

Case No: CO/13/2018

Neutral Citation Number: [2018] EWHC 1798 (Admin)

IN THE HIGH COURT OF JUSTICE

QUEEN'S BENCH DIVISION

ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 13/07/2018

Before :

THE HON. MR JUSTICE WILLIAM DAVIS

Between :

	The Queen on the application of Norman Joseph Jones	<u>Claimant</u>
	- and -	
	Criminal Cases Review Commission	<u>Defendant</u>

Mr Michael Mansfield QC (instructed by **Richard Haswell Solicitors**) for the **Claimant**

Hearing dates: 6 July 2018

Judgment Mr Justice William Davis:

1. On 29 February 2008 a man named Finney was murdered. His murder properly can be described as an execution. In February 2009 the Claimant was tried for that murder together with his son, Joseph, and two other men. The Claimant and his son were convicted. The other two men were acquitted.
2. Both the Claimant and his son applied for leave to appeal against conviction and sentence. The applications were dismissed by the full Court of the Court of Appeal

Criminal Division. The judgment of the court was delivered by Lord Justice Hughes (as he then was): [2012] EWCA 2631. The judgment sets out in some detail the prosecution case as it was advanced at trial and the defences put forward by the Claimant and his son.

3. In consequence it is not necessary for me to rehearse the background to the case other than in outline. The prosecution case against the Claimant was circumstantial. It depended upon inferences being drawn from a mass of interconnecting evidence derived from telephone, CCTV and ANPR material. Two telephones of particular significance were mobile telephones purchased on 28 February 2008 with numbers ending 384 and 267. These telephones were unregistered mobile telephones. They were purchased by the Claimant. They were used only for three days, usage ceasing on 2 March 2008 which coincided with the burning out of a van used to abduct Finney prior to his murder. Their usage was located via cell site evidence in areas associated with the abduction and murder of Finney and with the burning of the van.
4. Prior to the trial the Claimant served a defence case statement best described as skeletal. It amounted to little more than a bare denial. Joseph Jones did not serve a defence case statement at all before the start of the trial. Once the case had been opened he did serve one. It was a substantial document. In essence it said that a man named Jock Gordon had been responsible for the murder of Finney. It was asserted that, inter alia, he had been using the two mobile telephones of particular significance. Although the mobile telephones had been purchased by the Claimant, he had passed them immediately to Gordon. In his evidence the Claimant adopted this account.
5. The Court of Appeal Criminal Division described this account as the Gordon defence. The court said that the result of the trial depended on whether the proposition that Gordon was responsible for every incriminating action was plausible. The court concluded that it had been rejected out of hand by the jury. The court described that rejection as “scarcely surprising”.
6. Gordon was dead by the time of the trial. Indeed, he died about a month after Finney. The circumstances were suspicious in that he was found hanged at his place of work which was a garage. It appears that the garage had been sold shortly before Gordon’s death and the likelihood was that he no longer would be able to work there. He had been observed to be in a low mood as a result. An inquest in due course returned an open verdict. Gordon was a man without previous convictions and no apparent connection to crime. He had a mobile telephone of his own which was in use in South London both at a time when the victim had been taken to Hitchin in Hertfordshire by his abductors and later when the van used in the abduction was being burned in Wheathampstead in Hertfordshire. On the other hand, the mobile telephones purchased by the Claimant were in use in Hitchin and Wheathampstead at the relevant times. On the morning of Finney’s murder, a further mobile telephone linked to the crime was used near Heathrow. The Claimant’s case was that this telephone also was in Gordon’s possession albeit that it was his telephone. Gordon at this time was using his own telephone in a quite

different part of London. The Claimant on the other hand was near Heathrow at the relevant time.

7. There were five proposed grounds of appeal put forward by the Claimant to the Court of Appeal. Save that they were rejected as unarguable the court, little needs to be said about those grounds. One was revived in the application with which these proceedings are concerned but it is not a matter which has been pressed in oral argument before me. It is unnecessary to consider it further. Another concerned the failure to call as a defence witness the widow of Gordon. Her position is the focus of the application which I have to determine though not in the same way as was considered by the Court of Appeal. What is of note is that the Claimant's defence team at trial was in a position to call this lady had they considered it appropriate. She was not called because she had refused to give any indication of what she might say in evidence.
8. On 5 March 2015 the Claimant applied to the Criminal Cases Review Commission ("the CCRC") for a review of his conviction and sentence. Submissions were made in respect of more than a dozen different issues. It was not until 18 November 2016 that the CCRC issued its provisional decision. It was a refusal to make a reference of the Claimant's case to the Court of Appeal. The Claimant and his representatives were given the opportunity to make further comments in the light of the provisional decision. They were given an extension of time to do so i.e. until 30 April 2017. The CCRC's final decision was dated 11 September 2017. The CCRC confirmed its provisional view and decided not to refer the Claimant's case to the Court of Appeal. The Claimant now renews his application for permission to judicially review the decision of the CCRC, that application having been refused by the single judge.
9. The power of this court to judicially review a decision of the CCRC has been the subject of much litigation ever since the establishment of the CCRC in 1995. Those who apply to the CCRC almost without exception will have attempted unsuccessfully to appeal their conviction to the Court of Appeal. They regard the CCRC as their last chance of overturning what they believe, whether genuinely or otherwise, to be a wrongful conviction. As in this case the application to the CCRC not infrequently is in the context of a long term of imprisonment. Where an application is refused, the convicted person frequently will hold deep feelings of injustice. It is against that background that the jurisprudence has developed.
10. On a renewed application for permission to apply for judicial review it is neither necessary nor appropriate to engage in a lengthy review of that jurisprudence. I cite the judgment of Dove J in R (Steele) v CCRC [2015] EWHC 3724 Admin simply because it helpfully encapsulates the principles:

"It follows that whilst I obviously appreciate the deeply held feelings of injustice which clearly still trouble the claimant, the task which I have is a narrow one focused on seeking to identify whether there has been any public law error in the decision which

the defendant has reached. As has been emphasised in the authorities (see in particular R v CCRC ex parte Pearson [1999] 3 All ER 498) the decision as to whether or not to refer a case back to the Court of Appeal is clearly, in the light of the statutory language employed in the 1995 Act, a question of judgment for the defendant. It is not the task of the court to retake the decision or exercise the judgment afresh. The question is whether or not in reaching the judgment which the defendant has there is any error of law in terms of a decision which is perverse or irrational or which has, for instance, failed to take account of a material consideration or taken into account a consideration which is immaterial. It is on the basis of these traditional grounds of public law articulated in the Wednesbury case that the exercise of the judgment has to be assessed. For the reasons which I have set out above I am entirely satisfied that there is no arguable error of law, assessed within the narrow compass of the error of law jurisdiction, which is evident in this case.”

11. In this case the applicant accepts the limited scope of any potential challenge to the CCRC in any decision it makes. His case is that the CCRC failed to make enquiries which any reasonable decision maker would consider essential prior to reaching a final view on the critical question, namely whether the fresh material available gave rise to a real possibility that the Court of Appeal would overturn the conviction. Thus, the decision was not rational. The relief sought is a quashing of the decision of the CCRC not to refer the case back to the Court of Appeal contingent on the making of the relevant enquiries.
12. The enquiries which it is said the CCRC failed to make principally concern Patricia Watson, the widow of Jock Gordon. On 27 June 2013 she provided a witness statement to the applicant’s solicitors. They submitted the statement to the CCRC as part of the application for review. The statement included the following information:
 - Ms Watson had made two statements to the police. One was made after her husband’s death. The statement was made after she had been approached by the police. The other was made more recently “I think in April or May 2013”. This was after she had been contacted by the applicant’s father. She approached the police to inform them of this contact.
 - The first statement dealt with the relationship between the applicant and Gordon. It asserted that Ms Watson had given her husband’s mobile telephone handset and her handset to the applicant’s father on a date Ms Watson could not recall. She did not know where the handsets were now.
 - The handset belonging to her husband ended with the numbers 999.
13. In its provisional decision the CCRC noted that Ms Watson referred in her 2013 statement to having made two witness statements to the police. There were two witness

statements from Ms Watson on the Holmes database i.e. the computer system used in the murder enquiry. This was consistent in terms of number of statements with what she said in 2013. These statements had not been disclosed at the time of the trial. However, the CCRC concluded that the material in those statements did not assist the applicant's case.

14. The CCRC was challenged by those representing the applicant in relation to the conclusion reached about Ms Watson. It was said that there were probably further statements from her in existence. That was the only sensible conclusion from the fact that she had spoken of the second statement being made in 2013, a date on which it could not have been placed on the Holmes system. Those representing the applicant argued that questions had to be asked about the telephones handed over by Ms Watson to the applicant's father and about apparent inconsistencies in her evidence taken as a whole. The CCRC declined this invitation to interview Ms Watson. They concluded that no useful purpose would be served by further investigation with Ms Watson given the nature of her evidence and the contents of other material available from the Holmes system.
15. Associated with the evidence from Ms Watson is evidence obtained in September 2013 from the applicant's father. On his account the two mobile telephones given to him in 2008 after Gordon's death by Ms Watson were said by her to be Gordon's telephones. His evidence is that Ms Watson told him that the telephones had messages on them in a foreign language and that he agreed to take the telephones so that the messages could be translated. He says that he gave the telephones to a man named Jerry. After a few weeks Jerry called him to say that one of the numbers ended 267 but did not say whether this was the number of one of the telephones or a number saved onto a telephone. It is said that a note was made of this number. Months later Ms Watson asked for the return of the telephones. The applicant's father's evidence is that Jerry told him that someone else now had the telephones but that this person was on holiday. Before contact could be made with the relevant person, Jerry died as a result of a sudden illness. The telephones were never returned. The applicant's father had no further contact with Ms Watson.
16. Those representing the applicant invited the CCRC to make further enquiries of the applicant's father. This invitation was declined.
17. The applicant's case is that the refusal of the CCRC further to investigate the evidence given by Ms Watson and Mr Jones senior is irrational. He argues that there are clear and obvious lines of enquiry without which it cannot be said that the CCRC has conducted its review with due diligence. He submits that the following questions are essential lines of enquiry with Ms Watson:
 - To which police force did you make the two statements to which you refer in your 2013 statement?
 - Were those statements oral or written?

- Why did not give your mobile telephone to Mr Jones senior and what was the number of that telephone? Under what kind of contract did you hold the telephone?
- Why did you give Gordon's telephone to Mr Jones senior?

18. In relation to Mr Jones senior these questions are said to be essential:

- How sure are you that both telephones belonged to Jock Gordon?
- Why did you give the telephones to Jerry?
- Why did you make a note of the 267 number?
- Why did you ask for the return of the telephones when you did?
- Why did you not tell the applicant about any of this at the time or at any time in the years following the conviction and leading up to the appeal?

19. As I have indicated, the CCRC declined to interview Ms Watson and/or the applicant's father because it could see no useful purpose being served by that step. If that view were plainly wrong, it would be necessary to consider whether it undermined or invalidated the decision of the CCRC as a whole. The final decision, which includes responses to further issues raised by the applicant in the light of the provisional decision, covers over 60 type written pages and deals with a multiplicity of issues. In general terms the final decision can hardly be described as a perfunctory consideration of the issues raised.

20. In considering the merits of the complaints made by the applicant, it is important to recall the basis on which a case can be referred to the Court of Appeal by the CCRC. Such referral can only be made if there is a real possibility that the conviction would be overturned arising from evidence not put forward at trial. In the context of this case that would require new evidence providing real support for the Gordon defence. The evidence considered by the CCRC in respect of which the applicant asserts insufficient investigation has been made establishes that Gordon's widow handed over two mobile telephones to the applicant's father, that one of the telephones in some way referred to the 267 number, that the applicant's father passed on the telephones to someone else and that the telephones now cannot be traced. Leaving aside the significant doubts as to the credibility of some of this evidence, particularly that provided by Mr Jones senior, it takes the applicant nowhere in terms of showing that Gordon had the telephones which are of significance in the case. The questions which it is said should be asked of the witnesses might flesh out their accounts of their supposed dealings with the telephones. No answers which either witness conceivably could provide would provide material to support the Gordon defence. The relevance of the handing over of the two mobile telephones supposedly is that they may be the telephones of particular significance as referred to by the Court of Appeal. No further enquiry will assist in making good that proposition.

21. In oral argument Mr Mansfield QC pressed on me the proposition that the Claimant just

wished to know as much detail as possible about the mobile telephones said by Ms Watson to have been handed over to the Claimant's father and that the CCRC were "papering over the cracks" in failing to carry out the further investigations as set out above. The purpose of the exercise conducted by the CCRC was to establish whether there was new evidence sufficient to provide a real possibility of overturning the conviction. It was not to satisfy every doubt that might lie in the Claimant's mind.

22. The complaints made about the nature of the CCRC's approach do not establish any failure on the part of the CCRC to exercise its judgment in a rational manner. As the single judge observed when refusing permission on the papers, the CCRC has a measure of discretion as to how it deals with applications made to it. This was a complicated case. There were many lines of inquiry. In the absence of obvious error it is not for this court to second guess the way in which the CCRC dealt with individual strands of the case.
23. It follows that this renewed application for permission to apply for judicial review of the decision of the CCRC is refused.