PTA Template 269C1 - First Appeal

IN THE COURT OF APPEAL, CIVIL DIVISION

REF: **CA 2024 000286**

HER MAJESTY'S COURT OF APPEAL CIVIL DIVISION
(GS 22.02.23)
[illegible]
18 Oct 2024
CA-2024-000286

Jason Nicholas Juul **–v–** **The Chief Constable of Dyfed-Powys Police**
First Defendant
The Director of Public Prosecutions
Second Defendant

ORDER made by the Rt. Hon. Lord Justice William Davis

On consideration of the appellant's notice and accompanying documents, but without an oral hearing, in respect of an application for permission to appeal

Decision: Permission to appeal refused

Reasons

1. The appellant on 17 May 2022 was made the subject of a Serious Crime Prevention Order in the Crown Court at Swansea. This followed his conviction for breaches of an existing SCPO. The order made in May 2022 was for a period of 5 years from the date of his release from the custodial sentence imposed on that date. The appellant objected to the making of the order. One ground on which he relied was that he lived in Belarus with his wife. In those circumstances, any SCPO would be unenforceable. The judge in the Crown Court rejected the appellant's argument. She noted that he had also given an address in South Wales. She considered that the order was necessary to protect the public. The appellant originally had been made the subject of a SCPO for identity theft and fraud on an industrial scale.
2. The appellant appealed against the making of the SCPO. The grounds of appeal centred on the fact that he now was a resident of Belarus – or would be once released from his custodial sentence. In those circumstances the order was unworkable and had no value. This was the argument on which he had relied at the Crown Court. A single judge of the Court of Appeal Criminal Division refused leave to appeal. Although he renewed his application for leave to appeal, the appellant thereafter abandoned his appeal.
3. The appellant then applied to the High Court for discharge of the SCPO pursuant to section 18(3) of the Serious Crime Act 2007. This required him to show that there had been "a change of circumstances affecting the order". Farbey J refused the application. She concluded that there had been no change of circumstances. The matters on which the appellant sought to rely were matters which had been before the judge in the Crown Court. Section 18(3) was not to be used to mound a collateral attack in the making of the order. Insofar as there was a change of circumstance it amounted to the appellant saying that he now did not intend to return to the UK at all. Farbey J concluded that the appellant's simple statement of intention could not be the kind of change anticipated by section 18(3).
4. The appellant's grounds of appeal against the order of Farbey J are threefold: the court should reconsider the proportionality and necessity of the SCPO in light of the appellant's Article 8 rights: the court should take into account the challenge of enforcing the SCPO in Belarus or Russia, the appellant now being resident in Russia; there has been a change of circumstance requiring discharge pursuant to the 2007 Act.
5. There is no conceivable merit in the submission concerning proportionality and necessity. The judge in the Crown Court considered those issue carefully. The single judge reviewed her assessment of the issue and found that it was unimpeachable. As Farbey J said, the procedure under section18(3) is not be used as a secondary route of appeal against the original order. Whatever the jurisdictional issues that could arise in relation to enforcement of the SCPO in Belarus or Russia, the courts in England and Wales are entitled to make orders in relation to those who come within their jurisdiction. There is no doubt that the appellant satisfied that criterion when the order was made. The submission that the order in the appellant's case has the effect of exiling him from the UK has no substance. All that the order means is that he will be subject to it as and when he enters the jurisdiction.
6. The real issue is whether the appellant's current situation amounts to a change of circumstance as compared to the position when the order was made. The judge was right to conclude that it does not. This is not the case of a man who has severed all connection with the UK since the order was made, whether of his own volition or otherwise. He retains significant family connections, his address for service in the current proceedings being his mother's home in South Wales. Other family members also live here. Moreover, the criminal activity which led to the original order was not restricted by geographical borders. Insofar as there had been any change of circumstance, it did not alter the need to protect the public. The reasoning of Farbey J cannot be impugned in any way. There is no prospect of a successful appeal.

There is no other compelling reason for granting permission.

7. Whether the first defendant ought to be a party to the proceedings now is academic and no order will be made in respect of his further participation in the appeal.

Information for or directions to the parties

Mediation: Where permission has been granted or the application adjourned:

Does the case fall within the Court of Appeal Mediation Scheme (CAMS) automatic pilot categories (see below)? Yes/No (delete as appropriate)

Pilot categories:

- All cases involving a litigant in person (other than immigration and family appeals)
- Personal injury and clinical negligence cases;
- All other professional negligence cases;
- Small contract cases below £500,000 in judgment (or claim) value, but not where principal issue is non-contractual;
- Boundary disputes;
- Inheritance disputes.
- EAT Appeals
- Residential landlord and tenant appeals

If yes, is there any reason not to refer to CAMS mediation under the pilot? Yes/No (delete as appropriate)

If yes, please give reason:

Non-pilot cases: Do you wish to make a recommendation for mediation? Yes/No (delete as appropriate)

Where permission has been granted, or the application adjourned

a) time estimate (excluding judgment)
b) any expedition

Signed: BY THE COURT
Date: 1 October 2024

Notes

(1) Rule 52.6(1) provides that permission to appeal may be given only where –
   a) the Court considers that the appeal would have a real prospect of success; or
   b) there is some other compelling reason why the appeal should be heard.

(2) Where permission to appeal has been refused on the papers, that decision is final and cannot be further reviewed or appealed. See rule 52.5 and section 54(4) of the Access to Justice Act 1999.

(3) Where permission to appeal has been granted you must serve the proposed bundle index on every respondent within 14 days of the date of the Listing Window Notification letter and seek to agree the bundle within 49 days of the date of the Listing Window Notification letter (see paragraph 21 of CPR PD 52C).

Case Number: Error! Reference source not found.