Correcting mistakes in the magistrates' courts

To what extent has the Court of Appeal clarified the power of the magistrates' court to reopen cases in order to rectify mistakes? Dr Charanjit Singh reports

IN BRIEF

- Examines *R (on the application of Simon Williamson) v City of Westminster*, in which the Court of Appeal has sought to define the application of s 142 of the Magistrates Court Act 1980 (MCA 1980).
- Presents a practical examination of case law and explores the implications for defendants' seeking to reopen their cases following a guilty plea and sentencing.
- Notes the current position of the law under s 142, MCA 1980.

Few would argue against the notion that some of the systemic safeguards designed to mitigate miscarriages of justice, prevent the abuse of due process, and assure that convictions of the guilty are beyond reasonable doubt (*Woolmington v DPP* [1935] AC 462) are some of the most important aspects of British criminal justice.

The decision of the Court of Appeal in *R (on the application of Williamson) v City of Westminster Magistrates' Court* [2012] EWHC 1444 (Admin); *R (Williamson) v City of Westminster Magistrates' Court* [2012] Cr App R 24 ('*Williamson*') to define the application of s 142 of the Magistrates Court Act 1980 (MCA 1980) has had major implications for defendants seeking to reopen their cases following a guilty plea and sentencing. This article explores the *Williamson* decision in its attempt to rectify the ambiguity created by the drafting language of s 142, MCA 1980 and its practical effect on the application of the provision.

This article is set in four parts; s 142, MCA 1980 and its aim; the case law and issues that arose by reason of the wording of the provision; and the practical implications of the *Williamson* judgment, concluding with a summary.

Section 142 of the Magistrates Court Act 1980

Section 142, MCA 1980 concerns the power of the magistrates' court to '…rectify mistakes *etc*' (emphasis added). It was created to reduce the burden of appeals going to the crown and High Court in relation to matters that the magistrates' court could deal with itself—matters considered to be of a more procedural nature, rather than 'appeals' in the truer sense. However, the ambit of the provision was not clear given the language deployed.

Section 26 of the Criminal Appeal Act 1995 (CAA 1995) made a number of changes to this; the terminology 'in the interests of justice', as set out in s 142(2), MCA 1980, was introduced in s 142(1) regarding sentence, and the restriction that the power was only exercisable following a plea of 'not guilty' or where the defendant had been tried in absentia was removed. Section 26, CAA 1995 repealed s 142(4), MCA 1980, thereby removing the 28-day time limit and the requirement that the bench that dealt with the original matter also deal with the resulting s 142 application. In addition, the effect of ss 1A and 2A was to ensure that the power under the provision was not exercisable where an appeal had already taken place.

The purpose & extent of section 142

It has long been recognised that there is no right to appeal a conviction based on a guilty plea unless that plea was 'equivocal'; *R v Durham Quarter Sessions, ex p Virgo* [1952] 2 QB 1; *R v Plymouth Justices, ex p Hart* [1986] QB 950, see also s 108, MCA 1980. Section 142 was enacted to enable the magistrates' court to correct *limited mistakes and errors*, which would otherwise need to be adjudicated in the crown court, the High Court by way of case stated, or via judicial review proceedings (see s 111, MCA 1980). It was hoped that this would result in cost and time savings, as well as savings of resources being spent on correcting mistakes from the magistrates courts' through the appellate or review processes; the removal of the 28-day time limit stands in concurrence with this point. The power was not designed to render the appeals process redundant and therefore is not equivalent to the appellate powers of the crown court, High Court or those in review proceedings. A review of the case law shows an interesting array of instances in which the power was requested and/or sought to be exercised.

The approach of the courts

Section 142(2) was considered in the case of *R v Croydon Youth Court, ex p DPP* [1997] Lexis Citation 1465. In this case, the defendant had pleaded guilty, but his co-defendants pleaded not guilty and were acquitted on the basis that the prosecution had failed to negate the presumption of *doli incapax*. The defendant made an application under s 142(2), MCA 1980 for a retrial, the youth court held in his favour, but the decision was quashed on appeal. Lord Justice McCowan held:

> '…the purpose of s 142(2) is accurately described in the heading as a Power to rectify mistakes. It is generally and correctly regarded as a slip rule. [Counsel] places great reliance on the fact that those words in the heading are followed by etc. But in my judgment that cannot extend the power given beyond a situation akin to mistake. There was no mistake in the present case or anything like it. The magistrates were in fact told at the trial, according to their chairman, that it was not essential for them to listen to the tape. They did rule that the interview was admissible and the defendant, advised by counsel, did then unequivocally plead guilty' (at pp416–417).

In *R (on the application of Holme) v Liverpool Magistrates' Court* [2004] EWHC 3131 (Admin), a bench of magistrates granted an application to review a sentence seven months after the date of a conviction for dangerous driving. The rationale was that the sentence had not considered the severity of injuries suffered by the pedestrian. The argument was that the bench had made a mistake, in ignorance of the full facts, by under-sentencing the defendant. The decision to allow the review was quashed; there had been no mistake that fell into the remit of s 142, MCA 1980. Interestingly, Mr Justice Collins stated that, theoretically, it may be possible to argue that a magistrates' court had made a mistake in sentencing if it were one based on false information presented by the defendant in mitigation.

In *R v (Carl Acton) v Feltham Magistrates Court* [2007] EWHC 3366 (Admin), Mr Justice Mitting opined, in relation to McCowan LJ's comments, that: 'I do not exclude on a proper case argument that the statement that the

magistrates' court had no jurisdiction under section 142 to permit a plea to be vacated, save in the case of mistakes, to be moderately overstated. *Nor do I exclude the possibility that in circumstances which in effect render proceedings before a magistrates' court a nullity, that this court can and should intervene to quash those proceedings.*'

Practical implications of *Williamson*

Williamson's application focused on allegations regarding the conduct of his solicitor and whether that could fall into the concept of 'mistake' under s 142(2), MCA 1980. The contention was that he had misapprehended the strength of the prosecution case against him because the legal advice of his solicitor was flawed.

The court opined that, even if the contention were established, it would not be a matter that fell within the remit of the provision. The main reasoning seems to point to the fact that the effect of it doing so would have resulted in the provision being used as a 'surrogate' for a full appeal based on the alleged conduct of the solicitor. Therefore, the court held that the judge had erred in law when accepting that he had, under s 142, MCA 1980, a power to remit the case for a rehearing. Thus, any arguments in relation to the reasoning behind and the exercise of that discretion became purely academic; they were of no practical significance.

It is worth nothing that appeals against conviction from the crown court to the Court of Appeal, Criminal Division on such grounds are not unusual. However, such appeals are not straightforward, and they rarely succeed—even where a thorough explanation of the circumstances and procedure that ensures the legal adviser has provided a full account of what occurred is elicited. It is salient to note that, in the case of *R v Doherty and McGregor* [1997] Lexis Citation 2567, the Court of Appeal, with the approval of the Lord Chief Justice, referred to the Bar Council's guidance setting out the procedure to be followed. The process involves a waiver of legal professional privilege, and the Registrar of Criminal Appeals will send the grounds with an invitation for the legal adviser to comment. These comments are then considered by a single judge along with the applicant's argument. While this is the usual procedure, if necessary, the matter can be heard before a full court and are often supported by oral evidence. This process is required before a determination of allegations relating to misconduct or incompetence and then the court will consider whether this renders the conviction unsafe.

The court, at para [31], opined that:

> 'The purpose of s 142 as originally enacted was to *enable the magistrates' court itself to correct mistakes in limited circumstances to avoid the need for parties to appeal to the Crown Court, or to the High Court by way of case stated, or to bring judicial review proceedings*. …the s 142 power was designed to deal with an obvious mischief: namely the waste of time, energy, and resources in correcting clear mistakes made in magistrates' courts by using appellate or review proceedings. The removal of the short time limit in 1996 is consistent with that approach. It is the common experience of courts in all jurisdictions that mistakes, and slips are often not picked up immediately. [As] … far as the jurisdiction relating to convictions is concerned, the amendment enables the magistrates' court to exercise the power in circumstances beyond those originally envisaged [,] … but the power remains rooted in the concept of correcting mistakes and errors.'

In *Williamson*, the Court of Appeal suggested that if Parliament had intended to give the magistrates' courts a broader power, then it would not have referred to it as the power to 'rectify mistakes etc' and would instead have used far more 'expansive' terminology (at para [32]. The justices accepted that the provision may be used to allow an unequivocal plea of guilty to be set aside. With reference to examples, the justices stated that the following would fall within the meaning of mistake within the provision: pleading guilty to a non-offence, ie one not known in law; this applies in relation to offences that may have been on the statute book but later repealed. Furthermore, where a jurisdictional bar, ie a time limit or prosecutor identity, existed but was not appreciated by the defendant, then that would also fall within the provision, and cases where the proceedings are, in fact, a nullity.

At para [36] the court also accepted that 'there may be circumstances in which s 142(2) could be used to allow an unequivocal guilty plea to be set aside… There may be cases in which the proceedings were, in truth, a nullity. *We would not exclude the possibility that s 142(2) would be apt to deal with a case in which* ***circumstances developed after a guilty plea and sentence*** *which led the prosecution to conclude that the conviction should not be sustained*' (emphasis added). Exactly what those circumstances are remains open to debate, but they are likely to be restricted to gross evidential errors or matters in relation to which the prosecution had no knowledge.

Conclusion

The Court of Appeal has shut the door on s 142, MCA 1980 being misused to bypass the standard appeal process. *Williamson* has clarified the boundaries of s 142, aiming its definition at the mischief it intended on rectifying.

However, the court has not completely limited the ambit of the provision by leaving opportunity for limited expansion of the categories of cases falling under the category of 'circumstances leading the prosecution to conclude that a conviction should not be sustained'. NLJ

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