Judgment 38/2010

Taylor v Law Officers of the Crown – Royal Court (Criminal Indictment 10 of 2010) – 10th November 2010

Application for Judicial Review of the pre-trial ruling by Judge of the Royal Court – no statutory provision for interlocutory appeal to the Royal Court from ruling by another trial judge in that Court - what would effectively be a new appellate jurisdiction should be introduced by statute, not by judicial decision – application refused – trial should proceed without further delay. (See Judgment 37/2010)

The 10th day of November, 2010 before Sir de Vic Carey, Lieutenant Bailiff, sitting alone

ROGER WALTER FRANCIS TAYLOR

Applicant

v

LAW OFFICERS OF THE CROWN

Respondents

In the matter of the application by the Applicant for judicial review of decisions by the Royal Court handed down on 8 November 2010 and for a stay of the trial of the Applicant before the Royal Court due to commence on 10 November 2010, until the said judicial review had been concluded;

THE COURT, having heard Advocate J P Green for the Applicant and Crown Advocate R Sewards for the Respondents thereon, GAVE JUDGMENT in the attached terms and: -

1. DISMISSED the applications for judicial review and a stay;
2. AWARDED COSTS to the Respondents but reserved to the conclusion of the trial a decision as to the basis of calculation of such costs; and
3. DECLINED an oral application on behalf of the Respondents for summary assessment of costs under Rule 84 of the Royal Court Civil Rules, 2007.

K H TOUGH
Her Majesty's Greffier

IN THE ROYAL COURT OF GUERNSEY
ORDINARY DIVISION

Between: **The Law Officers of the Crown**

and

Roger Walter Francis TAYLOR

Decision on application for Judicial Review

Decision of a Single Judge: Lieutenant Bailiff, Sir de Vic G Carey
Decision handed down on: 10th November 2010

1. This is an application for Judicial Review of four decisions of Judge Finch and two decisions of the Law Officers in connection with preliminary matters relating to the Applicant's trial on allegations of money laundering which is due to commence in the Royal Court tomorrow.

2. The application is brought before the Ordinary Court with me sitting alone as Lieutenant Bailiff.

3. The decisions complained of arise in connection with an application for disclosure and a submission made by the Applicant that his whole trial was an abuse of process. So far as the disclosure application is concerned, I have seen a reasoned judgment from Judge Finch dated the 8th November, dismissing the Applicant's request for disclosure. So far as the abuse of process application is concerned, that judgment is, I understand, going to be handed down during the course of today, but I have not seen it.

4. Judicial Review has been recognised as a remedy available in Guernsey courts since the Court of Appeal decision in *Bassington*. No legislation has been enacted concerning any limitations or restrictions on its availability, but there has been a Practice Direction setting out the appropriate procedure to be followed. It had been the practice of this court to look at English decisions in the area of Judicial Review in order to establish parameters for its availability. This is an unusual application and, as far as I am aware, without precedent. I have therefore looked, in the time that has been available to me, as to how the law has developed in England, both with regard to Judicial Review of decisions made during the course of a trial on indictment and also in the area of providing a system for interlocutory appeals to be brought against rulings made by judges during the course of a trial.

5. I entertained this application in the Royal Court which is the superior court of record in this Island and is analogous to the High Court in England and Wales. I am sitting as a Judge of the Ordinary Court whereas Judge Finch is sitting as a Judge of the Royal Court sitting as a Full Court. Now that the Royal Court's appellate jurisdiction has been transferred to the Court of Appeal, I do not see any significance in a civil remedy such as Judicial Review being prosecuted in the Ordinary Court in respect of something being done in the Full Court, but that is not to concede at this stage that there is any power for this court to involve itself in such a matter.

6. The first point I have noted is that the old law in England involved the High Court having jurisdiction to issue prerogative writs in order to review the decisions of lower tribunals. It followed from this that the High Court did not claim any jurisdiction to review the activities of its own judges and this is confirmed in paragraph 28.32 of Blackstone. What has evolved in England which Mr Greenfield draws to my attention, is the introduction of a right of

Interlocutory appeal, firstly in cases of serious and complex fraud and then in all serious and complex cases to enable the decisions of trial judges to be tested before the Court of Appeal during the course of a trial. I accept what Mr Greenfield says that such a procedure may be working well in England, but I have noted that it was introduced by Statute (1987 and 1996) and that before that, the Supreme Court Act 1991 had turned its face against giving any right of appeal from the Crown Court to the High Court where decisions of the Crown Court related to trial on indictment. This remains the case today. I have noted what the Court of Appeal said in ***Bassington*** in the passage cited by Mr Greenfield at page 118 that the powers of the Court of Appeal and this court must be free to develop in order to take into account changing circumstances and perceptions. That, as I accept, appeared to be very wide, but the judgment then goes on to make reference to ***Morton v Paint*** which was a classic example of the Court of Appeal exercising recognised principles of judicial law making (Lord Lowry's Five Aids to Navigation in re ***C v DPP*** as quoted in ***Morton v Paint***) and rescuing the law of occupier's liability from a hole into which it had got itself.

7. I consider that what Mr Greenfield is asking here is for the Royal Court to introduce procedures similar to those that have been developed by Statute after careful consideration in England to enable the criminal justice process to be radically reformed. This is not the kind of change that in my view can be made by judicial decision. The introduction of what would effectively a new appellate jurisdiction in all criminal cases before the Royal Court would be unlikely to lead to finality or certainty and I doubt whether it should be exercised as suggested here by a judge of equal rank to the trial judge. [I take Mr Sewards point of it being res judicata]. Despite what Jersey has done the decision to widen appeals to the Court of Appeal and its ramifications are better suited to legislative intervention. There are as many good reasons for not allowing the criminal justice process to be held up whilst the conduct of the judge is reviewed and tested as there are for trying to save unnecessary trials and the inevitable strain that they cause to the accused and others. That is perhaps why in England the right is restricted to serious and complex cases.

8. Finally these are matters essentially for the very experienced trial judge who is steeped in the papers to address. I consider that the vast majority of complaints of breach of Human Rights can be addressed at the stage that the appeal comes to the Court of Appeal which will have wide powers to set aside a conviction where there has been unfairness or abuse of process. The very fact that this indictment does allege offences committed seven or eight years ago, points to the need for it to be disposed of without further delay and the trial must, in my view, proceed accordingly. Mr Greenfield will have the opportunity of challenging all the evidence. It follows that I dismiss his application both for judicial review and a stay.

