

**IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND
QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)**

**IN THE MATTER OF AN APPLICATION BY IAIN REA
FOR JUDICIAL REVIEW**

WEATHERUP J

[1] This is an application for judicial review of a decision of the Governor at HMP Magheraberry calculating the applicant's early release date as 17 February 2011. In making the calculation the Governor refused to give credit to the applicant for a period spent on remand in custody between 19 June 2003 and 1 March 2004. Dr McGleenan appeared for the applicant and Mr Scofield for the respondent.

[2] On 26 February 2007 Gillen J sentenced the applicant to 8 years imprisonment upon his plea of guilty to three charges, namely possession of firearms and ammunition with intent to endanger life on 12 June 2003, contrary to Article 17 of the Firearms (Northern Ireland) Order 1981, possession of explosives with intent to endanger life on 12 June 2003, contrary to Section 3(1)(b) of the Explosive Substances Act 1883 and possession of an imitation firearm with intent to cause fear on 12 June 2003, contrary to Article 17A of the Firearms (Northern Ireland) Order 1981.

[3] On 12 June 2003 police searched garage premises at Drumart Drive, Belvoir Estate, Belfast and recovered a quantity of firearms, ammunition and explosives. On 18 June 2003 police searched the applicant's home and recovered a sheet of notepaper containing a list of firearms and ammunition. On 19 June 2003 the applicant was charged with a drugs offence and also with possession of notepaper detailing types and quantities of ammunition and types of firearms on 17 June 2003, contrary to Section 57 of the Terrorism Act 2000. Further to the charges the applicant was remanded in custody on 19 June 2003 and was finally granted bail on 1 March 2004. It is this period in custody for which the applicant claims credit against the sentence imposed in

2007. The charges preferred against the applicant on 19 June 2003 were subsequently withdrawn.

[4] In 2006 the applicant was arrested and charged with six offences arising out of the search of the garage on 12 June 2003. On 26 February 2007 the applicant pleaded guilty to three of those charges, as set out at paragraph [2] above. The Governor gave credit to the applicant for 8 days on remand in custody on the 2006 charges. The applicant claims that he should receive additional credit for the period on remand on the 2003 possession charge from 19 June 2003 to 1 March 2004.

[5] Section 26(2) of the Treatment of Offenders (Northern Ireland) Act 1968, as amended by Article 49 of the Police and Criminal Evidence (Northern Ireland) Order 1989, provides for credit for periods of remand in custody. For present purposes the operative words are those in italics below.

“(2) The length of any sentence of imprisonment or term of detention in a young offenders centre imposed on or ordered in relation to an offender by a court shall be treated as reduced by any relevant period.

(2A) In sub section (2) *“relevant period” means –*

(a) any period during which the offender was in police detention in connection with the offence for which the sentence was passed; or

(b) *any period during which he was in custody –*

(i) by reason only of having been committed to custody by an order of a court made in connection with any proceedings relating to that sentence or the offence for which it was passed or any proceedings from which those proceedings arose; or

(ii) by reason of his having been so committed and having been concurrently detained otherwise than by order of a court.”

[6] Governor Jeanes confirms that the calculation of the applicant’s sentence did not include the period spent on remand on the 2003 charges from 19 June 2003 to 1 March 2004. Governor Jeanes refers to the differences between the 2003 possession charge and the 2006 charges, namely the dates of the 2003 charge (17 June 2003) and the 2006 charges (12 June 2003), the different charges preferred in 2003 (possession of notepaper containing a list of firearms and ammunition) and 2006 (possession of firearms and

ammunition and explosives and an imitation firearm) and the different legislation charged in 2003 (Terrorism Act 2000) as opposed to 2006 (Firearms (NI) Order 1981 and the Explosive Substances Act 1883).

[7] The sentence calculation report credits the applicant with 2 remand days on 25 and 26 January 2006 and 6 remand days from 20 to 25 February 2007. The length of sentence is stated to be 2,922 days and with credit for 8 remand days the maximum time to serve is 2,914 days, giving the late date of release as 17 February 2015. With 50% remission on the length of sentence there are 1,461 remission days and a minimum time to serve of 1,453 days, giving the early release date of 17 February 2011.

[8] The applicant's grounds for judicial review are as follows:-

(1) The decision to calculate the applicant's release date as 17 February 2011 is unlawful in that there was a failure to take into account the 10 ½ months the applicant spent in custody on remand, which will result in an effective sentence of 10 years rather than the 8 year sentence imposed by the court. This extension of the custodial period is in breach of Article 5 of the European Convention on Human Rights because it has been imposed by way of administrative action rather than on foot of a lawful sentence imposed by the court. The government has consequently acted in breach of Section 6 of the Human Rights Act 1998.

(2) The decision to calculate the applicant's release as 17 February 2011 is procedurally improper in that -

(a) The Governor failed to take into account the relevant factor that the applicant was remanded in custody from 19 June 2003 to 1 March 2004 on two charges relating to the possession of notepaper detailing types and quantities of firearms and ammunition and a drugs related offence.

(b) The Governor failed to take into account the fact that the offences on the bill of indictment and offences arising on the original charge sheet arose out of precisely the same circumstances, namely, the discovery of firearms, ammunition and documents relating to the applicant at premises at Drumart Drive, Belvoir Estate, Belfast in June 2003.

(c) The Governor erred in concluding that the applicant spent only 8 days on remand in relation to these charges. He did spend a period of 8 days on remand in relation to the charges on the bill of indictment. He had previously spent 10 ½

months on remand in relation to similar charges arising out of the same factual circumstances.

- (3) The Governor's decision is irrational in that an examination of the common factual circumstances relating to the original charges preferred on 19 June 2003 and the bill of indictment dated 24 January 2006 clearly indicate that the period spent on remand in relation to the June 2003 charges should have been taken into account in calculating the length of the applicant's custodial sentence.

[9] To obtain clarification of the background and connection between the 2003 charges and the 2006 charges the applicant's solicitors wrote to the Public Prosecution Service and received a response dated 28 December 2007. The applicant and the respondent are agreed that, of the 2003 charges, the drugs charge is irrelevant and only the possession charge is relevant. The possession charge related to the recovery of the notepaper in the applicant's home on 18 June 2003. The contents of that notepaper referred to firearms and ammunition recovered in the search of the garage on 12 June 2003. The PPS directed no prosecution on the 2003 charges. The 2006 charges, for which the applicant was eventually sentenced, related to the recovery of firearms, ammunition and explosives in the garage on 12 June 2003. In respect of the 2006 charges the notepaper recovered in the applicant's home was exhibit 29. Gillen J, in his sentencing remarks at paragraph 5, stated that the handwritten list of guns and ammunition found in the search of the applicant's home on 18 June 2005 corresponded to some of the weapons and ammunition found in the garage.

[10] The applicant contends that the length of the sentence of imprisonment of 8 years should be treated as reduced by a "relevant period" under Section 26(2A)(b)(i), being the period during which he was in custody by reason only of having been committed to custody by an order of a court (being the court remanding the applicant in custody for the 2003 charge), which order was "... made in connection with . . . the offence for which (the sentence) was passed . . ." The issue becomes whether the court orders remanding the applicant in custody on the 2003 possession charge were made "in connection with" the offences for which the applicant was sentenced in 2007.

[11] As to the effect of the word "only" in Section 26(2A)(b)(i) it was stated by Lord Bingham LCJ in R (Evans) v. Governor of Brockhill Prison (1997) 1 WLR 236 in relation to the equivalent English legislation that –

"It seems clear, as was held by the court in R (Naughton) v. Secretary of State for the Home Department (1997) 1WLR 118 that the expression

“only” in paragraph (b)(i) is intended to preclude any account being taken of periods in custody unrelated to the offence or offences for which the relevant sentence or sentences were passed.”

[12] In R (A) v. Secretary of State for the Home Department (2000) 2 WLR 293 a youth was refused bail on a charge of handling stolen goods and was committed to non secure local authority accommodation. On being sentenced to 4 months detention in a young offender’s centre the Governor refused to give credit for the time spent on remand in the local authority accommodation. The House of Lords held that for a period on remand to count as a relevant period under the legislation the youth would have to be committed to secure accommodation and therefore the Governor was correct to refuse credit for time spent on remand in the local authority accommodation. I refer to two themes that emerge from the case. First, credit is given for remand periods attributable to the offence for which the sentence is imposed. Second, the Governor who calculates the release date should not have to make value judgments. Lord Hope at page 294 H stated the effect of the legislation as follows –

“The broad principle to which it seeks to give effect is that periods spent in custody before trial or sentence which are attributable only to the offence for which the offender is being sentenced are to be taken into account in calculating the length of the period which the offender must spend in custody after he has been sentenced.”

On the administration of the system Lord Hope stated at page 298E that the legislation –

“.... made it necessary for the institution which was responsible for detaining the person during his sentence to be provided with the information which it needed to make the computation. But in my opinion the nature of the discount, and the fact that its application has been left to the Governor of the institution and not to a judge, suggest that value judgments as to whether the person’s liberty was or was not restricted are inappropriate.

Fairness is between one offender and another suggests that it is inappropriate for the Governor who has to do the computation to have to form judgments

on information provided by others on matters as to which there is no precise criterion.”

[13] Section 26 of the 1968 Act requires that the orders of the court by which the applicant was committed to custody (for the period on remand between 19 June 2003 and 1 March 2004) were made “in connection with” the offences for which the applicant was sentenced in 2007. The offences for which he was sentenced in 2007 were possession of firearms and ammunition with intent on 12 June 2003, possession of explosives with intent on 12 June 2003 and possession of an imitation firearm with intent on 12 June 2003. The necessary connection must be between the orders of the court remanding the applicant in custody and the offences for which he was later sentenced.

[14] Were the court orders remanding the applicant in custody in 2003 and 2004 made “in connection with” the offences for which he was sentenced in 2007? There was certainly a link between the 2003 charge for which he was on remand and the 2006 charges for which he was sentenced. The 2003 charge of possession of the notepaper containing lists of firearms and ammunition on 17 June 2003 was related to the 2006 charge of possession of firearms and ammunition with intent on 12 June 2003, in that the notepaper listed some of the firearms and ammunition that were the basis of the 2006 charges. But were the orders of the court remanding the applicant in custody made “in connection with” the offences for which he was sentenced? The applicant is correct to contend that the issue cannot be determined solely by consideration of the dates of the charges or the nature of the particular charges or of the particular legislative provisions, although each may be relevant to the issue of whether the court order for remand was made in connection with the offence for which he was sentenced. The respondent contends that there must be a direct link between the court order remanding the applicant and the offence for which the applicant is sentenced and that there is no direct link in the present case.

[15] I interpret the requirement that the court order remanding the prisoner be made “in connection with” the offence for which he is sentenced as meaning that the matter in respect of which the applicant was on remand must relate to circumstances that are in substance those for which he is sentenced. So there may be different charges and dates and legislation but the substance of the matter may be the same. In the present case the remands in custody related to the circumstances of the possession of the notepaper and were not in substance the same as the circumstances for which the sentences were imposed for possession of the firearms, ammunition and explosives.

[16] In the alternative the applicant relies on the final words of Section 26 (2A)(b)(i) that the court order remanding the applicant was made “... in connection with any proceedings from which those proceedings arose” (being proceedings relating to the sentence). I reject the applicant’s contention

that the wording relied on has any application to the circumstances of the present case.

[17] The applicant compares Section 26 of the 1968 Act with the equivalent provisions in England and Wales, which were formerly the same as the Northern Ireland provisions but were amended in 2003 and are now in Section 240 of the Criminal Justice Act 2003. Section 240 provides as follows –

- “(1) This section applies where –
 - (a) a court sentences an offender to imprisonment for a term in respect of an offence committed after the commencement of this section, and
 - (b) the offender has been remanded in custody (within the meaning given by section 242) in connection with the offence or a related offence, that is to say, any other offence the charge for which was founded on the same facts or evidence.
- (3) Subject to sub section (4), the court must direct that the number of days for which the offender was remanded in custody in connection with the offence or related offence is to count his time served by him as part of his sentence.”

[18] Two matters are noteworthy. First of all, credit is given not only for remands in custody “in connection with” the offence for which he is sentenced, but also for “a related offence” where the charge was founded on the same facts or evidence. Secondly, the calculation of the period of credit is a matter for the Judge on sentencing and not for the Governor. The respondent relies on this provision to support the contention that there must be a direct link between the remand order and the offence for which sentence is imposed and the amendment of the English legislation introduces a wider provision that includes related offences. I accept the respondent’s approach to the English legislation. In addition the administration of the English system introduces a greater degree of value judgment in determining whether there is a “related offence” and transfers decision making to the sentencing Judge, thus addressing the concerns expressed by Lord Hope in R (A) v. Secretary of State for the Home Department above.

[19] Even on the English legislation allowing credit for a related offence Mr Scofield for the respondent did not concede that the applicant would have qualified, raising an issue as to whether the remand and the sentence were based on charges founded on the same facts or evidence. However the advantage of the English system would be that such issues would be resolved by the sentencing Judge.

[20] The result of the present application is that Section 26(2) of the Treatment of Offenders (Northern Ireland) Act 1968, as amended by Article 49 of the Police and Criminal Evidence (Northern Ireland) Order 1989, does not entitle the applicant to credit for the period on remand between 19 June 2003 and 1 June 2004, in calculating his release date for the sentence of 8 years imprisonment imposed on 26 January 2007. Consideration might be given to the amendment of the legislation, as has occurred in England and Wales under Section 240 of the Criminal Justice Act 2003, so as to extend the matters in respect of which credit may be granted and to transfer the calculation of time to be served from the prison Governor to the sentencing Judge.