

JERSEY / JUDGMENT

Syvret -v- AG [2015] JCA 020 (30 January 2015)

[2015] JCA 020

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Court of Appeal 30 January 2015 Before : James McNeill, Q. C., President; John V. Martin, Q. C., and; David Perry, Q. C. Stuart Syvret -v- The Attorney General Application for leave to appeal out of time three orders of the Royal Court Mr Syvret appeared on his own behalf. G. G. P. White, Esq. , Crown Advocate.

JUDGMENT

martin ja: 1. On 28 January 2015 we heard - despite an application that we should recuse ourselves, or adjourn the matter - and dismissed an application by Mr Stuart Syvret for leave to appeal out of time three orders of the Royal Court. These orders were made in connection with an application by the Treasurer of the States of Jersey to enforce costs orders previously made in favour of the Attorney General against Mr Syvret. These are my reasons for disposing of the application in that way. 2. Mr Syvret is a well-known figure in Jersey. He was a member of the States of Jersey for nearly twenty years until 2010. For much of that time he was a senator; and latterly he was for some two years Minister for Health and Social Services. He was and is a forthright campaigner. He has for some years been concerned about the way in which child abuse has been investigated and dealt with in the Island, and has taken forceful steps to bring his concerns to public attention. His view is that the scale of the child abuse problem in Jersey has been covered up by the Jersey establishment, and he has made many serious allegations to that effect. 3. In March 2009 Mr Syvret published in his blog a confidential States of Jersey Police report prepared some 10 years previously relating to an investigation into the conduct of a nurse at Jersey General Hospital. The publication of the report led to his arrest and conviction on data protection charges. Since at least that time, he has become obsessed with the idea that the entire judicial establishment in Jersey, and to some extent beyond, is corrupt. 4. As a result, on nearly every occasion on which Mr Syvret appears in court he invites the tribunal to recuse itself. He has made this application to the current Bailiff (then Deputy Bailiff: Syvret-v-AG

[2012] JRC 087A); to Commissioners Tucker (Syvret-v-AG

[2009] JRC 165), Clyde-Smith (Syvret -v-AG and Connetable of Grouville

[2010] JRC 179), Sumption (Syvret -v-Chief Minister

[2011] JLR 343), Pitchers (Syvret -v-AG and Connetable of Grouville

[2011] JRC 115B), Gray (Syvret -v-AG

[2012] (2) JLR 94) and Page (twice, both in the present case: Treasurer of the States-v-Syvret

[2014] JRC 070 and Treasurer of the States-v-Syvret

[2014] JRC 149A); and to the full court of appeal (Syvret -v-AG and Connetable of Grouville

[2011] JCA 146). On each occasion the application has been refused. He now makes a similar application to us. 5. I quote verbatim the grounds on which Mr Syvret says that this Court should recuse itself. "Structural ultra vires of Jersey "judicial" apparatus; case-specific ultra vires; structural ultra vires of Office of Bailiff and of Deputy Bailiff; case-specific ultra vires of Bailiff and of Deputy Bailiff; non-compatibility with Article 6 of the ECHR; judicial corruption; judicial Secretariat corruption; misconduct in a public office and conspiracy to pervert the course of justice by the Judicial Greffier; misconduct in a public office and conspiracy to pervert the course of justice by the Deputy Judicial Greffier; misfeasance in a public office; conspiracies to pervert the course of justice; misconduct in a public office; abuse of process; nemo debet esse judex in propria causa; qui facit per alium facit per se". 6. The document containing these grounds explains them in the following way:- "This particular strand of proceedings against the applicant - namely a supposed attempt to recover a purported "debt" - is but a small and most recent component in a sustained course of conduct pursued by corruptly conflicted individuals and the corruptly conflicted public authorities they control against child-abuse victims and the applicant. A central factor in what may be termed "The Jersey Situation" is that the island's judicial function is structurally ultra vires - has become captured, contaminated and perverted by directly conflicted individuals - has been misused for prima facie criminal purposes - and has come to a point where it, itself, is little more than a criminal enterprise. Jersey's polity - those who control it - and, in particular public offices and post-holders such as Bailiff, Deputy Bailiff, Attorney General, Solicitor General, various other judges, the Judicial Greffier and the Deputy Judicial Greffier have - in various ways and on various occasions - acted criminally so as to conceal crimes of child-abuse, of rape, of corruption, of attempted murder and of murder." 7. We gave Mr Syvret a short opportunity to explain these matters to us. He complained that the shortness of the opportunity prevented him from developing his submissions as he wished, and represented both actual bias and a denial of his right to a fair trial. A litigant does not, however, have an untrammelled right to speak as lengthily and discursively as he wishes: the court must manage its business effectively and for the benefit of all litigants, not just the litigant currently appearing before it, and it is no part of its function to provide a privileged occasion for the airing of political views, however strongly held. We had received written material from Mr Syvret in advance of the hearing, which gave us a clear flavour of what he wished to say; and his theme has become a familiar one to the courts in this Island. Although he is an able advocate, he is not a lawyer; and it was explained to him that efficient use of the court's

time made it necessary to require him to focus his remarks so that they related to the issues of relevance that the court had defined. In fact, he was in the end given precisely the time he asked for to develop as he wished his theme on what he termed "structural conflict"; and well within that time he had made clear to the court what his argument was.

8. In essence, that argument came down to allegations similar to those made and rejected in many of the applications I have mentioned. Their premise is that successive Attorneys-General have been complicit in covering up child abuse, and when they have succeeded to higher office - particularly that of Bailiff - they have used their political and judicial power to victimise Mr Syvret and frustrate his attempts to reveal the truth. In his eyes, this makes the Bailiff for the time being, and his deputy, hostile parties to any litigation in Jersey involving Mr Syvret; and that in turn prevents the Bailiff or the Deputy Bailiff adjudicating in such litigation. Moreover, in his view it has the consequence that anyone appointed by the Bailiff - as Commissioners are - is similarly disqualified, as also is anyone in whose appointment the Bailiff has had any influence. He claims that it also has the consequence that anyone who knows socially a Bailiff, present or past, is likewise disqualified; and in his submissions to us he claimed that merely to have met the Bailiff or his immediate predecessors was sufficient to justify recusal. Moreover, the poison that he perceives to affect the higher echelons of the Jersey judicial system has now in his view come to affect many if not all of the staff supporting the judiciary.

9. As applied by Mr Syvret to us, the structural conflict he asserts was said to arise from the fact that we were selected and appointed to the Court of Appeal by conflicted parties - by which was meant the Bailiff in office at the time of our respective appointments. He claimed that this gave rise also to a personal conflict for each of us; and he invited us to explain the basis of our recruitment, our social links with other members of the Island's judiciary, the basis on which we were remunerated, and whether or not we were freemasons. However, despite repeated promptings, he was unable to give any other reason personal to any of us that might disqualify any or all of us from hearing his case.

10. The problem with Mr Syvret's structural conflict argument is that its premise - of misconduct by persons in senior positions in the administration of justice - is at present no more than assertion. Mr Syvret told us that he intends to litigate in order to establish the truth of his complaints; but unless and until his complaints are found to be justified the argument that the whole of the Jersey judicial apparatus is corrupted is bound to fail. That means that any application to recuse based only on the fact that the tribunal is part of the Jersey legal system is likewise bound to fail; and I consider that a tribunal faced in future with an application by Mr Syvret to recuse on the basis of the structural conflict he asserts should summarily decline to entertain the application.

11. I do not of course rule out the possibility that there may exist some relationship between a judge and a party, or other reason personal to a judge, that would disqualify him from adjudicating on a dispute to which Mr Syvret was a party. In the present case, the parties in dispute with Mr Syvret are the States Treasurer and the Attorney-General

- because the Treasurer is seeking to enforce costs orders made in favour of the Attorney-General. As I have said, Mr Syvret did not suggest that there was any personal reason why we could not adjudicate on a dispute involving him and those parties. Nor is there any such reason: as far as we are aware, none of us has met the Treasurer; and the Attorney-General plays no part in the selection of judges of the Court of Appeal, and such contact as there is between the three of us constituting this panel and the Attorney-General for the time being is in the nature of official entertaining. As Sumption Cmmr explained - perhaps slightly ungraciously, but nevertheless accurately - when refusing to recuse himself at Mr Syvret's invitation (2011 JLR 343), "official entertaining does not bring together companions of choice. Such entertaining is simply part of the courtesies of office on both sides." 12. In the circumstances, I do not myself consider that any of Mr Syvret's questions has any relevance. As it happens, the answers to some of them are in fact provided by the Court of Appeal (Jersey) Law 1961 itself, which makes clear that ordinary judges of this court are appointed by the Queen (not by the Bailiff), and that their remuneration is determined by the Minister for Treasury and Resources. It also requires judges of the Court of Appeal to take their oath in the Royal Court (not to that court or to the Bailiff). Social engagement with other judges is inevitable; but familiarity and friendship with other judges and officials ordinarily follows and is the consequence of appointment, not the other way round. 13. The test for recusal is well known. As expressed by Jones JA in *Syvret v AG and Connetable of Grouville*

[2011] JCA 130 :- "It is whether a fair-minded observer, informed of all of the relevant facts and circumstances, would conclude that there was a real possibility that the judge was biased. (See *In re Esteem Settlement*

[2001] JLR 169 , per Vaughan JA, paragraph 21, as endorsed by the Court of Appeal at paragraph 6 of its judgment in *Baglin*

v. Attorney-General

[2005] JLR 180 , and at paragraph 12 of the judgment of Montgomery JA in *Syvret v Attorney-General*

[2009] JLR 330). The test is objective." 14. Applying that test to the circumstances of this case, it is in my judgment clear that there is no ground on which this court could accede to the application to recuse itself. 15. Before leaving this aspect of the case, I should refer to the fact that the President sat as a single judge of this Court to hear Mr Syvret's application for leave to appeal out of time, and refused it. If this were an appeal from that refusal, the President would be unable to deal with the matter; but in fact what Mr Syvret is doing is exercising his right to have his application for leave determined by the full court, and in determining that application we are dealing with the matter afresh and without regard to the decision of the single judge. 16. As an alternative to his recusal application, Mr Syvret asked that his application be adjourned without date - no doubt with the consequence that enforcement of the costs orders should be stayed indefinitely. This was on the basis that "a responsible court may wish to take a view on the appropriateness of proceeding with this

particular case at this time, given its comparative triviality and its very significant overlap with other - more serious - proceedings". The other proceedings were an existing committee of inquiry into child abuse, and projected proceedings by Mr Syvret against judicial officials for misfeasance in public office. In relation to the inquiry, the overlap was said to be that "much of the material, facts, evidence and argument cited in this application constitutes similarly key material which falls within the ambit of an extant public inquiry"; but the material, facts, evidence and arguments are those advanced by Mr Syvret himself, and have nothing to do - and therefore have no overlap - with a claim to enforce costs orders. Mr Syvret also said that he had been identified as a witness to the inquiry (as indeed seems to be the case); but he claimed that the present proceedings were preventing him from engaging properly with the inquiry and amounted to intimidation of him as a witness. He said that there was no pressing urgency about enforcement of the costs orders, and that they had only been resurrected to prevent him standing as a candidate in a States by-election. 17. In my view, there was no reason to adjourn the matter. The costs orders were made, and the Treasurer is on the face of it entitled to enforce them when he chooses. There seems to me no logical reason why a simple application to enforce a debt should inhibit Mr Syvret from engaging properly with the inquiry, and too remote a connection between the projected litigation and the existing costs order to justify deferring consideration of the application to appeal out of time. 18. I can now turn to the application itself. It arises in the following way. 19. On 17 March, 2014, the Royal Court (Page Commr and Jurats Kerley and Blampied) heard (after refusing the customary application for recusal) an application by the Treasurer of the States for judgment against Mr Syvret for £67,859.80 in respect of costs orders made by the Royal Court and the Court of Appeal. These orders were unspecified; and for that reason, and because the Court had identified a point that might be capable of affording Mr Syvret a viable defence to the claim, the Court placed the matter in the pending list and made directions for the filing by the Treasurer of particulars of the claim. The court also extended Mr Syvret's time for filing an answer to the claim to three months from receipt of the particulars as regards, but only as regards, the possible defence it had identified. The court defined the purpose of the extension of time as being that "it affords Mr Syvret an opportunity to seek leave to appeal out of time such of the proceedings with which we are concerned as he may think are affected by these matters. Should he succeed in any such application he will be able to plead that fact by way of answer to the summons and all further consideration of the matter would, no doubt, be adjourned pending the outcome of that appeal. Should the specified three month period elapse without any such leave having been obtained the Treasurer of the States will be at liberty to bring the matter back to this court with a view to seeking final judgment". 20. Mr Syvret wishes to appeal this order ("the March order") on the basis that the Royal Court should have recused itself. 21. The matter came on again for hearing on 25 July, 2014. In the meantime, on 9 April, 2014, an order had been made by the Commissioner relating to the transcript of the March 2014 hearing. That order authorised release of the transcript to Mr Syvret, but stipulated that:- "save only for the purpose of obtaining legal advice in connection

with any appeal or save for the inclusion in any document required to be filed in connection with any appeal, [Mr Syvret] shall not reproduce or distribute any part of the transcript of the said proceedings without the express written permission of the Court". The order stated that any contravention of this restriction would be treated as a contempt of court. 22. Mr Syvret wishes to appeal this order ("the April order") on the basis that it represents an unwarranted interference with his right to publicise the proceedings. He also relies on it as a reason for not seeking to appeal the March order until now. 23. When the matter was heard in July 2014, Mr Syvret had not filed any answer to the Treasurer's claim. He again invited the court to recuse itself; again the application was refused. Mr Syvret asked for a further extension of time in which to investigate the point identified by the Royal Court at the hearing in March 2014: he had, he claimed, been thwarted in his attempt to make progress with the matter so far and would now have to prepare and launch an application for disclosure by the Data Commissioner - all of which would take time. The Court refused that application also, saying this:- "Mr Syvret is sufficiently experienced in court procedure to know very well that for a last-minute application of this kind to have any serious prospect of success the Court needs, at the very least, to see credible evidence that the earlier extension of time has been put to good use, that obstacles said to have been encountered are real and substantial and that there is good reason for the application for a further extension of time being left until the last minute rather than being made promptly when the case for further time first arose. This would be exactly the same for any other litigant. As it is, no such evidence was offered ... of what efforts Mr Syvret has in fact made to pursue this matter in the course of the four and a half months that have elapsed since the hearing on 5th March. Nor was there any obvious reason why application for an extension of time had not been made until now. In short there appeared to us to be no justification for granting any further extension of time and we declined to do so." The Court then proceeded to give judgment for the Treasurer on the application to enforce the costs orders. 24. Mr Syvret wishes to appeal the resulting order dated 25 July, 2014, ("the July order") on the basis that the Royal Court should have recused itself or should have given him a further extension of time. He also asserts that the Treasurer was not entitled to judgment. 25. I deal first with the July order, which Mr Syvret was entitled as of right to appeal. Any such appeal had, however, to comply with the procedural requirements of rule 3 of the Court of Appeal (Civil) Rules 1964, which stipulates that a notice of appeal must be served within one month from the date on which the judgment or order of the court below was pronounced. His notice of appeal in relation to the July order accordingly had to be served on or before 25 August, 2014. In fact, however, it was not until late in the afternoon of 1 September, 2014, that Mr Syvret emailed his notice of appeal to the Judicial Greffier. In consequence, if his appeal is to proceed he needs to persuade this court to exercise its discretion under rule 16(1) of the 1964 Rules to enlarge his time for serving the notice of appeal. 26. In deciding whether or not to grant an extension of time within which an appeal may be filed, the court must consider

- (a) the extent of the delay, (b) any explanation for it, (c) the prospects of success, and (d) the risk of prejudice: see *Crichton v Parker-Smith*

[2008] JCA 039 at paragraph 19; following *B v N*

[2002] JLR N 29. In cases where the delay in serving a Notice of Appeal is short and there is an acceptable excuse, an extension of time will not be refused on the basis of merits unless the prospective appeal appears to be hopeless: *Pitmans v Jersey Evening Post and Another*

[2013] JCA 149 . I am content to assume that these criteria continue to apply in Jersey notwithstanding the much stricter attitude now taken in England and Wales: see *R. (on the application of Hysaj) v Secretary of State for the Home Department* [2014] EWCA Civ 1633; *The Times* 22/01/15. 27. The extent of the delay is not substantial, amounting to no more than one week. However, there has been no explanation of that delay; and indeed there is no reason why Mr Syvret could not have done a week or more earlier what he in fact did on 1 September, 2014. Mr Syvret knows - or should know - of the necessity to observe litigation time limits or to explain a failure to do so. The judgment given in connection with the July order made the point clearly (see the quotation in paragraph 23 above); and Mr Syvret has previously failed in this court because of his failure adequately to explain delay (see *Syvret v A-G*

[2011] JCA 146 at [29]). So far as it then becomes relevant to consider the merits of the proposed appeal, it seems to me that there are none. The invitation to the court to recuse itself was based on Mr Syvret's structural conflict argument, which for reasons I have already explained has no merit. Mr Syvret had taken no steps whatever to advance matters in the time he had been given since the March order, and the Royal Court was well within the legitimate bounds of its discretion in refusing him more time. As to the assertion that the costs orders should not have been enforced, it is clear from the Notice of Appeal that the contention is based on a variant of the structural conflict argument, it being said (in paragraphs W and X) that the purported debts arose from fraudulent actions conducted for improper motives and improper purposes, and arose from actions and decisions by individuals who were expressly conflicted, thus rendering the actions and decisions of the relevant public authorities null, vitiated and ultra vires . Again, that argument cannot succeed on appeal. Finally, so far as prejudice is concerned, it seems to me that it would be disadvantageous to the Treasurer to be kept out of money to which he is on the face of it entitled. 28. For these reasons I concluded that leave to appeal the July order out of time should be refused. The considerations that led me to that conclusion apply with greater force to the projected appeals against the March and April orders. They were long out of time; there was no reason why the orders could not have been appealed earlier, and no explanation why they were not (Mr Syvret's suggestion that the April order prevented him from challenging the March order being plainly inconsistent with the terms of the April order); they had no merits (the complaint about the March order being the failure to recuse on structural conflict grounds, and the complaint about the April order being inconsistent with its terms); and there was the same prejudice to the Treasurer. It seemed

to me plain that leave to bring those appeals out of time should also be refused. 29. Once we had announced our decision, Mr Syvret asked for leave to appeal to the Privy Council. We refused leave. 30. Article 14 of the Court of Appeal (Jersey) Law 1961 is in the following terms:- "(1) No appeal shall lie from a decision of the Court of Appeal under this Part without the leave of the Court or the special leave of Her Majesty in Council.

- (2) No appeal shall lie from a decision of the Court of Appeal to grant, or to refuse to grant, leave to appeal." 31. Whether or not this is a case falling within paragraph (2) of that article, it is a case involving the exercise by us of a discretion. Although Mr Syvret would no doubt disagree, it involves no question of general public importance. 32. In *Wilson v Jaymarke Estates Ltd*

[2007] SC (HL) 135 at [17], Lord Hope of Craighead observed:- "It is contrary to the public interest that the time of the House should be taken up with appeals which do not raise an arguable question of general public importance, as this is liable to cause delay in the disposal of appeals which merit its attention." 33. Similar considerations apply in the Supreme Court: *Uprichard v Scottish Ministers*

[2013] UKSC 21 . In common with the Guernsey Court of Appeal (*Emerald Bay Worldwide Limited -v- Barclays Wealth Directors (Guernsey) Limited* , Guernsey Judgment No 2/2014), I consider that these considerations are relevant to appeals to the Privy Council and should inform the disposal in this jurisdiction of applications for leave to appeal from this court. 34. There being no question of general public importance in the present case, leave should be refused. Mr Syvret is, of course, able to apply to the Privy Council for leave to appeal those parts of our decision that do not fall within Article 14(2) if he wishes to do so. 35. MCNEILL JA:- I agree. 36. PERRY JA:- I agree. *Authorities Syvret -v-AG*

[2012] JRC 087A . *Syvret -v-AG*

[2009] JRC 165 . *Syvret -v-AG and Connetable of Grouville*

[2010] JRC 179 . *Syvret -v-Chief Minister*

[2011] JLR 343 . *Syvret -v-AG and Connetable of Grouville*

[2011] JRC 115B . *Syvret -v-AG*

[2012] (2) JLR 94. *Treasurer of the States-v- Syvret*

[2014] JRC 070. *Treasurer of the States-v- Syvret*

[2014] JRC 149A . *Syvret -v-AG and Connetable of Grouville*

[2011] JCA 146 . *Court of Appeal (Jersey) Law 1961. Syvret v AG and Connetable of Grouville*

[2011] JCA 130 . *Court of Appeal (Civil) Rules 1964. Crichton v Parker-Smith*

[2008] JCA 039. *B v N*

[2002] JLR N 29. Pitmans v Jersey Evening Post and Another

[2013] JCA 149 . R. (on the application of Hysaj) v Secretary of State for the Home Department

[2014] EWCA Civ 1633. Wilson v Jaymarke Estates Ltd

[2007] SC (HL) 135 . Uprichard v Scottish Ministers

[2013] UKSC 21 . Emerald Bay Worldwide Limited -v- Barclays Wealth Directors (Guernsey) Limited, Guernsey Judgment No 2/2014. Page Last Updated: 27 Sep 2016 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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