No: 201404243/B2
IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
Strand
London, WC2A 2LL

Tuesday, 9 April 2019

B e f o r e:

LORD JUSTICE FULFORD

MR JUSTICE SWEENEY

MR JUSTICE DINGEMANS

R E G I N A
v
CHRISTOPHER BRIAN WILLIAMS

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NON-COUNSEL APPLICATION
J U D G M E N T
(As Approved)

1. MR JUSTICE SWEENEY: On 30 July 2014, at the conclusion of his trial before His

Honour Judge Hughes and a jury in the Crown Court at Mold, the applicant, who is now aged 67, was convicted of two offences of breach of an enforcement notice, contrary to section 179(2) of the Town and Country Planning Act 1990, as substituted (Counts 1 and 2). On 20 August 2014 the judge sentenced the applicant to a fine of £2,000 on Count 1 and to a fine of £1,000 on Count 2. In addition, the applicant was ordered to pay £3,000 towards the costs of the prosecution.

2. He now applies for an extension of time of approximately 4 years in which to renew his application for leave to appeal against conviction, and for a representation order, after refusal by the single judge. Further, also long out of time and informally, the applicant seeks to add another ground of appeal. Although the extension of time sought is a very long one and no convincing reason for it has been advanced, we nevertheless propose to examine the merits in outline.

3. The facts are set out in the Criminal Appeal Office summary. It suffices, for present purposes, to relate that for a number of years the applicant ran a business, which included vehicle breaking and scrap storage, on land at and adjacent to a dwelling at 7 Saltney Terrace, Saltney Ferry near Chester. He became the tenant of that dwelling in July 1992. In early 2006, via previous adverse possession and consequent on a settlement with Network Rail, which was the registered owner, he obtained ownership of the land adjacent to No 7 and on which he ran his business.

4. By early 2006 the applicant was also the subject of an enforcement notice which had been issued by Flintshire County Council on 8 December 2005, in relation to the land at and adjacent to 7 Saltney Terrace. On 6 March 2006 a Mr Nichol, who described himself as a "planning consultant", wrote on behalf of the applicant to the Council in connection with the enforcement notice and submitted, amongst other things, that requiring the applicant to re-grass the site was unreasonable, that insufficient account had been taken of the fact that the applicant's means of making a living via a small business was at stake and that the time limits imposed were too tight.

5. On 9 May 2006 the Council wrote to the applicant saying that it had withdrawn the enforcement notice and that it was therefore unnecessary for the applicant to pursue his appeal against it. However, the letter made clear that that was without prejudice to the Council's power to issue another notice. On 20 April 2011 the Council duly issued another enforcement notice in relation to the same land, which was amended by a correction notice dated 2 November 2011, and which ultimately required the applicant, by 19 December 2011, to cease using the land for the storage and breakage of scrap vehicles, the storage of motor vehicle parts, tyres and other materials associated with the breaking of scrap vehicles and, by 16 January 2012, to remove from the land a metal clad shed and area of hard standing and all other materials used to create the hard standing and to replace those parts of the land by grading them to match the contours of the adjacent land and to reseed them with grass.

6. In 2012, consequent on his alleged failures to comply with those requirements, the applicant was prosecuted by the council for two offences of being in breach of the enforcement notice, with Count 1 relating to what was required to be done by 19 December 2011 and said to have been committed between the 21 December 2011 and 24 May 2012; and Count 2 relating to what had been required to be done by 16 January 2012 and said to have been committed between 23 January 2012 and 24 May 2012. Ultimately, the applicant, who was represented by solicitors, pleaded guilty to those offences with a Basis of Plea, which the prosecution accepted. It was to the effect that his plea to Count 1 was limited to a failure to clear tyres and that his plea to Count 2 was limited to a failure to remove the metal clad shed. As to Count 1 the basis further stated that "the vehicles on the land whilst not in regular use are not scrap" and that "other items on the land are for legitimate use as a home owner."

7. In consequence, on 28 September 2012, in the Crown Court at Mold, the applicant was fined £1,000 on Count 1, with no separate penalty on Count 2. He was ordered in addition to pay costs in the sum of £950.

8. On 18 July 2013 the Council visited the site again, consequent upon which the instant prosecution was mounted. Count 1 alleged that on 18 July 2013 the applicant had not complied with the original enforcement notice by failing, by 19 December 2011, to remove from the land all scrap vehicles, vehicle parts, tyres and other equipment or materials brought onto the land for the purposes of the storage and breakage of scrap vehicles, motor vehicle parts, tyres and other materials. Count 2 alleged that on 18 July 2013 the applicant had not complied with the original enforcement notice by failing, by 16 January 2016, to remove the metal clad shed area of hard standing etc.

9. The applicant was represented by the same solicitors. In the Crown Court there was no application for a stay or other plea in bar. Whilst the Basis of Plea to which the applicant and his solicitors had both been party the year before was not disclosed as such, the applicant mentioned in evidence, including in cross-examination, that in the previous case the prosecution had said in court that the vehicles were not scrap. According to the applicant, it was only prior to sentence in the instant case that the existence of the 2012 basis of plea was formally disclosed by the prosecution.

10. In consequence, two grounds of appeal were advanced before the single judge, namely that:
(i) It is an abuse of the court process for the prosecution to accept a written Basis of Plea which they then ask the court to approve at sentence and then to go on to prosecute for the same offences, on the same facts, at a later date; (ii) the failure by the prosecution to disclose the written basis of plea in the instant proceedings, in accordance with their duty under section 7A of the Criminal Procedure and Investigation Act 1996, misled the jury on a material point in issue. It is clear from the defence statement that that was the question of whether the motor vehicles on his land were scrap or not.

11. In its notice the respondent points out that:

(i) the basis was drafted by the applicant's then counsel and the applicant was represented by the same solicitors in both sets of proceedings;

(ii) the instant prosecution was different and included more detail, including the physical condition and lack of road tax of the vehicles found in July 2013, and the Basis of Plea could not be taken as an assurance that there would be no prosecution for like offences committed in the future, or that the vehicles referred to in the previous prosecution could never thereafter be referred to as scrap;

(iii) there was no breach of the prosecution's duty of disclosure and, even if there had been such a failure, there was no possibility that the jury would have arrived at different verdicts if it had been disclosed. Hence, the instant convictions were safe.

In refusing leave, the single judge said this:

> "The Basis of Plea which it is said should have disclosed as part of the proceedings tried in 2014 concerned the position as it was prior to 2012. The indictment on which he was tried related to the position as at the 18th July 2013. What the prosecution did or did not accept as at the former date could not affect the propriety of proceedings in relation to the latter date. The prosecution could not be said, by the acceptance of the earlier plea, to have accepted that the relevant vehicles never could be considered to be scrap vehicles. Acceptance of the plea in 2012 did not mean that the applicant was entitled to keep the vehicles on his land indefinitely.
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> In any event the relevant count on the indictment identified a significant number of activities to which the enforcement notice was directed. The use of the land to store and break scrap vehicles was one such. There were others. The prosecution case did not depend on proof that any particular vehicles were scrap vehicles.
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> Disclosure of the Basis of Plea arguably was not required in view of the terms of Section 7A of the CPIA, as amended. In any event there can be no doubt that it was a document within the knowledge of the defence i.e. the solicitors and the defendant himself. Failure to disclose in the circumstances of this case cannot affect the safety of the conviction.
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> Had there been an application to stay the proceedings as an abuse of process it would have failed. The prosecution was not 'in breach of the agreement reached in the written basis of plea'. The status of the basis of plea was an acceptance by the prosecution of the position as at the relevant date i.e. the date of the offences for which sentence was passed in 2012. It did not begin to prevent prosecution of offences in relation to the position as it obtained in 2013."

12. We agree. There is no arguable merit in the grounds originally advanced and the renewed application is refused.

However, as we have indicated, the applicant also seeks to add a further ground which is that the

2006 letter from Mr Nichol, to which we have already referred, provides a further basis upon which his application should succeed. In our view, it does not. To any extent that the applicant has applied to amend his grounds on the basis of it, that application is also refused.

13. It follows that we have concluded that this renewed application and the application to amend are both totally without merit. Therefore, we now propose to consider whether it is appropriate to make an order for costs.

(The Bench Conferred)

14. MR JUSTICE SWEENEY: Having considered the issue, we have decided not to make a costs order in this case.