

IN THE ROYAL COURT OF
GUERNSEY

Between:

GLEN PONTIN

Appellant

-and-

**THE PRESIDENT OF THE
COMMITTEE FOR THE
ENVIRONMENT AND INFRASTRUCTURE**

Respondent

Judgment on Application to dismiss/strike out Appellant's Appeal

Before: John Russell Finch Esq., O.B.E., Judge of the Royal Court

Application heard on: 12th July, 2019

Decision handed down: 17th July, 2019

**The Appellant was not legally represented.
Crown Advocate J Hill appeared for the Respondent**

Materials referred to:

The Road Traffic (Permits to Drive Public Service Vehicles) Ordinance, 1987, Sections 10,11 and 12;
The Royal Court Civil Rules, 2007, rules 89 and 90.

Carr v States of Guernsey Housing Authority, 15th August, 2012, Royal Court;
Mucelli v Government of the Republic of Albania [2009] 3 All ER 1035;
R (Redgrave) v Commissioner of Police for the Metropolis [2003] EWCA Civ 4;
Ziderman v General Dental Council [1976] 1 WLR 330

Introduction

1. This is a decision in respect of an application by the Respondent ("R"), dated 5th July 2019, that the Appellant's ("A") appeal against a PSV permit suspension for 6 months, dated 5th April, 2019, "be dismissed or alternatively struck out on the basis that it was commenced more than 30 days after the date of service upon the Appellant of the Notice of the suspension of his Public Service vehicle permit". This application was dealt with by the judge sitting alone on the 12th July, 2019. Oral submissions were heard from both parties and a decision on the application was reserved. This is now handed down.
2. It is a technical and procedural matter. A represented himself, as he cannot afford the services of an Advocate. Although Crown Advocate Hill, both of his own volition and at the request of the Court, spelt out the points as clearly as possible, it is not surprising that they rather lost

A early on. The application by R is straightforward in nature, however. The requisite legislation (and references are to the bundle produced by R, that includes both sides' documentation) is the Road Traffic (Permits to Drive Public Service Vehicles) Ordinance, 1986, at tab 17. Section 12 deals with appeals by persons aggrieved by any decision of the Committee. A Notice of Appeal may be issued, on the grounds that the decision was *ultra vires* or an unreasonable exercise of its powers. This has to be served "within the thirty days next succeeding" of a Notice under Section 11 of the Ordinance giving the decision appealed against. R says this has not been done and that the period of 30 days is a statutory time-limit that cannot be extended.

Brief History

3. For the purposes of the present hearing, it is only necessary to set out the relevant dates relating to this suspension, as extracted from the chronology prepared on behalf of A (R's skeleton argument, tab 3).

- 5/4/19 (The subject of A's appeal.) A letter from R to A giving Notice of a 6 months' suspension of A's PSV licence following a speeding conviction.
- 1/5/19 A applied under Rule 90, Royal Civil Rules, 2007 for leave to sign the appeal summons (as no Advocate had signed it).
- 17/5/19 The Deputy Bailiff gave a written judgment on the Rule 90 application, refusing leave, but giving A the chance to flesh out his documentation "so as to plead the material facts and to clarify what relief he is seeking". The Deputy Bailiff then set out what documentation would be capable of achieving this and so comply with Section 12(2) of the Ordinance (i.e., why the decision appealed against should be set aside and the material facts relied on by A).
- 5/6/19 The Deputy Bailiff gave permission under Rule 90.
- 18/6/19 The Appeal Summons was served on R.

In his written decision of 17/5/19, the Deputy Bailiff helpfully pointed out that A "now needs to be alive to the possibility that the respondent, if he pursues this matter, may argue that the appeal is out of time".

Observations

4. It is not R's fault that procedural problems arose. A's original application was plainly defective, as it did not set out the reasons for the appeal and plead the material facts in the case. A Public Authority defending a decision such as this is properly entitled to see why it is alleged they got it wrong. As R's skeleton argument sets out (paragraphs 3.1 and 3.2) the decision appealed against was contained in a Notice dated 5/4/19. It would have likely arrived by 9/4/19, or if there was a problem with the local post, 10/4/19. The 30 day appeal window would thus expire at 10/5/19 by the latest. Permission was granted by the Deputy Bailiff on 5/6/19. Under Rule 89 of the Royal Court Civil Rules an action is commenced when the requisite summons is handed by the party concerned to HM Sergeant. The 5/6/19 date would be 26 days out of time (and also well out of time had there been a rare postal delay in the dispatch of the decision dated 5/4/19 appealed against). R submits that there is no power or discretion in the Court to extend the statutory 30 day appeal window.
5. The case directly in point is at Tab 18, Carr v States of Guernsey Housing Authority, 15th August, 2012, Royal Court, a decision again of the Deputy Bailiff. This concerned a different set of facts; it was a housing appeal. Nevertheless, it is relevant R suggests, due to the similarity of facts in that case on serving the Notice of Appeal to those in the present matter. Simply summarised, at that hearing Mrs Carr had a two-month time-limit for service of the appeal summons, but was 7 days out in serving it. In his decision, the learned Deputy Bailiff cited an English House of Lords case on extradition, Mucelli v Government of the Republic

of Albania [2009] 3 All ER 1035. There was only a 7-day time-limit fixed for appealing an Extradition Order. It was held that a time-limit can only be extended if the statute so provided. The Deputy Bailiff then referred to the cases in which that principle had been applied. Any power conferred by the English Civil Proceedings Rules to extend the period could not be invoked “to avoid service required by statute, unless of course, the statute so provides” (Lord Neuberger).

6. What this means is that the situation found in the present case has already come up in the Royal Court in another case and clearly dealt-with. That earlier decision was based on a highly-persuasive authority from the highest English Court, which was incidentally made-up of the same judges who sit in the Privy Council, Guernsey’s highest appeal court. The Carr decision is in accordance with authority and, with respect, is correct. It will be followed here and, accordingly, R’s submission that A is out of time, which cannot be extended, is correct and the appeal falls down on that basis. This is not simply a bureaucratic decision, but accords with authority and the ordinary meaning of the words of the statute. The delay was, in essence, grounded in A’s failure to set out the reasons for his appeal, which were required and necessary.

The Second Point

7. The substance of A’s submissions is that he is being punished twice for his speeding offence – once in the penalty inflicted by the court and again by the Public Body regulating PSV licences. For completeness sake, and in case the view taken on the time-limit is technically wrong, it will be dealt with in this decision. R refers to the English case of R (Redgrave) v Commissioner of Police of the Metropolis [2003] EWCA Civ 4, at tab 19. Latin phrases are nowadays seldom appropriate in legal proceedings, but here there is a particularly apt one: “*nemo debet bis puniri*” – no-one ought to be punished twice for the same offence. The facts of the case are again rather different from those before the court in relation to the present appeal. Shortly stated, the Court of Appeal held that a discharge of a person in a Magistrate’s Court for a criminal offence for insufficient evidence was no bar to disciplinary proceedings against the former defendant (a Police Officer) in respect of the same facts. “A decision of a criminal court was no bar to the bringing of disciplinary proceedings in respect of the same charge”. The purpose is different: the disciplinary proceedings were not to punish the former defendant, but to protect the public and maintain high standards; see Ziderman v General Dental Council [1976] 1 WLR 330. Hence it was, as R submits, in order to impose a suspension of A’s PSV licence beyond the date of his offence disqualification. This again, is clearly understandable and a well-established principle and it will be followed.

Conclusion

8. Both R’s arguments are correct and in line with authority. They will be applied here. R’s application accordingly succeeds and A’s appeal fails on these grounds.

Costs

9. Costs normally follow the event, but there is a wide discretion. Noting that A is debarred from his main livelihood, the decision mercifully will be that there will be no order for costs. A has also had to come up with substantial Court Fees to enable his application to be heard. In all the circumstances, they are remitted and to be returned. It would, on balance, be too hard to deprive A of these sums whilst he is unable to ply for hire, and under the present circumstances, where he has failed on technical and procedural grounds.

Appeal Dismissed

J R Finch, O.B.E.
Judge of the Royal Court