

JAMES DOWSETT v CRIMINAL CASES REVIEW COMMISSION (2007)

QBD (Admin) (Laws LJ, Mitting J) 8/6/2007

CRIMINAL PROCEDURE - HUMAN RIGHTS

CREDIBILITY : CRIMINAL CASES REVIEW COMMISSION : DECISIONS : EUROPEAN COURT OF HUMAN RIGHTS : MURDER : PROSECUTION DISCLOSURE : RIGHT TO FAIR TRIAL : UNSAFE CONVICTIONS : REFUSAL TO REFER : BREACH OF RIGHT TO A FAIR TRIAL : LIMITED IMPACT ON SAFETY OF CONVICTION : s.13 CRIMINAL APPEAL ACT 1995 : Art.6 EUROPEAN CONVENTION ON HUMAN RIGHTS

Despite a ruling by the European Court of Human Rights that a defendant's rights under the European Convention on Human Rights 1950 Art.6 had been breached, the Criminal Cases Review Commission had not erred in its refusal to refer the case back to the Court of Appeal on the basis that the issue ruled upon would have had a limited impact on the safety of a conviction.

The claimant (D) applied for judicial review of a decision by the Criminal Cases Review Commission, refusing to refer his case back to the Court of Appeal Criminal Division, following a ruling by the European Court of Human Rights that he had not received a fair trial in accordance with the European Convention on Human Rights 1950 Art.6. D had been convicted of murder in 1987 following the killing of a business associate (N) by two men (G and R). The Crown alleged that D had agreed to pay G and R £20,000 for their services. D asserted that he had engaged G and R to break N's arm in order to incapacitate him from business dealings. D maintained that G had undertaken a frolic of his own and then blackmailed him for the sum of £20,000. G and R pleaded guilty to murder prior to D's trial and at the last minute, G was called by the Crown to give evidence against D at trial. G's evidence was generally considered to be unreliable and self-serving, but the Crown believed elements of it to be accurate. G's evidence and credibility were important to the case against D. In 1994, D appealed against his conviction on the basis that the prosecution had failed to disclose material that went against G's credibility. The court concluded that the impact on the case as a whole would have been minimal and upheld D's conviction. In 2003, D obtained a ruling in his favour from the European Court of Human Rights which found that his Art.6 rights had been infringed by the failure of the Crown to disclose further material to the D, the Court of Appeal and the European Court. The material contained correspondence that G had in fact been in contact with police officers about the prospect of his giving evidence for a lengthy period prior to trial. On the basis of the ruling by the European Court, D requested that the Commission refer his case back to the Court of Appeal on the basis that the material disclosed substantially undermined the safety of his conviction. The Commission, applying *R v Pendleton (Donald)* (2001) UKHL 66, (2002) 1 WLR 72, refused D's request on the basis that the new material would have little impact on the proceedings and that there was no real possibility that the conviction would not be upheld under the Criminal Appeal Act 1995 s.13(1)(a). D submitted that the Commission erred in its decision to refuse to refer the matter to the Court of Appeal in the light of the decision from the European Court.

HELD: (1) Consideration had to be given to the effect of domestic law on the breach of Art.6 identified by the European Court. There was considerable case law that expounded the proposition that even where a defendant's Art.6 rights had been breached, there were circumstances in which that breach would not result in doubts about the safety of a conviction, *R v Forbes (Anthony Leroy)* (2001) 1 AC 473, *R v Lambert (Steven)* (2001) UKHL 37, (2002) 2 AC 545 and *R v Lewis (Michael William)* (2005) EWCA Crim 859, Times, May 19, 2005 considered. It was clear from those authorities, that not every breach would make a conviction unsafe. The facts and merits of each individual case must be analysed and in D's case, there was little to suggest that there would have been a different outcome to his trial had the information been disclosed. (2) Consideration also had to be given to the Commission's

powers under the 1995 Act. Section 13(1)(a) was set out in unambiguous terms and required that the Commission only refer a case to the Court of Appeal where there was a real possibility that the conviction would not be upheld were the reference to be made. The appropriate test was whether or not the individual case crossed the threshold of doubts as to safety of the conviction, R v Criminal Cases Review Commission Ex p Pearson (1999) 3 All ER 498 considered. **If the Commission were to refer every case where a defendant's Art.6 rights had been breached, the role of the Court of Appeal would become mechanistic rather than one of judgement.** The result of a reference by the Commission would have been academic.

Application refused

Counsel:

For the claimant: A Masters

For the defendant: D Perry QC

LTL 8/6/2007 EXTEMPORE (Unreported elsewhere)

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