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(subject to editorial corrections)

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)

IN THE MATTER OF AN APPLICATION BY KIERAN JOSEPH

McGUINNESS FOR JUDICIAL REVIEW

KERR J

Introduction

[1] The applicant was sentenced to six years imprisonment at Stafford Crown Court in May 2000 on a charge of causing death by dangerous driving. He was transferred to Northern Ireland as a restricted transfer prisoner, that transfer becoming effective on 17 April 2001. As a restricted transfer prisoner he became subject to the rules and regulations of the Northern Ireland Prison Service except in relation to the date of his eventual release from prison.

[2] The applicant will become entitled to release on licence when he has completed two thirds of his sentence on 4 March 2004. He will be entitled to apply for parole on 5 March 2003 when half of his sentence will have been served. By this application he claims that the Northern Ireland Prison Service was wrong to fix his earliest release date (EDR) at 4 March 2004 for the purpose of determining his eligibility under its pre-release home leave scheme (PRHL).

[3] For the reasons given in my judgment in the associated case of *Colin Malcolmson* (which was heard with this case) the applicant's claim to have his EDR fixed at 5 March 2003 must be rejected. The applicant has raised a further argument, however. He claims that the Prison Service should have allowed him to participate in the home leave scheme, notwithstanding that he did not satisfy the PRHL criteria. He claims that it was open to the respondent to do so by recourse to its powers under rule 30 of the Prison and Young Offenders Centres Rules (Northern Ireland) 1995 and that it should

have exercised its discretion in the applicant's favour because of the exceptional circumstances of his case. It is further argued that the only reason for refusing to allow the applicant home leave under rule 30 is the fact that his EDR has been fixed at 4 March 2004 and that, since this factor had been treated by the respondent as disqualifying the applicant from consideration under PRHL it should not have been taken into account in deciding whether he should have a period of home leave under the general powers of rule 27.

Rule 27

[4] Rule 27 of the 1995 Rules provides: -

> "(1) A prisoner to whom this rule applies may be temporarily released for any period or periods and subject to any conditions.
>
> (2) A prisoner may be temporarily released under this rule for any special purpose or to enable him to have medical treatment, to engage in employment, to receive instruction or training or to assist him in his transition from prison to outside life.
>
> …"

As I stated in the *Malcolmson* case, the Prison Service enjoys a wide general discretion to release under this provision. It is entitled, in my opinion, to have regard to the personal circumstances of the prisoner and the reports that have been prepared in relation to his conduct in the prison; to have regard to the level of support that he may expect to receive from his family and friends in the community if released and to take into account the benefit that might accrue to him by a period of home leave before becoming eligible under PRHL.

The applicant's circumstances

[5] The applicant has received excellent reports from the residential prison officer and the senior officer. He has attended a course held at the Limavady College of Further Education and the head of the school of applied and social sciences at that institution has given a glowing report on his performance on the course. He has been offered employment as soon as he is released.

[6] In his application for temporary release under rule 27 he stated: -

> "The pre-release home leave applied for is solely for the purpose of re-integration into society. … If

> granted my English conditional release on 5 March 2003, it will not be possible for the prison to facilitate the 26 days available to me between 4 March 2003 and 5 March 2003."

The Prison Service response

[7] The Prison Service replied to the applicant's application under rule 27 on 6 November 2002. The following are the relevant passages of their reply: -

> "The basis of your application is 'solely for the purpose of re-integration into society' and with less than half of your sentence completed, a judgment must be made on whether release would be appropriate for this reason. The consequence of any sentence of imprisonment is that a person is removed from society for a period. During the period in prison a management plan will prepare the prisoner for release and, as the sentence nears completion, periods of temporary release will complement the resettlement process. Such release is not an entitlement but is a recognised integral part of the plan. You have yet to enter the final stage of sentence which leads to release.
>
> Notwithstanding your eligibility for parole licence in March of next year, your earliest date of release is 4 March 2004. As this is still some time away, it is not considered that it would be appropriate to release you, for the purpose stated, at this point in your sentence. Your application must therefore be refused.
>
> In considering your application, account has been taken of all of the representations you have made, and which have been made on your behalf (including those I am aware of by virtue of the present judicial review proceedings), as well as of the Prison Service's legal obligations, including those under the European Court (*sic*) on Human Rights"

The applicant's case

[8] Mr O'Hara QC for the applicant submitted that in exercising the general powers available under rule 27 the Prison Service ought not to have taken

account of the applicant's ineligibility to apply under PRHL. He suggested that the applicant was likely to be released at the halfway point of his sentence because of his excellent behaviour and the consequence of fastening on 4 March 2004 as the applicant's EDR was that he would not benefit at all from the rehabilitative effect of home leave.

[9] A further argument advanced on the applicant's behalf was that the respondent had effectively fettered its discretion by concluding that he was not suitable for release because his release date was "still some time away". Mr O'Hara argued that this precluded the open-minded consideration of the applicant's particular circumstances that should have taken place.

[10] Finally it was submitted that the respondent had failed to take account of the applicant's excellent prospects of release on parole because of his exemplary behaviour while in prison, his supportive family background and his prospects for employment on release.

Conclusions

[11] I am satisfied that the respondent was entitled to take into account that the applicant could not be guaranteed release until 4 March 2004. The value of home leave lies in its capacity to re-introduce the prisoner to life outside prison at a time when his release is in prospect. The date on which he is due to be released is therefore an obvious factor to be considered in assessing whether home leave should be granted.

[12] Although the applicant *may* be released in March 2003 there is no guarantee that this will occur and it is beyond question, in my opinion, that the respondent is entitled to have regard to the possibility that it may not. The respondent has not in any event ruled out a reconsideration of the applicant's being granted home leave before March 2003.

[13] The fact that the Prison Service took into account the date of the applicant's EDR does not mean that it was influenced by his ineligibility for PRHL to refuse his application under rule 27. The same circumstance (*viz* the date of earliest release) was relevant to both decisions *i.e.* the eligibility of the applicant for the PRHL scheme and whether he should be released under the general provisions of rule 27. It does not follow that because the date of release militated against the exercise of the general discretion that the respondent had allowed the ineligibility of the applicant to influence its decision on the application under rule 27.

[14] It follows that the respondent's consideration of the date of the applicant's release did not inhibit a full and open-minded assessment of whether he should benefit from the general discretion available to the respondent under rule 27. Indeed, for the reasons that I have given I consider

that the respondent was bound to take into account the fact that the applicant may not be released until March 2004.

[15] There is no reason to suppose that the respondent failed to take into account the applicant's excellent record in prison. On the contrary the letter informing the applicant that it had been decided that his application had been refused specifically stated that al representations made by him and on his behalf had been considered before the decision was reached.

[16] None of the challenges made to the respondent's decision has been made out. The application for judicial review must therefore be dismissed.