



SHERIFF APPEAL COURT

**[2019] SAC (Crim) 10
SAC/2019/000322/AP**

Sheriff Principal D L Murray
Sheriff A G McCulloch
Sheriff N McFadyen

OPINION OF THE COURT

delivered by SHERIFF PRINCIPAL D L MURRAY

in

APPEAL BY BILL OF SUSPENSION

by

STEPHEN ROBERTS

Appellant

against

PROCURATOR FISCAL, KILMARNOCK

Respondent

**Appellant: Allan QC; Paterson Bell Solicitors
Respondent: A Edwards QC; Crown Agent**

10 September 2019

[1] The appellant was charged with two contraventions of section 13 of the Company Directors Disqualification Act 1986. Proceedings commenced by a warrant to cite that was granted on 26 May 2016 with the appellant cited to a pleading diet on 9 June 2016.

The appellant took a preliminary plea to the competence on the basis that proceedings were time-barred. The appellant maintains that section 21(4) of the Company Directors

Disqualification Act 1986 provides that the time for proceedings under section 13 of the Act is regulated by section 431 of the Insolvency Act. Section 431(3) provides that summary proceedings in Scotland under *inter alia* Section 13 of the Company Directors

Disqualification Act 1986

“shall not be commenced more than three years after the date of the commission of the offence. Subject to this (and notwithstanding anything in section 136 of the Criminal Procedure (Scotland) Act 1995), such proceedings may (in Scotland) be commenced at any time within 12 months after the date on which evidence sufficient in the Lord Advocate’s opinion to justify the proceedings came to his knowledge or, where such evidence was reported to him by the Secretary of State, within 12 months after the date on which it came to the knowledge of the latter.”

[2] The dates of the alleged offences are between 8 September 2011 and 18 July 2014.

The summary complaint contained a docketed certificate that evidence, sufficient in the view of the Lord Advocate to justify the proceedings against the appellant, came to his knowledge on 9 June 2015. That docket was provided for the purpose of section 431(4) and constituted a certificate of the Director of Public Prosecutions, (in this case) the Lord Advocate or the Secretary of State as the case may be, as to the date at which such evidence as was referred to in section 431(3) came to his knowledge, as conclusive evidence of that matter.

[3] It was submitted that matters came to the knowledge of the Secretary of State from the Crown witnesses J Black, solicitor for Scottish Enterprise, who wrote a letter dated 4 December 2013 to The Insolvency Service, a sub department to the Department of Trade and Industry, detailing his concerns over the complainer’s activities and citing possible contravention of his disqualification. There was then further correspondence from a David Taylor dated 13 April 2014 which complained about the appellant’s actions.

[4] The appellant submits that the reference to “or where such evidence was reported to him by the Secretary of State within 12 months after the date in which it came to the knowledge of the latter” must have some purpose and that that “information” was provided in the letter of 4 December and the subsequent 13 April letter.

[5] The Crown position is that the certificate of the Lord Advocate is conclusive evidence as to the date in which evidence sufficient in the Lord Advocate’s opinion to justify proceedings came to his knowledge. It may be that information came to the attention of The Insolvency Service which caused enquiries to be made but it was the case, as provided for and stated in the certificate, that the evidence in the opinion of the Lord Advocate sufficient to justify proceedings was only received in terms of a full police report on 6 June 2015. The court is not entitled to go behind the face of the certificate, the authority for that being *Walkingshaw v McLaren* 1985 SCCR 293 and *Henderson v Wardrope* 1932 JC 18.

[6] We are not persuaded by the appellant’s argument. The authorities make clear that the court is not to go behind the certificate from the Lord Advocate and we are satisfied that the certificate verifies the point at which the Lord Advocate found there to be a sufficiency of evidence. Accordingly we shall refuse the Bill.