2766 (Admin)*.
30. Further or in the alternative the decision of the District Judge has breached the Claimant's Human Rights under the Human Rights Act 1998, particularly the right to a fair trial under the European Convention on Human Rights Article 6, particularly Articles 6.3 (c) (the right to defend himself in person) and 6.3 (d) (the right to examine or have examined witnesses against him).

AND THE CLAIMANT ASKS THE HONOURABLE COURT FOR THE FOLLOWING ORDERS

1. An Order Transferring this application for Judicial Review to the High Court of Justice in London for determination.
2. An Order Quashing the decision of the District Judge dated xxx
3. Costs

Statement of Truth

I believe the facts contained within these Grounds for Judicial Review to be true.

Signed

Dated