

In the Wigan and Leigh Magistrates' Court

In the matter of:

R

v

Alan Taylor

Application for a stay due to an Abuse of Process, or an adjournment of these proceedings to await the determination of the Divisional Court

1. The defendant objects to this indictment under s7 of the Indictment Act 1915 due to an executive Abuse of Power by Her Majesty's Government in the administration of the Misuse of Drugs Act 1971 c.38 ("the Act") on the grounds of illegality, irrationality and unfairness. This abuse threatens his basic human rights - and the rule of law. *Cf.* Archbold §1-191 (j) and 4-47 *et seq.* *Cf R v. Horseferry Road Magistrates' Court, ex p. Bennett* [1994] 1 AC 42, where Lord Griffiths explained at pp.61H-62A:

"If the court is to have the power to interfere with the prosecution in the present circumstances it must be because the judiciary accept a responsibility for the maintenance of the rule of law that embraces a willingness to oversee executive action and to refuse to countenance behaviour that threatens either basic human rights or the rule of law."

Further Lord Griffiths stated:

“I would accordingly affirm the power of the magistrates, whether sitting as committing justices or exercising their summary jurisdiction, to exercise control over their proceedings through an abuse of process jurisdiction. However, in the case of magistrates this power should be strictly confined to matters directly affecting the fairness of the trial of the particular accused with whom they are dealing, such as delay or unfair manipulation of court procedures.”

2. Accordingly the defendant seeks either 1) to stay the indictment; 2) that the magistrates adjourn these proceedings so he can seek a declaration from the Divisional Court that continuing the prosecution would amount to an abuse of process; 3) an adjournment of these proceedings to await the outcome of a similar challenge presently before the Divisional Court¹; or, 4) for this court to decline jurisdiction and require the matter to be pursued in the Divisional Court. *Cf. R. v. Central Criminal Court, ex p. Randle and Pottle*, 92 Cr.App.R. 323, DC; *R v Belmarsh Magistrates ex parte Watts* [1999] 2 Cr.App.R. 188 at 195; Archbold § 1-192 & 4-50.
3. The abuse: should this court commit the defendant for trial, the intended application by this court of (the mal-administered) Act to Mr Taylor would manifest two inequalities of treatment under criminal penalty:
 - i) a failure to treat like cases alike, *viz* the unequal application of the Act to those concerned with equally harmful drugs without a rational and objective basis; and
 - ii) a failure to treat unlike cases differently, *viz* the failure to treat those who use controlled drugs peacefully as a different class from those who do not.

Those who produce, manufacture, export, import, distribute, supply and possess alcohol and tobacco are the analogous comparators.

4. These two inequalities of treatment constitute deprivation of liberty at common law and discrimination contrary to Art 14 of the Human Rights Act 1998 within the ambit of Arts 5, 8, 9 and Protocol 1 Article 1 on the grounds of property and legal status.

5. Government unconsciously admitted abusing the Act's powers, and the inequalities of treatment in Command Paper 6941 whilst defending the actions on subjective and / or incoherent grounds not rationally connected to the Act's policy and / or objects.²
6. Scrutiny of government's admission reveals that the abuse and the resultant inequality of treatment occurs because: (1) Parliament has not stated an explicit policy nor fixed any triggering circumstances to guide the Secretary of State for the Home Department ("SSHD") in exercising his powers afforded by s.2(5) of the Act, instigating the control of a drug; (2) Government has fettered the SSHD to an overly-rigid and predetermined policy; (3) the SSHD has failed to understand and give effect to the Act's policy and objects; and (4) the SSHD has arbitrarily exercised s.2(5) and the incidental discretionary powers.³
7. As a result of this abuse by the executive a fair trial is not possible.
8. The Court is therefore invited to consider the alternatives stated at paragraph 2 above. It is submitted that the Defendant's remedy lies with the Divisional Court (Queens Bench Division). The Defendant encloses a quoted section from the Crown Prosecution's Guidance on the proper jurisdiction below. Should this Court decline jurisdiction (under options 2, 3 or 4 at para. 2 above), the Justices are asked to consider whether the Defendant ought to instigate his own application for Judicial Review (a *Mackeson* application), or might reasonably await the final determination of essentially the same claim presently before the Divisional Court (*Stratton* CO/10629/2008).

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1. The Queen on the application of Edwin Stratton versus Waltham Forest Magistrates' Court (CO /10629/2008).
 2. The Government Reply To The Fifth Report From The House Of Commons Science And Technology Committee Session 2005-06 HC 1031 Drug classification: making a hash of it? October 13th 2006 p.24.
 3. *Cf. Padfield v Minister of Agriculture, Fisheries and Food* [1968] AC 997 at 1030-1034.

CPS Guidance Attachment
(http://www.cps.gov.uk/legal/a_to_c/abuse_of_process/)

CPS Guidance – Abuse of Process - Misuse of Process - f.
Unconscionable behaviour by the executive

This category of the doctrine of abuse is more exceptional than those described above. It arises from the duty of the High Court (first articulated in the case of *Bennett v Horseferry Magistrates Court*) to oversee executive action so as to prevent the State taking advantage of acts that threaten either basic human rights or the rule of law (including international law).

Applications for a stay based on this ground cannot be determined in any tribunal below the High Court because they involve the judiciary exercising a supervisory function over the actions of the executive (*Bennett v Horseferry Road Magistrates Court*, per Lord Griffiths at 152 H-J). Where the defence wishes to make such an application at the beginning or as a preliminary to trial, the proper procedure is for the instant proceedings to be adjourned and for the defence to commence proceedings in the High Court for a declaration that continuing the prosecution would amount to an abuse of the process.