

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION

Smith's (David) Application [2014] NIQB 50

APPLICATION BY DAVID SMITH FOR LEAVE TO APPLY FOR
JUDICIAL REVIEW

TREACY J

Introduction

[1] The applicant in this case is David Smith, a sentenced prisoner, currently detained in Her Majesty's Prison, Magilligan. By this application he challenges the decision of the Northern Ireland Prison Service refusing him compassionate temporary release to visit his terminally ill grandmother. The sole ground upon which relief is sought is that the decision is a breach of Article 8 of the European Convention.

[2] Following further representations from the applicant's solicitors by letter dated 10 April 2014 the Prison Service by response dated 11 April again refused CTR. The letter of refusal recognises that Article 8 is engaged and that in normal circumstances he would expect to visit his grandmother. However, given the Article 2 concerns for prison officers a prison escort is not feasible. Had escorted visiting been considered feasible such a visit would I understand have been facilitated. Accompanied release by family members has been rejected since none of them have custodial training and have, as the Prison Authority has put it, no authority to prevent him absconding.

[3] The risk that the applicant would re-offend during a period of temporary release and the possibility of absconding lie at the heart of the decision to refuse CTR associated with the inability of the Prison Service to identify any controlled way to let him visit his grandmother accompanied, escorted or in any other fashion for example on the basis of sureties. The applicant was however previously granted

compassionate bail by Her Honour Judge Philpott post-conviction on 28 November 2012 and 1 December 2012 to visit another member of his family who was seriously ill in the Royal Victoria Hospital. The court has been shown the bail application and the terms on which the bail was granted. The conditions of bail were duly complied with. On these two occasions his mother went surety, collected him and remained with him and returned him to the prison apparently without incident and in full compliance with the terms of his bail.

[4] The applicant's licence expiry date is 9 August 2014 and he becomes eligible to apply for pre-release home leave on 9 June 2014. Against that background I consider that, whilst the applicant has a mixed history, the current situation seems like now or never so far as his grandmother is concerned and he is so near the end of his sentence that not being able to see her before she dies is in my view disproportionate. This is especially so in circumstances of his manifest past compliance with compassionate bail subject to appropriate conditions.

[5] As in the case of the compassionate bails similar, indeed stronger safeguards, can be put in place, to sufficiently mitigate the feared risk as expressed by the Northern Ireland Prison Service. Accordingly I hold that the decision to refuse this applicant compassionate temporary release was disproportionate and therefore a breach of Article 8.