

Case Law update

New guidance on striking out appeals to the Crown Court when an unrepresented appellant is absent.



by Emma Clarke

In Lawal v Cambridge Crown Court [2023] EWHC 466 (Admin), the court clarified the courts power to 'strike out' a case from the list without the need to hear any evidence when an unrepresented appellant fails to attend an appeal hearing in the Crown Court.

The Application

Mr Lawal applied for judicial review of a decision from the Crown Court at Cambridge to proceed in his absence and dismiss an appeal without hearing any evidence. On the date of the appeal listing, the appellant was not present when the case was called on in the morning. Having allowed some time, the court proceeded in his absence and dismissed the appeal without hearing evidence. The appellant said that he was simply running late that day, and later applied for the matter to be re-opened. The court considered there was no power to re-open the case and did not do so.

Previous Authorities

Previous authorities on how the Crown Court should manage appeal listings where parties do not attend are:

- Guildford Crown Court ex p. Brewer (1988) 87 Cr. App. R 256: where an appellant fails to attend or to give instructions, but is represented, the appeal should proceed in their absence, but in the presence of counsel. Failure to attend does not amount to an abandonment of the appeal. This was followed in R v Chelmsford Crown Court [2003] EWHC 73 Admin, authority that, if an appellant fails to attend, but is represented, then the court should hear the appeal.
- Confirming Brewer, Podmore v DPP [1997] C.O.D 80 [see Archbold 2024 7-505]: that where an appellant is represented, the court has no jurisdiction to dismiss the appeal without first hearing evidence.
- R v Croydon Crown Court ex p. Clair (1986) 83 Cr. App. R 202: where neither party is represented, the court should dismiss the appeal, and only allow it to be restored with consent from both parties and a strong satisfactory statement on behalf of the appellant, supported by affidavit, or the oath of witnesses present, accounting for their absence.

Criminal Law Developments

The Online Safety Act was passed on. Part 10 creates new offences including false communications, threatening communications, sending/showing flashing images, encouraging or assisting serious self-harm and sending or threatening to share intimate images.

Possession of Nitrous Oxide became illegal on 8th November 2023. It is now a class C drug.

9SJS in the news

Robert Smith prosecuted this child sex offence case.

Phil Barnes and Simon Blakebrough prosecuted this drugs case.

The impact of Lawal

Before Lawal, the court's powers when an appellant failed to attend and failed to instruct representation, were unclear. The only conclusive decision came from Chelmsford, stating that the court may dismiss an appeal where neither party is represented, so where the appellant was absent and unrepresented, but the respondent was present, the court would have to hear the appeal, unless the respondent's representatives absented themselves.

Lawal clarified that a Crown Court has the power to 'strike out' a case from the list where an unrepresented appellant failed to attend, adding that the Court was not required to hear evidence before dismissing an appeal. Crown courts were warned that the court must exercise its discretion to adjourn a hearing for enquiries into why the appellant was absent. The reasonable course of action would have been for the court to adjourn, to the afternoon at least, to allow the appellant time to arrive and to explain. Dismissing an appeal without a short adjournment may be unreasonable.

Team News

Tobias Collins joins the team



■ We are delighted to announce that Tobias Collins has joined our team as a probationary tenant. Toby will be supervised by Vanessa Thomson and is available to take instructions.

Chambers and Partners rankings

■ 9SJS has been ranked by Chambers and Partners for Crime at the Northern Bar for the fifth year in a row. Jaime Hamilton KC has again been ranked as a notable practitioner and Helen Longworth has been recognised as an Up and Coming member of our team.

Advocacy tip:

"When preparing mitigation, I always start with the sentencing guidelines. What 'factors reducing seriousness' might apply, even in part? Are there features of any aggravating factors that might be used to reduce their impact?" – Mark Monaghan

Contact the Team

[Charles Garside KC](#)

[Simon Jackson KC](#)

[Dafydd Enoch KC](#)

[Jaime Hamilton KC](#)

[Peter Cadwallader](#)

[David Bruce](#)

[Mark Monaghan](#)

[Geoff Whelan](#)

[Vanessa Thomson](#)

[Jonathan Savage](#)

[Robert Smith](#)

[Simon Blakebrough](#)

[Phil Barnes](#)

[Andrea Lock](#)

[Hayley Bennett](#)

[Helen Longworth](#)

[Adam White](#)

[Isabelle Haddad](#)

[Beth Caunce](#)

[Emma Clarke](#)

[Katie Walden](#)

[Tobias Collins](#)

[CLERKING TEAM](#)

[Chris Swann](#)

[David Ellis](#)

[Austin Brock-Clements](#)

Bulletin edited by Helen Longworth and Emma Clarke

