Blouet v Bath & Wansdyke Magistrates Court

CO/587/2009

High Court of Justice Queen's Bench Division Divisional Court

12 March 2009

[2009] EWHC 759 (Admin)

2009 WL 873826

Before: Lord Justice Goldring Mr Justice Sweeney

Thursday, 12 March 2009

Representation

- Mr Fryer appeared on behalf of the Claimant.
- The Defendant was not represented, did not attend.

Judgment

Lord Justice Goldring:

1 This is an application for judicial review of the decision of the district judge, sitting at Bath and Wansdyke Magistrates' Court, not to order a fact-finding exercise rather than a trial. We are going to refuse permission for judicial review. However in doing so we are going to set out what we anticipate the correct procedure to be in the circumstances. That would make any application merely academic.

2 The background was this. The claimant has a history of mental health problems. He has been charged with a criminal offence. A psychiatric report, prepared by someone called Dr Butler, concluded that he was not fit to plead. He suffered from Asperger's syndrome. A second psychiatric report was prepared by Dr Frost. His report was based on interviews between May 2005 [and] February 2008 together with historical notes. There was no interview with specific reference to the drafting of his report. He concluded that the claimant was fit to plead and did not have a mental disorder of a nature that required attention under the Mental Health Act .

3 District Judge Purcell, on 5 December 2008, had the case in front of him for a fact-finding hearing to take place. It could not go ahead. It was adjourned until 26 January 2009. At this point - and pertinent to the claim - the claimant and the district judge disagreed. The district judge adjourned the hearing for trial, relying on P [2007] EWHC 946 . The contention of the claimant was that the correct procedure was to adjourn for a fact-finding hearing to determine whether the claimant did the act and, if he did, to adjourn for further reports.

4 The submission that is made by Mr Fryer, on behalf of the claimant, is that what Dr Butler said was sufficiently significant to trigger such procedure.

5 The relevant legislation is that of Section 11 (1) of the Powers of Criminal Courts (Sentencing) Act 2000 which provides:

> “If, on a trial before a magistrates' court of an offence punishable on summary conviction with imprisonment, a court -
>
> (a) is satisfied that the accused did the act or made the omission charged; but
>
> (b) is of the opinion that an inquiry ought to be made into his physical and mental condition before the method of dealing with him is determined;
>
> the court shall adjourn the case to enable a medical examination and a report to be made, and shall remand him.”

6 Section 37 (3) of the Mental Health Act 1983 provides:

> "Where a person is charged before a magistrates' court with any act or omission as an offence and the court would have power, on convicting him of that offence, to make a hospital … order under sub-section (1) above in his case as being a person suffering from mental impairment, then if the court is satisfied that the accused did the act or made the omission charged, the court may, if it thinks fit, make such an order without convicting him."

7 Guidance is provided in P [2002] Cr App R 19 . In effect, P does no more than recount the relevant statutory provisions which I have set out already.

8 Some guidance, albeit in the context of a plea of insanity, was provided by this court in R (on the application of Singh) v Stratford Magistrates' Court [2007] 4 All ER 407 . At paragraph 35 Lord Justice Hughes, with whose judgment Mr Justice Treacy agreed, said:

> "I agree with Mr Murphy that in all cases where an order under Section 37 (3) is a possibility, the court should first determine the fact-finding exercise. That may be concluded, as here, on admissions, or it may involve hearing evidence. If the court is not satisfied that the act/omission was done/made, an unqualified acquittal must follow, whatever the anxieties may be about the accused's state of health."

At paragraph 40 he said:

> "If it is clear that no Section 37 (3) order is going to be possible on the medical evidence whatever happens, then in the absence of some other compelling factor the case must proceed to trial, so that if the accused was insane, he is acquitted, and if he was not, he is convicted."

9 The approach which the district judge should follow is this. First, there should be up-to-date - and I emphasise the words "up-to-date" - medical evidence before him. If there is a possibility of a Section 37 (3) order being made, he will then try the issue in accordance with Section 11 (1) of the Act. If thereafter there arises the obligation to adjourn for further reports then that is what must happen. It may of course be that - given the up-to-date reports which he will then have - only a very short adjournment will be needed or, if everyone agrees that in the circumstances it is not, the matter can proceed under Section 37 (3) if that be appropriate.

10 I have considered what the district judge said in his acknowledgement of service, there being no acknowledgement of service from the Crown Prosecution Service. I would just make two observations. First, in paragraph 6, having considered Section 11 (1) of the Powers of Criminal Courts Act , he said:

> "… it would seem that a trial and a finding that the accused did the act charged is a necessary precursor …"

He seems to assume there that trial and finding within Section 11 are the same things when they are not. He also said (in paragraph 8):

> "If it becomes apparent during the trial that the defendant cannot take an effective part in proceedings the court can revert to the fact-finding process."

11 I am not sure what he there has in mind. It seems to me that he is in danger of making the same error as was made in Barking . The procedure is perfectly simple. The Act sets it out. Lord Justice Hughes has explained it perfectly simply. It now should be easy for the district judge to follow it.

Mr Justice Sweeney:

12 I agree.

13 LORD JUSTICE GOLDRING: There will be a transcript of what I said, Mr Fryer. It seems to me sensible that the case be listed - although I am generally very much against listing for

mention but it seems that the case ought to be listed - before the district judge when the transcript is available. Let me ask you this before completing that sentence. Do you have legal aid for an up-to-date report?

14 MR FRYER: No is the answer at the current time. I know the case has been listed for mention on 20 March. Certainly the position could be resolved very quickly.

15 LORD JUSTICE GOLDRING: It had better be dealt with on that date and the procedure which should then be followed can be amplified. I emphasise it is important that before there is embarked upon any sort of fact-finding procedure or trial there be up-to-date medical evidence. I think that deals with your problems.

16 MR FRYER: Yes.