



**APPEAL COURT, HIGH COURT OF JUSTICIARY**

**2022 HCJAC 36  
HCA/2022/000311/XC**

Lady Dorrian  
Lord Woolman  
Lord Boyd of Duncansby

**STATEMENT OF REASONS**

issued by LADY DORRIAN, the LORD JUSTICE CLERK

in

**BILL OF ADVOCATION**

by

**CONNIE LEE GRAHAM**

Complainer

against

**HIS MAJESTY'S ADVOCATE**

Respondent

**Appellant: McSporran KC; Collins & Co, Solicitors, Edinburgh for Virgil Crawford, Solicitors,  
Stirling**

**Respondent: A Edwards KC, AD; the Crown Agent**

14 September 2022

**Introduction**

[1] This Bill of Advocation relates to decisions of the summary sheriff at Falkirk on 22 July 2022 to (i) refuse to grant bail and (ii) to adjourn the hearing to a later date. The complainer accepts that the refusal to extend bail is of little practical effect for reasons which will become clear, and so the core issue is whether the summary sheriff had the power to

continue the diet. The powers of summary sheriffs in criminal matters are governed by section 45 of the Courts Reform (Scotland) Act 2014, which provides:

**“45 Summary sheriff: criminal competence and jurisdiction**

(1) A summary sheriff may, in relation to criminal investigations and proceedings (whether summary or solemn proceedings), exercise the jurisdiction and powers that attach to the office of sheriff.

(2) Without limiting the generality of subsection (1), the jurisdiction and powers exercisable by a summary sheriff under that subsection include, in particular, those of a sheriff under the Criminal Procedure (Scotland) Act 1995 (‘the 1995 Act’).

(3) Despite subsections (1) and (2), a summary sheriff does not have jurisdiction or power to do any of the following in solemn criminal proceedings—

(a) to preside at any of the following diets, other than for the purpose of adjourning the diet—

(i) a first diet,

(ii) a diet under section 76(1) of the 1995 Act,

(iii) a trial diet,

(b) to pass sentence on an offender, or make any other order or disposal in respect of the conviction of an offender of an offence,

(c) to review, vary, revoke or discharge any sentence or such other order or disposal.

(4) This section does not affect the jurisdiction and competence of a sheriff in relation to any matter mentioned in subsection (1).”

[2] The complainer, having tendered certain pleas which were accepted, and having been granted bail pending sentence, thereafter failed to appear at several diets, with the result that eventually a warrant was issued for her arrest.

[3] On 22 July 2022 she appeared from custody on two separate matters: (i) a new summary complaint and (ii) on an apprehension warrant in respect of the indictment matter.

The summary complaint called first and, having heard submissions, the summary sheriff

refused bail. The summary sheriff ordered that the case be continued until 25 July 2022 to call before a sheriff and refused bail meantime. When the outstanding case called, the summary sheriff indicated that she was unable to deal with it and would require to continue it for a sheriff to preside. Notwithstanding the refusal of bail on the summary complaint, she considered that she required to separately consider the status of the complainer during the period of continuation of the indictment case. The solicitor for the complainer submitted that it was incompetent for her to do so, and declined to make a motion for bail. The Crown opposed bail. The case was continued until 25 July 2022 and the complainer was remanded in custody. This is recorded in the minutes as a refusal of bail.

[4] It was submitted on behalf of the complainer that the orders made by the summary sheriff were prohibited under section 45 and thus incompetent. In our view that submission must be rejected. The statute does not prohibit a summary sheriff from making administrative decisions in respect of solemn proceedings. On the contrary, sections 45(1) and (2) vest the summary sheriff with the same powers as a sheriff, both summary and solemn, subject only to the carve-out contained in section 45(3) which is clearly designed to relate to certain substantive decisions in solemn proceedings. The section does not prevent a summary sheriff from adjourning a sentencing diet. Given the wide powers given to a summary sheriff, and the limited nature of the carve-out, it is perfectly competent for a summary sheriff to make an administrative decision to continue a solemn diet, should that be necessary.

[5] The continuation in this case was merely an administrative procedural decision. It was not a decision of a kind struck at by any part of section 45(3). In particular, the decision to continue the hearing for sentencing does not amount to “any other order or disposal in respect of the conviction of an offender of an offence”. The continuation has no effect on the

status of the complainer's conviction, nor the sentence to be imposed. Neither does it "review, vary, revoke or discharge any sentence or such other order or disposal". It simply maintained the *status quo* pending the availability of a sheriff. The full terms of section 45(3)(b) state that the summary sheriff cannot "pass sentence on an offender, or make any other order or disposal in respect of the conviction of an offender of an offence". The nature of the "other order or disposal" which is prohibited must take its character from the sentence as a whole. Administrative decisions are not struck at.

[6] Whether the summary sheriff's decision to remand the complainer should have been recorded as a refusal of bail is a moot point, given that no application was made and that bail had already been revoked by implication thanks to the granting of the warrant. However, nothing turns on this. The complainer was by then already remanded in respect of other matters.

[7] Further, even when the summary sheriff is specifically prevented from presiding over a particular type of hearing eg trial diet, it is clearly provided that the summary sheriff should have the power to adjourn any such diets. The power to do so must carry with it the power to deal with any matter incidentally arising from such a decision, which would include a decision on bail. The notion that a summary sheriff could adjourn a jury trial but not continue a sentencing diet would be an absurdity. The Bill will be refused.