

Neutral Citation No. [2014] NIQB 14

Ref: GIR9156

Judgment: approved by the Court for handing down
(subject to editorial corrections)*

Delivered: 04/02/2014

IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

QUEENS BENCH DIVISION (JUDICIAL REVIEW)

AC's (a minor) Application [2014] NIQB 14

IN THE MATTER OF AN APPLICATION BY AC, A MINOR, BY HIS FATHER
AND NEXT FRIEND AC FOR JUDICIAL REVIEW

AND

IN THE MATTER OF THE EXERCISE OF THE POWER CONTAINED IN
SECTION 16(1) OF THE PRISON Act (NORTHERN IRELAND) 1953

Before: Morgan LCJ Girvan LJ and Gillen J

GIRVAN LJ (delivering the judgment of the court)

[1] The applicant AC is 14 years of age. He was in custody on remand at Woodlands Juvenile Justice Centre ("the JJC") when, on 11 November 2013, police took him to Bangor police station to be interviewed in relation to separate offences. On the same day an application was made on his behalf for leave to apply for judicial review of the decision by the PSNI to remove him from the JJC, and of the decision by the JJC to release him to police. He was returned to the JJC on the same day. The PSNI had sought production of the applicant by way of a form entitled *Application for production of prisoner* which stated that the application was made in accordance with section 16(1) of the Prison Act (Northern Ireland) 1953 ("the 1953 Act").

[2] In correspondence dated 9 January 2014 and in its skeleton argument to the court, the PSNI accepts that it had no power to seek to remove the applicant from the JJC pursuant to the power provided by section 16 of the 1953 Act. By correspondence dated 7 January 2014 the Youth Justice Agency ("the Agency") claimed that its decision to release the applicant into police custody was not made on the basis of section 16 of the 1953 Act. Instead it was asserted that the senior staff member in the JJC granted the applicant a leave of absence pursuant to paragraph 4

of Schedule 2 to the Criminal Justice (Children)(Northern Ireland) Order 1998. The Agency states that this power was exercised on the basis that it was in the best interests of AC that the matter be dealt with as expeditiously as possible. The reasons given for this were that the alternative course of action may have been a gate arrest once the applicant was released from JJC detention following which he may have had to apply for bail and face trial. It was considered that granting leave to attend police interview allowed for the prospect that all outstanding charges could be considered by a court at the same time. It was also submitted by the Agency that release on leave allowed for arrangements to be put in place in terms of the attendance of an appropriate adult and solicitor.

[3] Whilst the Agency submits that it had the power to release the applicant to police, it is not minded to defend the application for judicial review on the basis that it accepts that it did not follow its own policy in that the applicant and/or his solicitors were not properly informed of the precise power that was being exercised in relation to the applicant.

[4] The amended Order 53 statement seeks:

- (a) an order quashing the decision of the PSNI to remove the applicant from the JJC and take him to Bangor police station and purport to authorise his detention there;
- (b) a declaration that the said detention was unlawful, ultra vires and of no force or effect;
- (c) an order quashing any decision of the JJC to allow the PSNI to remove the applicant from the lawful custody of the JJC and convey him to Bangor police station;
- (d) a declaration that the said decision is unlawful, ultra vires and of no force or effect;
- (e) an order of mandamus requiring the PSNI to return the applicant to the JJC.

In addition the applicant seeks damages and costs.

[5] The Agency submits that a suitable remedy might be a declaration that its decision on 2 October 2013 to grant the applicant leave of absence in the custody of a member of the PSNI was unlawful as the Agency failed to have due regard to its policy that detainees should be advised of the power that is being exercised in this regard.

[6] By letter of 9 January 2014 the applicant stated that it is not accepted that any purported exercise of the power contained in the Criminal Justice (Children) (Northern Ireland) Order 1998 would be appropriate and that the court should proceed to determine whether any lawful power was exercised and whether the applicant was in the lawful custody of the PSNI. The Agency states that this is a procedural error which should not give rise to an entitlement to damages.

[7] The PSNI submit that the appropriate relief, if any, to be granted in the case would be a declaration that the power to order removal of prisoners under section 16 of the 1953 Act does not extend to production of persons detained in a JJC on the ground that a JJC is not a prison within the terms of the Prison Act. It is submitted that the relief sought in the Amended Order 53 Statement at (c) and (d) lies only against the JJC; that the relief sought at (e)-(g) inclusive is now academic and no longer applicable; and that ground (j) (damages) can be dealt with by way of converting the proceedings into a writ.

[8] Article 53 of the Criminal Justice (Children) (Northern Ireland) Order 1998 provides:

“Parental responsibility for children in juvenile justice centres

53. While a child is being detained by the managers of a juvenile justice centre, they shall-

- (a) have parental responsibility for him; and
- (b) if they are satisfied that it is necessary to do so in order to safeguard or promote his welfare, have the power to determine the extent to which a parent of his may meet his parental responsibility for him.”

[9] Schedule 2, paragraph 4 of that Order 1998 provides:

“4. At any time during the period of a person's detention in a juvenile justice centre the managers of the centre may grant leave to him to be absent from it in the charge of such person and for such period as they think fit, but during such period he shall, for the purposes of this Order, be deemed to be detained by the managers of the centre, and the managers may at any time require him to return to the centre.”

[10] In the course of argument reference was made to the provisions of Rule 41 of the Juvenile Justice Centre Rules (Northern Ireland) 2008. It provides:

“A police officer may, on production of an order issued by or on behalf of the Chief Constable, interview any child and an interview under this rule shall take place in accordance with statutory

provisions in force at the time and such other conditions as the director may impose.”

[11] It is common case that the decision of 2 October 2013 cannot stand. The PSNI accept that the application as formulated was inappropriate. It does not appear that the relevant authorities turned their mind to the effect or the importance of Rule 41 of the 2008 Rules. No production order had been made by or sought from the Chief Constable nor does it appear that the director of the JJC considered the question of what conditions should have been imposed under Rule 41. That Rule contains a specific statutory regime for the interviewing of a detainee by the police and the more general power under Schedule 2 Para 4 to grant leave of absence could not override the specific regime set out in Rule 41 with its specific safeguards for the detainee.

[12] The applicant is thus entitled to a declaration that the decision of the JJC to allow the PSNI to remove the applicant from the lawful custody of the JJC and convey him to Bangor police station was unlawful and that his detention by the police was accordingly also unlawful. The applicant is free to bring such civil proceedings to claim damages for wrongful imprisonment by the PSNI as he is advised and we consider that that should be the subject of separate proceedings which may in the circumstances be most suitably heard in a lower court.