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15 December 2023

DIVISIONAL COURT DELIVERS JUDGMENT IN RELATION TO ALLEGED BREACHES OF CORONAVIRUS RESTRICTIONS LEGISLATION (ARRESTS FOR BREACHES OF CORONAVIRUS RESTRICTIONS, IMPOSITION OF BAIL CONDITIONS)

Summary of Judgment

Introduction

Lord Justice Treacy¹, delivered the judgment of the court today in a judicial review relating to decisions of the PSNI and a District Judge arising from the treatment two applicants received following alleged breaches of the Health Protection (Coronavirus Restrictions) (No.2) Regulations (NI) 2020 (“the 2020 regulations”).

The first applicant’s challenge was confined to the lawfulness of the decision by a District Judge to impose conditions on the grant of bail.

The second applicant challenged her pre-charge detention by the police, the refusal of the police to grant her post charge bail and the decision of the District Judge imposing bail conditions. The facts and issues are different in each case and are summarised separately below.

Factual background

21 January 2021 police received a complaint about a house party in breach of the regulations. They called at the address and, when no one answered the door, they forced entry. Three females and one male were found inside. Both applicants were among the people present.

The applicants were arrested at the scene and taken to a police station. The arresting officer states that, while at the scene, he checked police records and found that the three females present “had multiple breaches of Covid Regulations.” Because of this history he sought to arrest the women, and these arrests were authorised by police control. Following their arrest the two applicants were detained in police custody until the next available magistrates’ court which took place on 22 January 2021.

Factual background - Sinead Corrigan

On the morning of the hearing on 22 January 2021 this applicant was produced to court via video link from the police station. According to her affidavit she had the following Covid-related history at the time of her appearance:

- 2/10/2020 - issued with four fixed penalty notices for breaches of the regulations;
- 3/10/2020 - arrested at a party which breached regulations. After arrest she was detained in police custody until her appearance in court the following Monday;

¹ The panel was Treacy LJ & Colton J. Treacy LJ delivered the judgment of the court.

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- 5/10/2020 – appeared in court where the police opposed bail. The District Judge granted bail subject to a residence condition, a curfew between 11pm-7am and restrictions on her use of alcohol;
- 7/10/2020 – arrested for breach of bail and detained in police custody until 8/10/2020 when she was released;
- 12/10/2020 – arrested for a further breach of the regulations and brought before a magistrates’ court. She was released on conditional bail, the conditions being similar to those noted above. Her solicitor contested the imposition of conditions on her bail and Mateer DDJ adjourned the case for two weeks and suggested that skeleton arguments be submitted on the issue of appropriateness of bail conditions in cases such as this;
- The solicitor applied to the High Court for removal of all conditions. McAlinden J dealt with the application. He did not reject it on the merits but said the DDJ should make a final determination before the High Court considered the matter;
- When the matter came back before the magistrates’ court, McGarrity DJ heard it. He revoked all the conditions without comment on the legal issues raised by their initial imposition;
- 3/12/2020 – All the above charges were dealt with substantively by the magistrates’ court which imposed a fine totalling £1,000;
- 6/01/2021 – The fine was reduced on appeal to £50.

As noted above the issue of the appropriateness of imposing conditions on a grant of bail for breach of Covid Regulations by this applicant had arisen before but had never been dealt with conclusively. The issue arose again on 22 January 2021 when police outlined her history of Covid breaches and objected to bail on the basis that she was likely to reoffend.

The judge’s handling of the case is described as follows in his reply to this applicant’s pre-action protocol (‘PAP’) letter:

“After hearing from the prosecution and the defence, the District Judge decided that it was appropriate to grant the applicant bail in her own recognisance of £500.00 and to impose the following bail conditions: (1)A curfew from 10pm and 8am, with a requirement to present herself at the door if required to do so by police; (2)To confirm with police who is in her ‘social bubble’; (3)She is not to be under the influence of alcohol or in possession of alcohol in a public place. The District Judge determined that the bail conditions imposed in this case were appropriate taking into account Article 133 [of the Magistrates Courts (NI) Order 1981], in particular the risk of further offending by contravening the Coronavirus Regulations and the resulting risk of infection flowing from same.”

During the hearing on 22/1/21, the defence solicitor objected to the imposition of bail conditions on the basis that they were not permissible when the index offence did not carry any risk of imprisonment upon conviction. The solicitor applied to the High Court for removal of the bail conditions and was granted unconditional bail. Subsequently she was granted leave to apply for

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judicial review of the decision of the DJ to impose conditions on the grant of bail to her. The sole relief sought in this applicant's order 53 statement is a declaration that the imposition of bail conditions by the district Judge was unlawful.

Factual background - JR310

This applicant was arrested at the same house party as the first applicant on 21 January 2021. This applicant mounts a similar challenge to the lawfulness of the imposition of bail conditions by the District Judge. This applicant also raises complaints about her detention by the PSNI. While in custody, an observing officer described the applicant as "unresponsive and could not be woken." The officer informed the Custody Sergeant of this fact, and an ambulance was called for her. Meanwhile, the officer returned to the cell. The record states "I returned to the cell and provided oxygen. I ensured her airway was clear and provided oxygen, suddenly the DP attempted to pull the oxygen mask away." Paramedics arrived and attended to her in the cell. A note in the custody record states that all checks were normal, and the paramedics confirmed there was no need to take her to hospital. During the course of the day the custody record noted that the applicant was demanding medication, being disruptive, violent, threatening self harm, struggled with staff when handcuffs and limb restraints were applied. She displayed a range of destructive and offensive behaviours consistent with aggressive and violent intent, but also consistent with extreme and unmitigated anxiety/distress, particularly in someone with mental health vulnerabilities. These behaviours included defecating and vomiting in the cell, attempting to "headbutt" the wall, attempting to pull her own hair out, tying custody clothing around her neck and making repeated verbal claims that she intended to kill herself.

Meanwhile, at 16:03 that day the applicant was charged. There is no record of any interview, questioning or other investigation having occurred prior to the charge. The charge sheet recites that she, without reasonable excuse, contravened a requirement given in Regulation 6 of the 2020 regulations, contrary to regulation 8(1) of those regulations. She was served with a Notice under Article 45 of the 1981 Order waiving her right to receive 24 hours' notice of entitlement to be tried by jury for "the Schedule 2 offence overleaf." This was despite the fact that the offence she was suspected of was summary only - there was never any possibility that it could be tried on indictment. She was refused post charge bail by the police. The custody record does not record a reason for the denial of police bail. It is now accepted by the PSNI it did not have lawful grounds to detain the applicant post charge - we shall return to that fact later in this judgment.

Around 17:00 she was allowed to telephone her mother. A note timed at 17:03 says "DP permitted to use telephone to speak to her mother, she started shouting at her and told her to go fuck herself. She then stated her mum was to look after her baby and after she gets out, she will be gone and will kill herself." From at least this point onwards, therefore, the police are aware that there is a child somewhere in this mix who may or may not be receiving adequate care while its mother is being detained in police custody for an alleged Covid breach. There is no record of any police enquiry into the welfare arrangements for that child.

At 17:42 she was examined by a doctor, but the medical advice did not change. After the meeting with the doctor she was observed attempting to strangle herself. A note timed at 18:06 records "she had these constant outbursts, was making verbal threats to self-harm and was seen trying to headbutt the wall and pull out her hair."

There is a change in the police shift and new personnel come on duty. At 19.44 the following record is logged:

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“DP ... had been observed tying clothing around her neck by CDO Dobson, he has taken immediate action and removed it. DP was unconscious. Sgt Rafferty Con Carwell CDO Rainey responded to first aid given immediately” ...

The police officers gave the applicant oxygen, a defibrillator was deployed but no shock given, CPR was commenced, and an ambulance was called. The record concludes “DP has come round, however, appears unwell. NIAS in attendance and DP is going to hospital.”

The applicant was returned from hospital to custody in the police station arriving there at 00:39. She was given a meal and is then observed to sleep for the rest of the night. A “review” note recorded at 07:47 on 22 January 2021 reads “Circumstances are unchanged and further detention authorised to bring the DP before court.” The applicant continued to sleep until wakened to attend the FMO at 09:50. The FMO certified her as fit to appear in court and the medical advice re medication did not change. She was returned to her cell at 10:00, given breakfast and was then observed to sleep for the morning.

At 12:13 she was taken to an interview room to appear in court via video link. Following the decision of the court, a final medical check was completed which records that there is no alcohol or other substance abuse in this case, that the applicant is not homeless and that no risks are identified in her case except the risk of self-harm.

Her property was returned to her, and she was released from police detention at 14.37, some 30 hours after she was first presented to the custody officer for assessment.

Scope of the issues to be determined

In these proceedings JR310 challenges the lawfulness of her arrest and detention by the police. She seeks declarations that the decision to arrest her was unlawful and that decisions to refuse police bail and to continue detaining her at various times were also unlawful. She seeks orders of certiorari quashing all the impugned decisions and an award of damages for her alleged wrongful arrest and unlawful detention by the PSNI. The scope of her claim has now altered as the PSNI now accepts that, as the offence for which she was arrested was not an imprisonable offence, it was unlawful for her to be detained for the reason relied upon. The PSNI further agreed that she is entitled to a declaration to that effect and that her claim for damages against the PSNI pursuant to paragraph 4.1(v) of the Order 53 statement is settled on ‘terms endorsed’ (which means that the PSNI is not disclosing the details of the settlement either to this court or to the public). To the extent that there remain challenges to her pre-charge detention we consider, for reasons which we set out later in this judgment, that these are matters which will require evidence and that this is not the proper forum for that aspect of the challenge.

JR310 challenged the imposition of bail conditions by the district judge principally on the basis that as, she was unlawfully detained when she appeared before the district, no bail conditions could or should be imposed on her by that court.

The only respondent in the case of Ms Corrigan was the district judge. There was no judicial review challenge by her regarding her police detention. Since it appeared that Ms Corrigan may also have been unlawfully refused post charge bail, we caused further enquiries to be made of the police so that the issue arising therefrom could be addressed in both cases. The court is grateful for the

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prompt assistance of the Crown Solicitor's Office who has now confirmed that the PSNI accepts that it was unlawful for Ms Corrigan to have been detained for the reason relied upon.

Accordingly, in the case of both these applicants, it follows that as the offence for which each applicant was arrested was not an imprisonable offence, it was unlawful for them to be detained by the PSNI for the reason given and therefore when they appeared before the district judge neither was lawfully detained. Both appeared in court via video link from the police station and remained in the custody of the police. The district judge released them on bail subject to conditions. In the case of JR310 she was not immediately released but remained in detention until seen by a doctor before being released. We do not know whether the same procedure was followed in the case of Ms Corrigan.

Summary of principal conclusions

Both applicants were charged with non-imprisonable offences pursuant to the Health Protection (Coronavirus, Restrictions) (No.2) Regulations (Northern Ireland) 2020 ("the 2020 regulations"). Pursuant to Article 39(1) of the Criminal Evidence (Northern Ireland) Order 1989 ("the 1989 Order") the custody officer in each case was required to order their post charge release from police detention, either on bail or without bail, unless the conditions in either subparagraph (a) or (b) of the 1989 Order were satisfied. In each case the reason the custody officer refused to release was because they considered that they had reasonable grounds for believing that their detention was necessary to prevent her from committing an offence. However, pursuant to Article 39(i)(a)(ia), this reason applies only in the case of a person arrested for an imprisonable offence. As the offence for which each applicant had been arrested was not an imprisonable offence, it was, as the PSNI now accept, unlawful for either of them to be detained for the reason relied upon.

Accordingly, the court declares as follows:

"The court declares that as the offence for which JR310 and Ms Corrigan were arrested was not imprisonable, under Article 39 of the Police and Criminal Evidence (NI) Order 1989, the police did not have lawful grounds to detain either of them post charge and, accordingly, they were both unlawfully detained when brought before the magistrates' court."

The court further declares in the circumstances of each applicant the district judge was not lawfully empowered to impose any bail conditions and each should have been discharged without bail conditions.

Had the applicants been lawfully before the court the district judge had the power to impose bail conditions for an offence that is not punishable by imprisonment.

NOTES TO EDITORS

1. This summary should be read together with the judgment and should not be read in isolation. Nothing said in this summary adds to or amends the judgment. The full judgment will be available on www.judiciaryni.uk

ENDS

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If you have any further enquiries about this or other court related matters please contact:

Catherine Burns
Lady Chief Justice's Office
Royal Courts of Justice
Chichester Street
BELFAST
BT1 3JF
Telephone: 028 9072 4615
E-mail: Catherine.Burns@courtsni.gov.uk