

**Judgment 11 / 2004**

**Edward Michael Ratcliffe – Court of Appeal  
(Criminal Appeal 309) – 21 April, 2004**

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**Magistrate’s Court (Criminal Appeals) (Guernsey) Law, 1988 – unsuccessful application to the Royal Court for leave to appeal from conviction on a plea of guilty – decision of the Court of Appeal in Snowdon’s appeal (1996) 22. GLJ 19, followed – appeal dismissed for want of jurisdiction.**

**IN THE COURT OF APPEAL OF GUERNSEY**

The 21<sup>st</sup> day of April, 2004 before Sir Philip Bailhache, Presiding, Jonathan Philip Chadwick Sumption Q.C. and Sir John Nutting Bt. Q.C.,

THE LAW OFFICERS OF THE CROWN

V

EDWARD MICHAEL RATCLIFFE

Appellant

In the appeal of the Appellant from the conviction, on a plea of guilty, imposed on him by the Magistrates Court on 14th November, 2001, his application for leave to appeal to the Royal Court having been refused by that Court on 17<sup>th</sup> February 2003;

WHEREAS, on 15<sup>th</sup> December 2003, the Court of Appeal adjourned consideration of the appeal and ordered that the Appellant be granted legal aid;

THE COURT this day, having heard the Appellant in person and Crown Advocate G. D. McKerrell thereon, GAVE JUDGMENT in the terms attached hereto and REFUSED the appeal, for want of jurisdiction.

K.H. TOUGH  
Registrar of the Court of Appeal

**OFFICIAL TRANSCRIPT**

WEDNESDAY 21ST APRIL 2004

**COURT OF APPEAL**

**Before**

Sir Philip Bailhache; presiding  
**Jonathan Philip Chadwick Sumption, Esq., QC**  
**Sir John Nutting Bt., QC**

EDWARD MICHAEL RATCLIFFE  
**(Criminal Appeal No. 309)**

Judgment delivered by Sumption, JA

1. On this application, we are concerned with a preliminary issue as to whether this Court has jurisdiction to receive the present appeal. We are not at present concerned with any other matter, and, in particular, we are not concerned with the merits of the appeal. If there is jurisdiction in this Court to hear it, the merits will have to be considered on another occasion. We will therefore limit our account of the facts to the minimum necessary to explain how the question of jurisdiction arises.
2. Mr. Ratcliffe pleaded guilty in the Magistrate's Court on 14th November 2001, to a charge of failing to provide a specimen of breath required under Article 3 of the Road Traffic (Drink Driving)(Guernsey) Law 1989, as amended. He was fined £600.
3. On 22nd November 2001 he appealed to the Royal Court under Article 2 of the Magistrate's Court (Criminal Appeals)(Guernsey) Law 1988. Under that Article the Royal Court could hear an appeal against conviction on a plea of guilty only if it granted leave, having satisfied itself that there were exceptional circumstances. On 17th February 2003, the Lieutenant Bailiff held that he was not satisfied that there were exceptional circumstances and he refused leave. The result of that was that the Royal Court did not hear, indeed, could not hear, Mr. Ratcliffe's appeal.
4. Mr. Ratcliffe has sought to appeal to the Court of Appeal against (i) his original conviction by the Magistrate; and (ii) the decision of the Royal Court on 17th February by which it refused him leave to appeal. Section 7(1) of the Law provides:

*“A person whose appeal is dismissed by the Royal Court, or the prosecution whose appeal against the acquittal of an accused person is dismissed by the Royal Court, may appeal to the Court of Appeal against that conviction or acquittal, as the case may be.”*

There are then a number of provisos which limit that right of appeal.

5. The meaning of this provision is clear. If the Royal Court hears an appeal from the Magistrate's Court, then the Court of Appeal may hear a further appeal from the decision of the Royal Court on that appeal, subject to the provisos and limitations that follow in Article 7(1). Article 7 does not confer any jurisdiction to hear an appeal from a decision of the Royal Court

refusing leave to appeal, because such a decision of the Royal Court is not a decision on an appeal to the Royal Court, it is a decision that there is not to be an appeal to the Royal Court. Without an appeal to the Royal Court there cannot be a further appeal to us. That is what the law says and it is what this Court decided in the case of *The Law Officers of the Crown v. Snowden* in 1996 (22 GLJ 19). It is plainly right.

6. The jurisdiction of this Court is wholly statutory. Without a statutory power to hear an appeal, we cannot hear it. It follows that this Court has no jurisdiction to hear Mr. Ratcliffe's present appeal.
7. We can readily understand Mr. Ratcliffe's frustration at this state of affairs, and we therefore add two short observations:
  - (i) that until 1988 there was in fact no right at all to appeal to the Court of Appeal on a criminal matter arising from the Magistrate's Court. The right of appeal which was introduced then was deliberately limited. Any system of law must have some provisions for limiting rights of appeal, even though this may in a small number of cases mean that an injustice cannot be rectified;
  - (ii) we point out, as we did during the hearing, that Mr. Ratcliffe has been advised in forceful terms by his own Advocate, by this Court in December 2003, and by the Deputy Bailiff himself in a letter which he directed Mr. Tough to write to Mr. Ratcliffe, that if any Court had power to hear his complaint it was the Royal Court not the Court of Appeal. It may well be difficult for Mr. Ratcliffe to re-open the matter even in the Royal Court, given that it has refused leave once. It is not just difficult but legally impossible for him to do so here. We think that Mr. Ratcliffe would have been well advised to listen to that advice, and not to come before the one Court which everybody agrees cannot deal with his problem.
8. The appeal is therefore not granted.

BAILHACHE, JA: I agree and have nothing to add.

NUTTING, JA: I too agree and have nothing to add.

SUMPTION, JA: Mr. McKerrell, nothing arises I take it?

ADVOCATE MCKERRELL: Sir, there is provision I believe within the law that the Court can award up to £75 costs in relation to prosecution costs and the cost of the transcript.

SUMPTION, JA: Are you making an application for those costs?

ADVOCATE MCKERRELL: Sir, I am.

(Judges of Appeal confer)  
(H.M. Greffier addresses Judges and Advocate McKerrell)

SUMPTION, JA: It turns out that there is absolutely no power.

ADVOCATE MCKERRELL: The provision is within the law but it would require something else that has not yet been put in place, so I'm sorry to have wasted your time.

SUMPTION, JA: There cannot be an order in those circumstances.

ADVOCATE MCKERRELL: There cannot be an order in those circumstances sir.

SUMPTION, JA: In that case the decision that we would have made if we had had power to do so does not need to be disclosed. Any other business?

THE APPELLANT: There is one question that I'd like to ask, if I may- I was going to ... (inaudible) ... yesterday, and ask him before we started, which there was confusion on, did he oppose my application for appeal going forward, was there any opposing briefs from the Law Courts of this appeal going forward?

SUMPTION, JA: Well I think that is a matter that you will have to find out about by consulting Advocate McKerrell. I'm sure he will be most helpful to you insofar as he properly can be.

THE APPELLANT: And after listening to what you've just said, I find it still very difficult that on 17th February, when Lieutenant Bailiff Day passed judgment, it's also been proved in front of myself on the- that was a directions hearing.

SUMPTION, JA: Well all that we can say about that is that it is not a matter for us to consider.

THE APPELLANT: And I can't understand why, when the case hasn't been heard by the Royal Court, Mr. Southwell states in his closing statement that-

SUMPTION, JA: Well Mr. Ratcliffe, however much force there may be in this point we simply cannot do anything about it; with the best will in the world we can't, we have no statutory power. So that while we understand your sense of frustration there really is no point in trying to address us on it.

THE APPELLANT: So can I address Mr. Tough and ask to make an application to the Royal Court?

SUMPTION, JA: You can- well this is not a matter on which we propose to give you any more advice than we already have done. You already have been very fully advised and I think you should now take a bit of time to consider very carefully what you should do in light of that advice and the judgment we've just delivered.

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I, Suzanne Margaret O'Neill hereby certify the foregoing to be a correct and complete extract, prepared to the best of my skill and ability from the tape-recording of the proceedings in this case.

..... Suzanne M. O'Neill  
Tuesday 4th May 2004