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*Judgment: approved by the Court for handing down (subject to editorial corrections)**	*Delivered: 21/02/2018*

IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

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JOHN PAUL MURPHY

Appellant:

-v-

REGISTRAR OF COMPANIES FOR NORTHERN IRELAND

Respondent:

Before: Stephens LJ and Treacy LJ

STEPHENS LJ (giving the judgment of the court)

Introduction

[1] This is an application by John Paul Murphy ("the appellant") for an order directing His Honour Judge Kinney to state a case for the opinion of the Court of Appeal. The application to state a case relates to a hearing before HHJ Kinney on 5 April 2017 when the appellant was convicted, as the sole company director of J P Murphy Limited, of the offence of failing to file company accounts for the year ending 31 October 2013 in circumstances where those accounts ought to have been filed no later than 31 July 2014 contrary to Sections 441 and 451 of the Companies Act 2006.

[2] The appellant appears in person and Mr Brownlie appears on behalf of the Registrar of Companies for Northern Ireland. The appellant was informed of his ability to have a McKenzie Friend but he chose not to avail of that assistance.

Factual background

[3] J P Murphy Limited was incorporated on 30 September 1983. It is a private limited company and the appellant has been the sole company director since its incorporation.

[4] We have access to a considerable volume of correspondence. We do not intend to set out the contents of all the letters and e-mails that were sent prior to the

prosecution, but rather we refer to a number of letters so as broadly to indicate the position prior to the initiation of the criminal proceedings.

[5] On 29 January 2015 Mr James Kane, a civil servant employed in the office of the Registrar of Companies at Companies House, Linenhall Street, Belfast wrote to the appellant in relation to the company accounts for the periods ending 31 October 2011, 31 October 2012 and 31 October 2013 pointing out that the statutory responsibility for delivering these documents to Companies House rests with the directors and failure to do so can result in criminal proceedings being instituted. The letter also stated that the appellant's case can be passed to the Public Prosecution Service if these documents were not received within 28 days of the date of the letter and that a summons may then be issued without further warning.

[6] On 9 March 2015 Mr Kane again wrote to the appellant. On this occasion the appellant was informed that whilst the documents for the periods ending 31 October 2011 and 31 October 2012 remained outstanding Mr Kane did not propose to take prosecution action for those accounts. However, the position in relation to the accounts for the period ending 31 October 2013 was that he was instructing the Public Prosecution Service to institute criminal proceedings against the appellant.

[7] On 17 March 2015 the appellant replied stating that he was actively working to get these issues resolved and all of these accounts filed. He stated that his accountant was on holiday and asked for any action to be deferred.

[8] On 18 March 2015 Mr Wray, compliance case officer of Companies House, replied stating that no further deferment of prosecution action could be given.

[9] On 27 April 2015 the appellant referred to, for instance, difficulties with the loss of crucial documents and bank accounts having been closed. He stated that he was actively working to get these accounts all completed and submitted as soon as possible.

[10] On 18 May 2015 the appellant again wrote advising that he continued to do what he could to collate all necessary information to allow his accountant to complete and file these outstanding accounts. However, he stated that his focus had altered as he was involved in a very difficult and protracted domestic and family court case. He ended by reassuring that he treated the issue of overdue accounts seriously and that he was currently doing what he could to deal with the matter.

[11] A prosecution followed. The summons was listed in the Magistrates' Court on 23 June 2015, 25 August 2015, 8 September 2015, 22 September 2015, 20 October 2015, 17 November 2015 and 1 December 2015. On each occasion it was adjourned. Then on 26 January 2016 the learned District Justice convicted the appellant and imposed a fine of £80. The appellant states that the case was listed for mention only

in the Magistrates' Court on that date and that without any prior notice or time for preparation and in direct breach of the Rules and Order of the Magistrates' Court, of the fundamental principles of natural and constitutional justice, of the Human Rights Act 1998 and of the overriding principles of the court, the appellant was not arraigned or allowed to enter a plea or to introduce evidence in defence of the charge against him prior to being summarily convicted of this criminal offence.

[12] The appellant, as he was entitled to do, appealed to the County Court. The appeal in the County Court is by way of rehearing. The appellant considered and still considers that the County Court could exercise a power to quash the conviction of the Magistrates' Court in the same way that the High Court could do exercising supervisory judicial review powers. The appellant also considered that the deficiencies which he has described in the Magistrates' Court meant that the entire prosecution should be struck out as an abuse of process. He brought such an application before His Honour Judge McFarland, the Recorder of Belfast, ("the Recorder") who disagreed stating that the matter was being dealt with by way of a rehearing and when the appeal was fixed for hearing at that stage the appellant would have an opportunity to enter his plea to the complaint. The approach taken by the Recorder was that he did not have the power to quash the conviction in the Magistrates' Court and that the appeal to the County Court would allow all the issues to be ventilated so that the prosecution would have to prove a case beyond all reasonable doubt and the appellant would have an opportunity to put forward any defence that he wished to raise. In that way the proceedings were compliant with Article 6 of the European Convention on Human Rights.

[13] On 16 May 2016 the appellant applied to the Recorder to state a case for the opinion of the Court of Appeal. On 14 June 2016 the Recorder refused to do so and on 28 June 2016 the appellant applied to the Court of Appeal for an order directing the Recorder to state a case. The essential issue being whether the Recorder was correct to proceed by way of a rehearing rather than by quashing a conviction or staying the proceedings as an abuse of process.

[14] On 28 November 2016 that appeal was reviewed before the Lord Chief Justice. The appellant did not attend, having sent to the court office medical reports. The Lord Chief Justice stated that he had considered those reports and they did not appear to him to indicate that the appellant was incapable of attending court. Various directions were given and the appeal was listed for hearing on 23 January 2017.

[15] On 23 January 2017 the appellant did not attend. The hearing was adjourned to allow the appellant to provide medical evidence explaining why he was unable to file a skeleton argument or attend the hearing. The appeal was then listed for 6 February 2017 on which date the Court of Appeal dismissed the application as the appellant had failed to attend or provide the Court of Appeal with the requested evidence.

[16] On 10 February 2017 the appeal from the Magistrates' Court to the County Court was listed for mention before HHJ Kinney. The appellant was not in attendance. The appeal was listed for review on 8 March 2017 and for hearing on 5 April 2017. The appellant was not in attendance on 5 April 2017 and the appeal proceeded in his absence. The court heard evidence on behalf of the complainant and convicted the appellant. It made no alteration to the sentence which was imposed on the appellant. The reason why the appellant was not in attendance on 5 April 2017 can be discerned from the fact that on 7 March 2017 he completed and lodged an application for consent to appeal to the UK Supreme Court against the decision of the Court of Appeal dated 6 February 2017. The appellant also furnished a copy to the Public Prosecution Service and to the County Court Judge dealing with the matter. The appellant asserted that he could not participate in the proceedings on 5 April 2017 as to do so would prejudice the pending appeal to the UK Supreme Court against his conviction on the grounds of the failure of the court to observe the specific rules and orders of that same court.

[17] On 26 April 2017 the appellant applied to HHJ Kinney to state a case for the opinion of the Court of Appeal. On 23 May 2017 HHJ Kinney declined to do so and the appellant now applies to this court for an order directing the judge to state a case.

[18] On 26 September 2017 this application was reviewed before the Lord Chief Justice. The appellant was in attendance. In ease of the appellant the respondent agreed to prepare the Book of Appeal. The appellant was directed to file a skeleton argument. He failed to do so within the time set by the Court of Appeal, but a 17 page skeleton argument was prepared dated 14 February 2018. The appeal was heard on Monday 17 February 2018.

Legal principles

[19] The obligation to state a case for the opinion of the Court of Appeal is contained in Article 61 of the County Courts Order (Northern Ireland) 1980. Article 61(1) is in the following terms:

> "Except where any statutory provision provides that the decision of the county court shall be final, any party dissatisfied with the decision of a county court judge upon any point of law may question that decision by applying to the judge to state a case for the opinion of the Court of Appeal on the point of law involved and, subject to this Article, it shall be the duty of the judge to state the case."

Article 61(4) provides:

> "If the county court judge is of opinion that an application under paragraph (1) is frivolous, vexatious or unreasonable he may, subject to paragraphs (5) and (6), refuse to state a case and, if the applicant so requires, shall give him a certificate stating that the application has been refused on the grounds stated in the certificate."

Article 61(6) is in the following terms:

> "Where a county court judge refuses to state a case or fails to state a case within such time as may be prescribed by county court rules, the applicant may apply to a judge of the Court of Appeal for an order directing the county court judge to state a case within the time limited by the order, and the judge of the Court of Appeal may make such order as he thinks fit."

[20] As is apparent Article 61(1) makes it clear that a County Court Judge may only state a case on a point of law actually decided by him or her. On a case stated the point of law must be formulated accurately and succinctly in the requisition. The facts as found by the County Court Judge which give rise to the point of law have also to be set out accurately and succinctly. This court in *Emerson v Hearty and Morgan* [1946] NI 35 considered what was required in relation to a case stated. Lord Justice Murphy stated that in order "to deal with a question of law sought to be raised by a Case Stated this court must have clearly before it (a) the precise facts found by the judge who stated the Case and (b) any inferences or conclusions of fact which he drew from the facts found by him." He went on to state that "The point of law upon which this Court's decision is sought should of course be set out clearly in the Case." We would observe that the obligation is on the appellant to clearly identify the point of law actually decided by HHJ Kinney.

Discussion

[21] As is apparent from the factual background the appellant's application to compel the Recorder to state a case was dismissed. As a result the Recorder's order cannot be challenged or disputed in this application. We proceed on the basis that (a) the appeal from the Magistrates' Court to the County Court should proceed by way of rehearing; (b) the decision of the Magistrate cannot be quashed by a County Court Judge; and (c) there was no abuse of process in proceeding to hear and determine the appeal.

[22] The application to state a case under the heading "Background and Precedence" challenges the decision of the Court of Appeal on 6 February 2017 to dismiss the application to state a case in relation to the decision of the Recorder. It is not possible in these proceedings to challenge the earlier decision of the Court of Appeal which is binding on this court.

[23] As is apparent from the factual background the appellant knew of the date for the hearing in the County Court before HHJ Kinney. He knew that he could present any evidence that he wished to do during the course of that appeal which was by way of rehearing. He knew that he could enter any plea that he wanted to before HHJ Kinney. If any injustice had occurred in the Magistrates' Court then the appellant could correct that injustice before HHJ Kinney by securing his acquittal in relation to the charge against him. We note that the appellant suggests that if he attended the hearing of the appeal before HHJ Kinney that would have prejudiced his pending appeal to the Supreme Court. Clearly that was not correct. If leave was granted to appeal to the Supreme Court and if the Supreme Court held that the conviction of the Magistrates' Court should be set aside then all subsequent court orders would also have fallen.

[24] Before turning to a consideration of the various grounds upon which the appellant relies in relation to this application to compel HHJ Kinney to state a case we note the context was a factual finding by HHJ Kinney that all the constituent elements of the offence charged had been established.

[25] We have considered each of the grounds contained in the appellant's requisition to HHJ Kinney to state a case. We consider that either they do not raise a point of law or they relate to matters which were decided on 6 February 2017 when the previous appeal to the Court of Appeal was struck out or that they are unreasonable or frivolous or vexatious. We do not propose to go through each ground seriatim but rather to illustrate.

[26] Ground A contains one word "bias." There is no attempt to define what bias is alleged in respect of the decision of HHJ Kinney or on what factual basis it is alleged. Some explanation might be contained in Ground B, which alleges unfair prejudice/discrimination by the courts in general. There is nothing to support such an allegation but rather the appellant was given every opportunity before HHJ Kinney to set out his case whatever it is. It is important to recognise that this is an application to state a case in relation to the decision of HHJ Kinney and has nothing to do with the earlier decision of the learned District Judge. The appellant's method of dealing with any alleged injustice before the District Judge was to appeal to the County Court which he did or to bring a judicial review application which he did not do. By following the appeal route the appellant could then present whatever evidence he wished and he could have challenged whatever evidence he wished that was presented on behalf of the prosecution. The court system provided the remedy

which the appellant adopted namely an appeal to the County Court by way of rehearing. The appellant has failed to avail of that remedy.

[27] Another illustration is that the appellant states in Ground F that he is not guilty of committing a criminal offence or of criminal neglect. He explains that this is on the basis of the defence set out in Section 451(2) of the Companies Act. He had the opportunity to present that defence to HHJ Kinney and he chose not to avail of it.

[28] A further illustration is that the appellant challenges decisions in the Court of Appeal, that the medical evidence he had produced was inadequate to justify an adjournment. We are bound by the earlier decisions of the Court of Appeal. The earlier decisions of the Court of Appeal have nothing to do with the decision of HHJ Kinney who was not asked to adjourn on the basis of any medical reason.

[29] We asked the appellant to bring definition to the exact point of law in relation to which he wished HHJ Kinney to state a case. We emphasised this had to be a point of law decided by HHJ Kinney. The response was that the decision of the Magistrate to convict was in breach of the applicant's Article 6 Convention rights. We make it clear that was not a point of law decided by HHJ Kinney, rather HHJ Kinney provided to the appellant an opportunity of resisting the prosecution case and of presenting whatever evidence he wished in an environment that was entirely compliant with Article 6 ECHR.

Conclusion

[30] We decline to order the learned County Court Judge to state a case.