

Neutral Citation No: [2021] NIQB 88

Ref: OHA11639

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

ICOS No: 21/74596

Delivered: 27/09/2021

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

**QUEEN'S BENCH DIVISION
(JUDICIAL REVIEW)**

**IN THE MATTER OF AN APPLICATION BY CZESLAW LESZKIEWICZ
FOR LEAVE TO APPLY FOR JUDICIAL REVIEW**

**Mr Eric Peters (instructed by Terence McCourt Solicitors) for the Applicant
Mr Aidan Sands (instructed by the Crown Solicitor's Office) for the Proposed
Respondent**

O'HARA J

Introduction

[1] On 27 September 2021 I refused leave to apply for judicial review to this applicant who has since asked for written reasons for that decision.

[2] The applicant is a Polish national. On 5 May 2021 he was sentenced to 7 months' imprisonment with 7 months on licence to follow for a serious sexual offence. With time served he was eligible for release on 7 September 2021 but he was not released. The Prison Service advised that he was being held at the request of the Home Office who were pursuing his deportation.

[3] Papers were not however served on him in prison until approximately 5pm on Friday 24 September. There is therefore an obvious issue about the lawfulness of his detention between 7 and 24 September.

[4] When the leave application was heard on 27 September Mr Peters, for the applicant, argued that in fact the papers had still not been properly served with the effect that there was still no service. His contention was that:

(i) The applicant has limited education.

- (ii) The applicant has only “primitive” English.
- (iii) The person serving the papers had not certified that the papers were explained to and understood by the applicant.

[5] There is no affidavit from the applicant in this case. Instead there is only one from his solicitor. In the circumstances that is understandable but there is nothing in the solicitor’s affidavit to suggest that the solicitor had difficulty in taking instructions either because of a language barrier or because of a lack of education on the part of his client. Moreover, the applicant knew or must be taken to have known the nature of the papers which were to be served from his discussions with and his instructions to his solicitor.

[6] It would clearly have been better if the individual who served the papers in the prison had completed that process in full but in the circumstances of this case I concluded that they had been adequately served on an individual who, in the absence of any evidence to the contrary, had sufficient knowledge and understanding to know what their import was.

[7] I indicated to Mr Sands for the proposed respondent that in my judgment his client should understand that since the papers had only been served on 24 September the time to respond should run from that date and not from any earlier date when the papers were supposed to have been but were not in fact served.

[8] The applicant may have an action in respect of his detention from 7 to 24 September. Other than that I consider that there was no arguable case for judicial review and leave was refused.