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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 JONATHAN NEILL FOR

JUDICIAL REVIEW

KERR J

Introduction

[1] This is an application by Jonathan Neill, a sentenced prisoner, for judicial review of decisions of the Northern Ireland Prison Service to terminate a system of home leave known as the 10 day allowance scheme and to refuse to allow the applicant to avail of that scheme.

Background

[2] The applicant was convicted of murder on 3 August 1992 at the Central Criminal Court in London. As he was then seventeen years old he was sentenced to be detained during Her Majesty's pleasure.

[3] On 1 June 2001 Mr Neill was transferred to prison in Northern Ireland under the Crime (Sentences) Act 1997. It was a condition of his transfer that he would remain subject to the statutory arrangements that apply in England and Wales in relation to eligibility for release on life licence and post release supervision and recall. Otherwise he was required to comply with the rules and regulations of any establishment in which he was detained in Northern Ireland.

[4] On 6 June 2002 Mr Neill applied for temporary release under the 10 day allowance scheme. This is one of the schemes that have been developed by the Prison Service under the auspices of rule 27 of the Prison and Young Offenders' Centre Rules (Northern Ireland) 1995. Each scheme has eligibility

rules that determine whether an individual prisoner may apply under them but all applications for home leave, if ineligible for a particular scheme, are considered under the general provisions of rule 27.

[5] The 10 day allowance scheme had as an essential qualifying criterion that a prisoner be a life sentence prisoner who had completed either ten years as a life sentence prisoner or eight years as a detainee at the pleasure of Her Majesty. It was also a condition of eligibility, however, that a prisoner should have had his case considered by the Life Sentence Review Board. The object of the scheme was to allow prisoners a structured period of home leave to help their reintegration into the community. Since the applicant was a transferred prisoner and his release arrangements were governed by the sending jurisdiction, strictly speaking, he was not eligible for the 10 day allowance scheme because he could not be referred to the Life Sentence Review Board since it dealt exclusively with prisoners whose release was governed by the laws and regulations appertaining to Northern Ireland.

[6] Mr Neill's application was refused by letter dated 22 July 2002. This explained that since the coming into force of the Life Sentences (Northern Ireland) Order 2001, the Life Sentences Board had ceased to exist and new arrangements had been made in respect of the release of life sentence prisoners. It was therefore no longer appropriate to continue the 10 day allowance scheme. The letter informed the applicant, however, that the scheme would remain in place for those prisoners who had been eligible to apply and who had already been granted temporary release under it. This arrangement would continue only until the tariffs of those prisoners had been set. After that they would be considered under the general provisions of rule 27.

[7] Since the applicant was not eligible for the scheme in that he could not be referred to the life Sentence Review Board and since in any event his application had not been processed until after the decision had been taken to close the scheme, he was advised that he could also apply under the general provisions of rule 27. He did so and was refused temporary release.

The arguments

[8] For the applicant Mr Doran argued that the applicant was in fact eligible under the scheme since he was subject to the rules and regulations in Northern Ireland in relation to temporary release. He also claimed that the applicant had a legitimate expectation that he would be considered under the scheme because of what he described as the "undertaking" contained in a letter to the applicant's solicitors of 8 May 2002 and because of the existence of the scheme and its general availability to prisoners before its closure.

[9] Mr Doran made the further submission that as the scheme was in existence at the time that Mr Neill applied to be considered, it was unfair to close it before his application had been processed. Other prisoners who had already benefited from the scheme had been allowed to continue on it. The applicant should have been treated similarly and his application should have been dealt with before the scheme was closed.

[10] For the respondent Mr Maguire submitted that the decision to close the scheme was a matter for the discretion of the Prison Service. Its closure became inevitable with the coming into force of the 2001 Order. A cut off for applicants had to be fixed and there was nothing unfair about the date chosen or the retention of those who had been the beneficiaries of the scheme before the legislation came into effect.

[11] The applicant could not claim an expectation of being included in the scheme, Mr Maguire contended, because the most that he could expect was that his case would be assessed under the terms of whatever scheme that existed and for which he was eligible whenever his application was considered.

Was the applicant eligible?

[12] The letter of 8 May 2002, on which the applicant so crucially relied, stated: -

> "To be eligible for [the 10 day allowance] scheme prisoners must have served 10 years in continuous custody and have had their case considered by the Life Sentence Review Board. In the case of Secretary of State's pleasure (SOSP) prisoners, the period to be served in continuous custody is 8 years. Mr Neill therefore satisfies the "time served in continuous custody" criterion but does not satisfy the LSRB criterion."

It is quite clear, therefore, that the applicant was not eligible for the scheme.

Legitimate expectation

[13] Even if the applicant had been eligible for the scheme, I am satisfied that the only legitimate expectation that he could have claimed was that he should have his application examined according to the policy existing at the time that the application came to be processed. He could not assert that a pre-existing policy that had been overtaken by legislative events should be kept alive simply to cater for his particular situation. In *R v Secretary of State for the Home Department ex parte Hargreaves and others* [1997] 1 WLR 906 it was held that a

prisoner who was told when he first entered prison that he would qualify for temporary release when he had served one third of his sentence could not assert a legitimate expectation that this would not change. The speech of Lord Scarman in *Re Findlay* [1985] AC 318, 337/8 puts the matter clearly: -

> "Given the substance and purpose of the legislative provisions governing parole, the most that a convicted prisoner can legitimately expect is that his case will be examined individually in the light of whatever policy the Secretary of State sees fit to adopt provided always that the adopted policy is a lawful exercise of the discretion conferred on him by the statute."

[14] The accident of timing that meant that the applicant's application was due to be processed just at the time that the change in the law rendered the 10 day allowance scheme redundant is no more than that – an accident of timing. In any event, the letter of 8 May 2002 does not give the applicant an undertaking that he would be included in the scheme. In fact it made clear that he could not benefit under the scheme and that his case would always have to be considered under he general provisions of rule 27. There is simply no basis for a legitimate expectation claim.

Substantive unfairness

[15] This argument was predicated on the claim that all prisoners whose applications had been made before the scheme had to be scrapped because of the coming into force of the 2001 Order should have had it preserved in some ersatz form to allow their eligibility to be determined. Although he was at first disposed to argue that this claim could be sustained by comparing the position of such applicants with those who had already benefited under the scheme, Mr Doran wisely retreated from that suggestion. Clearly those prisoners who had already been released under the scheme stood in a markedly different position from those such as the applicant.

[16] It was accepted that the scheme had to come to an end. The only criticism made of the Prison Service was the manner of its ending. But that decision falls so squarely within the realm of administrative, operational decisions that a challenge to its reasonableness would, as a matter of principle and practicality, be virtually impossible to maintain. As it is, I am entirely satisfied that the cut off point chosen by the Prison Service was entirely logical and reasonable, especially because of the availability of the general powers under rule 27.

Conclusions

[17] None of the grounds advanced by the applicant has been made out and the application must be dismissed.