

R v PAUL ADAMS - CACD
23rd of MAY 2014
APPLICATION FOR LEAVE TO APPEAL CONVICTION
& APPLICATION TO ADDUCE FRESH EVIDENCE

Lady Justice Rafferty DBE
Mr Justice Burnett
Mr Justice Holroyde (who gave judgment)

Lynne Shirley for the Applicant
Hannah Eales for the Respondent

1. The respondent did not oppose the substantive appeal and only opposed the ground of appeal relating to non compliance with disclosure.
2. The following is a note of the judgment given (as verbatim as possible).
3. On the 11th of October 2013 the applicant was convicted of two offences: count 1 obtaining money transfers by deception and count 3 dishonestly obtaining an exemption from a liability to pay Council Tax. He was sentenced to three months imprisonment on each count concurrent and concurrent to six months imprisonment in relation to an unrelated offence.
4. The applicant applies for leave to appeal the conviction and adduce fresh evidence pursuant to section 23 of the Criminal Appeal Act 1968. He was referred to the full court by the registrar. The application for leave is not resisted by the respondent.
5. The applicant was in receipt of Income Support and Council Tax Benefit from 1998. There was an investment in his name for £56,000 and it was alleged that he had wrongly failed to disclose it.
6. Count 1 is that he obtained a large sum by deception, in relation to Income Support. Count 3 related to dishonestly obtaining an exemption in relation to payment of Council Tax.
7. He was interviewed, under caution, on the 9th of March 2011 and the 8th of October 2011; Holroyde J emphasized those dates. He gave full answers and denied any dishonesty and said that he inherited money and investment was made of the money in his name by his step father. The applicant has extreme anxiety and filling in forms and reading correspondence causes difficulty and therefore he relied upon his step father.
8. He accepted that there was an investment but did not know the nature or amount and said that he was worried because he thought he should declare and therefore had a discussion with the DWP when he visited the Jobcentre and suffered deductions from his benefit of £40 per week. He understood this was to recoup sums received.
9. The applicant acknowledged in interview and in evidence that he did not make a separate notification to the council because he assumed the information was passed on and therefore separate notification was unnecessary.

10. Therefore, the essence of his account was that he notified the DWP long ago and therefore he was not deliberately withholding information or nor was he dishonest. He was arrested in May 2013. The respondent's proceedings then began. The applicant made a request to the DWP for disclosure of all documents. There was some disclosure in early September and an indication was given that the DWP had no records before 2002.
11. On the applicant's behalf an application was made for an adjournment so that further enquiries could be made. The application was unsuccessful.
12. The respondent's witnesses gave evidence that the form would have made it clear that he had an obligation to disclose the capital. Reminders were sent in relation to changes of circumstances. The evidence showed that the DWP records did not include any record of notification by the applicant.
13. A witness from the DWP accepted that the records were incomplete and accepted that he had suffered a significant deduction of benefits not received and that there was no explanation for the deduction. There was an unexplained reference to child maintenance despite the fact that the applicant had no dependent children. No one has suggested that he had claimed that benefit.
14. His evidence was consistent with what he said in interview two to two and a half years earlier. He maintained that he had notified the DWP many years ago. He was cross examined that it was a deliberate lie. A psychiatrist gave evidence; his evidence was read by admission. He confirmed that the applicant had a high level of anxiety and compulsive hoarding; photographs were seen of his home. He had anxiety, panic attacks and phobia. This impacted upon his ability to deal with paperwork.
15. The applicant was convicted and sentenced.
16. After his conviction he persisted with his enquiries of the DWP and further searches were made. On the 24th of October 2013 an officer of the DWP wrote to the applicant's solicitors in relation to a decision in 2004 which was highly relevant. The document referred to the official form LT54, dated the 12th of October 2004.
17. The applicant therefore suggests the convictions are unsafe.
18. In relation to count 1, the applicant consistently said that he did disclose and this was proved correct, therefore, the foundation of the prosecution case was swept away. The DWP did not have a record of confirmation of the notification provided. This is powerful support for his consistent assertion that he was not dishonest.
19. In relation to count 3, the vindication of the applicant provides obvious and powerful support for his denial of dishonesty.
20. It is unnecessary to say more about the specific grounds of appeal or to analyse the evidence under section 23.
21. There is no doubt that the convictions are unsafe and must be quashed.

22. The respondent suggests that they had not failed in their duty of disclosure. They say they did not know of the existence of the material until it was disclosed. The court felt disquiet about a number of aspects of the case:

- (a) they questioned the basis upon which the prosecution was brought. They had no doubt that in the majority of cases the local authority is able to say that the relevant records are complete and reliable and therefore the crown are able to invite the jury to infer no relevant notification had been made. It may then be legitimate for the crown to invite the jury to draw inferences in relation to dishonesty and that the person deliberately did not disclose.
- (b) here, there is an acknowledgement that the relevant records were incomplete and a deduction from benefit paid and possible child maintenance to the applicant's account; the crown cannot provide any explanation for this. The witnesses could not explain the child maintenance issue and this casts doubt on the reliability of the records.
- (c) it is difficult to see how the crown felt it right to ask a jury to conclude that the applicant had not notified. The crown were inviting the jury to be sure that he was not telling the truth but on the basis that the DWP's administration was incomplete and there were unexplained records and they did not include the notification.
- (d) the crown carried a real risk that that the burden of proof was reversed in the minds of the jury. The jury were invited to make an adverse assumption against the applicant rather than draw an inference from reliable evidence.
- (e) there is considerable force in the applicant's submissions that the crown failed in their duty of disclosure. The CPS are reliant upon the DWP for the production of records and the court understands why it may have seemed difficult to go behind the information from the DWP and the material provided. It is accepted that the CPS acted promptly once the vital document was produced.
- (f) the duty of the prosecution includes a duty to make enquiries. It was wholly unsatisfactory that the proceedings were brought and pursued without a more determined attempt to check the records.
- (g) the applicant was able to press the DWP to make a further search. The letter of the 24th of October 2013 indicated that nothing more demanding of the DWP was needed other than to make a extensive search.
- (h) concerns were heightened when what happened happened.
- (i) the medical evidence, which was agreed, shows that he has significant anxiety problems. He was exposed to the stress and worry of prosecution which began two and a half years before trial. His consistent assertion that he had disclosed was proved correct from the documentation of 2004 but it did not come to light until nine years later.
- (j) it is therefore impossible to see how proper disclosure was allowed to happen.

- (k) he suffered conviction and prison. It is true it is suspended but for a man with his problems to be a victim of this protracted process is a serious matter. The court grants leave and allows the appeal. The convictions are quashed.

Lynne Shirley
24th of May 2014