

JERSEY / JUDGMENT

Syvret -v- AG [2012] JRC 138B (16 July 2012)

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JUDGMENT

commissioner: 1. These are my reasons for having decided on 16th July, 2012, that the claim of Mr Syvret against the Attorney General should be struck out as being plainly and obviously without merit. 2. Before I come to that, however, I should deal with an application made by Mr Syvret that I should recuse myself. The ground of his application is that, according to him, I am a friend of the Bailiff, Sir Michael Birt, the Deputy Bailiff, Mr Bailhache, and Michael Beloff Q. C. Mr Syvret's case, as I understand it, is that I was appointed as a Commissioner because of those friendships. 3. The true position is this: that, to the best of my knowledge, I have neither met nor communicated on any occasion with Mr Bailhache. As regards the Bailiff, I have spoken briefly to him when I first sat as a Commissioner and on a handful of occasions since. We have not otherwise had any social or other dealings with one another. Finally, as regards Michael Beloff, he is an old friend of mine. It may well be that he was contacted about my appointment as a Commissioner in his capacity as the senior Judge of the Court of Appeal. However, I have not discussed my appointment as Commissioner with him nor have I spoken to him about Mr Syvret or his case at any time. 4. I have approached the present case without any preconception or bias. In my judgment Mr Syvret's application is misconceived and has no merit whatsoever. No fair-minded and informed observer would conclude that there was a real possibility of bias arising out of the connections between the individuals to whom I have referred and myself; the connection, such as it is, is far too slight for any such conclusion. Like Commissioners Sumption, Pitchers and Tucker before me, each of whom was the subject of an unsuccessful application by Mr Syvret that he should recuse himself, I refuse the application to recuse myself. 5. I can now revert to the application made by the Attorney General to strike out Mr Syvret's Order of Justice. It runs to 138 paragraphs and advances a number of causes of action in tort ranging from misfeasance in public office to false imprisonment and fraudulent concealment and many others besides. 6. The case which Mr Syvret advances is that on the day after he commenced various actions against a variety of public authorities, a police officer delivered to Mr Syvret a letter requiring him to attend Police Headquarters for questioning about a number of alleged offences. Mr Syvret's case is that the police officer was acting "under instruction from the Attorney General". Mr Syvret's pleaded contention is that the Attorney General should not have had any involvement in any decisions or actions in respect of Mr Syvret because of an alleged conflict of interest arising out of the fact that the Attorney General was Senior Partner of the law firm which acted for victims of a serious case of child abuse at a Jersey children's home. 7. Another event

with which Mr Syvret alleges that the Attorney General was involved was the decision to prosecute him for breach of the Data Protection Law. Mr Syvret alleges that this was done in order to cover up the serious abuse of children which had taken place at the children's home. The allegation made at paragraph 128 and following of the Order of Justice is that the Attorney General was involved in various decisions and actions taken in relation to that children's home and that (to quote paragraph 132 of the Order of Justice) the police were "driven and instructed" by the Attorney General. Mr Syvret further contends at paragraph 133 of the Order of Justice that the Attorney General ordered and directed "a grotesquely disproportionate and illegitimate policing action" which included the prosecution of Mr Syvret. 8. The Solicitor General invites me to strike out Mr Syvret's claim. He submits, rightly, that in a criminal case the decision to initiate a prosecution is a matter for the police and not for the Attorney General or his office. It is true that in the present case the police sought advice from a lawyer in the Attorney General's office as to what powers of search were available to them. As it happens, that advice was subsequently followed. However, the decision to carry out the search was made by the police and not by the Attorney General, albeit guided by advice from his Department:- see *Reynolds-v-Metropolitan Police Commissioners*

[1985] 1QB881 per Waller LJ at 886 G-H. 9. I am satisfied that, contrary to the assertion made by Mr Syvret at paragraphs 9 and 21 of the Order for Justice, the Attorney General did not cause or direct the arrest of Mr Syvret or the earlier search of his home: those were decisions made by the police. 10. On 6th April, 2009, the police searched Mr Syvret's accommodation. Even if (as Mr Syvret asserts and I am prepared for present purposes to assume) that search took place following advice given to the police by the Department of the Attorney General that does not entitle Mr Syvret to bring proceedings against the Attorney General. The police are operationally independent of the Attorney General and his Department. It was for the police to decide whether or not to act on the advice given by the Attorney General's office. Just as a solicitor who gives negligent advice to his own client is not liable to a third party who acts on that advice but to whom he does not owe any duty of care, so too the Attorney General does not owe any duty of care to a third party who claims to have been damaged by action taken by the police on the basis of advice given to the police by the Attorney General's Department:- see *White-v-Jones*

[1995] 2AC 207 at B- E. In the present case it was the police who decided to arrest Mr Syvret and it is the police alone who are answerable for that action. That proposition appears to be accepted by Mr Syvret in paragraph 28 of his Order for Justice. 11. By parity of reasoning the police, rather than the Attorney General, are alone responsible for the many other actions taken by police officers of which Mr Syvret complains. These actions include (but are not limited to) criminal trespass (see paragraph 37); denying Mr Syvret a fair trial (see paragraph 38); colluding with third parties in order to avoid accountability for failure to take action to protect patients (see paragraph

40) and subjecting Mr Syvret to covert surveillance, harassment and discrimination (see paragraph 52). 12. By letter dated 1st May, 2012, the Solicitor General sought further and better particulars of the Order of Justice. In his response to that request, dated 31st May, 2012, Mr Syvret asserted that the request "had not credibility" and was "one of the time-wasting evasions" on the part of the Attorney General. None of the requested particulars was supplied. 13. A further fundamental obstacle to the bringing of the present proceedings by Mr Syvret is that on 17th November, 2010, he was convicted in the Magistrate's Court for breaching the Data Protection (Jersey) Law 2005 by publishing on his blog a confidential police report into an investigation at the children's home referred to above. Mr Syvret's appeal to the Royal Court was dismissed on 30th August, 2011. The Judgment of the Royal Court dismissed Mr Syvret's appeal, holding that the disclosure of the police report on the blog of Mr Syvret was not in the public interest. In my judgment it is not open to Mr Syvret to bring the present action against the Attorney General since it represents a collateral attack upon the validity of his conviction. 14. In the above circumstances I am satisfied that Mr Syvret's claim against the Attorney General is wholly without merit and that it must be struck out. Authorities *Reynolds-v-Metropolitan Police Commissioners* [1985] 1QB881 per Waller LJ at 886 G-H. *White-v-Jones*

[1995] 2AC 207 at B- E. Data Protection (Jersey) Law 2005. Page Last Updated: 04 Nov 2015 BAILII:
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