Neutral Citation No [2013] NIQB 120 | *Ref:* **TRE9068**

*Judgment: approved by the Court for handing down (subject to editorial corrections)** | *Delivered:* **28/11/13**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)

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Sloan's (William) Application (Leave Stage) [2013] NIQB 120

IN THE MATTER OF AN APPLICATION BY WILLIAM SLOAN FOR JUDICIAL REVIEW

AND

IN THE MATTER OF A DECISION BY THE PAROLE COMMISSIONERS FOR NORTHERN IRELAND

TREACY J

Introduction

[1] The applicant is a life sentence prisoner who seeks leave to apply for judicial review of a decision of the Parole Commissioners for Northern Ireland ("the PCNI") dated 3 September 2012 by which a panel declined to direct his release on licence.

Background

[2] The mandatory sentence of life imprisonment was imposed on the applicant on 6 July 1990 in respect of an offence of murder. The victim of that offence died on 19 June 1989 as a result of injuries sustained on 28 May 1989.

[3] The applicant benefited from early release on licence on 20 January 1999 in accordance with the terms of the Northern Ireland (Sentences) Act 1998 ("the 1998 Act"). He was however charged with further offences in May 2006 and was returned to custody.

[4] By a decision dated 4 March 2008 Kerr LCJ fixed the minimum term to be served by the applicant for the purposes of retribution and deterrence at 19 years: [2008] NILST 10.

[5] Having been recalled from early release before his tariff had expired and before it had been fixed the applicant submitted that he is not a prisoner recalled under the Life Sentences (Northern Ireland) Order 2001 ("the 2001 Order"), but under the 1998 Act. With his tariff now having expired, the applicant's case falls to be considered by the PCNI under article 6 of the 2001 Order (rather than under the 'recalled prisoners' provisions of article 9, which relate to prisoners recalled under that article).

Grounds of challenge

[6] The applicant's challenge is made on four grounds:

(1) Failure to give reasonable explanation why opinions of professional witnesses given insufficient weight / Irrationality.

(2) Error of law as to the statutory function of the PCNI.

(3) Disproportionate interference with ECHR rights.

(4) As above with additional complaint that the PCNI gave significant weight to the views of the applicant.

Failure to give reasonable explanation why opinions of professional witnesses given insufficient weight / Irrationality (on the evidence)

[7] Rule 24(2) of the Parole Commissioners Rules (NI) 2009 requires *inter alia* that the decision of the PCNI panel shall be recorded in writing with reasons. This ground of challenge is based on the applicant's contention that it should not have been considered necessary for the protection of the public from serious harm that he continue to be confined, and that there was a "complete absence of evidence on which the Commissioners could have placed such reliance".

[8] There is no substance to this point. Evidence was given by professional witnesses at the hearing which included the Life Governor, the Probation Officer and the Consultant Forensic Psychologist. I reject the suggestion by the applicant that this evidence was of a uniformly positive nature. As the proposed respondent pointed out in its skeleton argument:

(a) The Life Governor referred to the difficulties that the applicant had in applying in the community what he has learned in prison. He noted that the applicant was on the pre-release scheme for a fourth time (having most recently been removed from the scheme after being unlawfully at large for a period of two weeks in July 2011). He noted also the failure of a drugs test in November 2011. While the Life Governor said that he does not think the applicant is a risk to anyone or at risk of committing a violent offence, he also said that there is a risk that the applicant would drink alcohol, and that that

would increase the risk of him being unlawfully at large or committing other crimes.

(b) The Probation Officer indicated that the applicant was not assessed as posing a risk of serious harm, but emphasised that the assessment tools used do not take account of the index offence (because the assessment tools are not suitable for use in respect of politically motivated offences). She noted that alcohol was a risk factor and considered that the applicant needed to be alcohol free.

(c) The Consultant Forensic Psychologist also identified alcohol as a risk factor, and said that the applicant needs to demonstrate that he can manage in the community.

[9] The weight to be given to a material consideration is classically a matter for the decision maker: Tesco Stores Limited v Secretary of State for the Environment and others [1995] 2 All ER 636. Further, the PCNI is the primary decision-maker. In R (Smith and West) v Parole Board [2005] UKHL 1, Lord Bingham said of the Parole Board that:

> "It is the primary decision-maker, not entitled to defer to the opinion of the Secretary of State or a probation officer: R v Parole Board, Ex p Watson [1996] 1 WLR 906, 916" [26].

[10] I accept the respondent's submission that the PCNI properly formed their own view of risk in the applicant's case, applying the statutory test for reasons set out in detail in paragraphs 27 – 38 of their decision and that no arguable challenge to the approach of the PCNI is disclosed by a reading of the panel's decision. These reasons engage properly with the evidence of the professional witnesses, giving that evidence appropriate weight without deferring to the view of those witnesses.

Alleged error of law as to the statutory function of the PCNI

[11] It is clear the PCNI identified the statutory test to be applied [see paras 3, 27 and 38 of the panel's decision]. The test [per article 6(4)(b) of the 2001 Order] requires that the PCNI shall not direct release unless satisfied that it is no longer necessary for the protection of the public from serious harm that the prisoner should be confined.That test was correctly identified and faithfully applied.

[12] I reject the applicant's contention that the PCNI erroneously exceeded its statutory remit in noting that 'the issue in dispute in this case is the speed at which the pre-release programme can be implemented'. The respondent agreed with this observation because on the evidence before the PCNI, the applicant's progress through the pre-release scheme was the primary issue in dispute. This was because there was a notable degree of agreement between the parties about other matters:

> " [26] Counsel on behalf of Mr Sloan submitted that the parties agree Mr Sloan is not ready to be released at this time but that they differ as to the duration of continued confinement required".

[13] On this issue the PCNI decision was favourable to the applicant at para 43 where it indicates that the panel supported an accelerated pre-release programme being implemented in the applicant's case.

Alleged disproportionate interference with ECHR rights

[14] Contrary to the applicant's contention that the 'only reason' he is currently in custody is the decision of the PCNI I accept that he is detained on foot of his conviction by a competent court of an offence of murder and his detention is justified under article 5(1)(a) ECHR, and he has had an article 5(4) ECHR compliant review before the PCNI.

Alleged disproportionality with additional complaint that the PCNI gave significant weight to the views of the applicant

[15] The PCNI is not entitled to defer in the discharge of its statutory function to the opinions of the Secretary of State or a probation officer. Nor should it defer to the prisoner. The prisoner's attitude to release is however a matter of fundamental importance to the PCNI's assessment, and requires to be given weight as the tribunal – subject to the limits of rationality – considers appropriate. Where a prisoner does not seek immediate release but acknowledges the need to demonstrate a period of stability, it would clearly be improper for the PCNI to do other than to consider that position relevant.

Conclusion

[16] I conclude that the grounds on which leave to apply for judicial review is sought are not arguable, and amount in essence to an inappropriate appeal on the merits of the decision. In these circumstances leave is refused on all grounds.