Judicial Communications Office

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COURT DISMISSES GERRY ADAMS' APPEAL AGAINST CONVICTION

Summary of Judgment

The Court of Appeal today dismissed an appeal by Gerry Adams against his convictions in the 1970s for attempting to escape from internment.

Gerard Adams ("the appellant") was detained on 21 July 1973 on foot of an Interim Custody Order ("ICO") which was signed by the Minister of State at the Northern Ireland Office. His detention was continued by virtue of a Detention Order made by a Commissioner on 16 May 1974. The appellant first attempted escape from detention on 24 December 1973 and a second attempted escape occurred on 26 July 1974. He was sentenced to 18 months imprisonment in respect of the first attempt and three years imprisonment in respect of the second, consecutive to the earlier sentence. No appeal was lodged by the appellant against either conviction until over 40 years later when these appeals were prompted by the disclosure of Government papers. The appellant contended that the ICO made on 21 July 1973 was invalid as it had not been considered personally by a Secretary of State.

Legislation

The statutory powers for detention (or internment) without trial in Northern Ireland were contained in the Civil Authorities (Special Powers) Act (Northern Ireland) 1922 ("the 1922 Act"). During "the Troubles" this power was exercised on 9 August 1971 and from time to time thereafter. Following the introduction of Direct Rule on 30 March 1972 new interim arrangements for detention were introduced by the Detention of Terrorists (NI) Order 1972. The power of arrest under the Special Powers legislation remained in force but the detention powers were now exercised under the 1972 Order. It was this legislation that was in force when the appellant's ICO was made on 21 July 1973.

Article 4 of the 1972 Order provides that "where it appears to the Secretary of State" that a person is suspected of being involved in terrorism he can make an ICO for that person's temporary detention. An ICO can be signed by a Secretary of State, Minister of State or Under Secretary of State. The detained person had to be released within 28 days unless the Chief Constable referred the matter to a Commissioner, in which event the detention continued. Under Article 5 of the 1972 Order, the Commissioner could make a detention order if satisfied that the person was involved in terrorism or his detention was necessary for the protection of the public.

The interim arrangements in the 1972 Order were replaced by the Northern Ireland (Emergency Provisions) Act 1973 with effect from 8 August 1973 but anything done under the 1922 Act or the 1972 Order was to have effect as if it had been done under the 1973 Act.

Release of Government Papers

The trigger for the appellant's late appeal was the disclosure of documents by the Government under the 30 year rule. Papers revealed that there had been debate among officials and Government legal advisors in 1973/74 about the need for the Secretary of State to consider personally the making of an ICO. This appears to have prompted a change of practice in 1974 to one where the decisions on ICOs were made by the Secretary of State alone. The papers state that this approach was born out of caution based on legal advice which suggested that "the safer construction of [the legislation] is that only the Secretary of State can make the order".

The Use of Parliamentary Materials for Interpretation

The Court of Appeal commented that while the materials released are of considerable interest they do not inform the court's interpretation of the statutory provision. The appellant, however, relied on two statements from Hansard as aids to interpretation. The first was a statement of the Lord Chancellor on 19 July 1973 when he said "the Secretary of State makes a temporary order only if (he) is personally satisfied that the person concerned" was involved in terrorism. The second was a statement of the Attorney General on 11 December 1972 who said that "under Article 4(2) [of the 1972 Order] an interim custody order can be made also by a Minister of State or by an Under Secretary of State". The appellant contended that the Attorney General was in error in making that statement. The Court was satisfied that the rule in *Pepper v Hart* on statutory interpretation could not assist the appellant in this case as the enactment was not ambiguous or obscure and in any event the statements relied on appear to be contradictory.

The appellant also relied on a note by an official dated 2 July 1975 stating that when drafting the 1972 Order it was considered that the Secretary of State should take the decision in relation to an ICO but as he would not always be present in person the signature on the order could be that of a minister. The Court of Appeal held that a statement of an official is not a Hansard statement and cannot therefore inform the interpretation of the legislation.

Ground of Appeal

The appellant contended that Article 4(1) of the 1972 Order required the Secretary of State to consider personally each ICO. He claimed that the prosecution failed to adduce proof that the ICO dated 21 July 1973 had been considered personally by the Secretary of State and was therefore invalid. The appellant also relied on a legal

opinion dated 4 July 1974 which set out the arguments for and against personal consideration by the Secretary of State and concluded that the point was arguable and the outcome would not be certain but that a court would probably find that it was a condition precedent to the making of an ICO that it should be the decision of the Secretary of State personally.

The *Carltona* Principle

The Court of Appeal set out the case law developing the *Carltona* principle which states that the duties imposed on ministers are so multifarious that no minister could ever personally attend to them and that the duties are normally exercised under the authority of the ministers by responsible officials of the minister's department. The Court concluded that the starting point, if not the presumption, is that the *Carltona* principle applies and can only be displaced (or rebutted) by Parliament using express words or by necessary implication. The necessary implication that Parliament intended to exclude the *Carltona* principle may be derived from the wording of the legislation and the framework of the legislation and the context. The Court said the seriousness of the subject matter is an aspect of the context and may be taken into account in determining whether it is a necessary implication that Parliament intended to exclude the *Carltona* principle although it is not determinative.

The Wording, Framework and Context of the Legislation

The appellant relied on the wording of Article 4(1) of the 1972 Order which states that "where it appears to the Secretary of State" that the conditions for the making of an order exist "the Secretary of State may make an order" as requiring personal consideration by the Secretary of State. The Court of Appeal, however, said that these words are a common legislative formula and have not been found in previous cases to be the basis for any necessary implication of personal consideration. The appellant also relied on the wording and framework of Articles 4(1) and 4(2) of the 1972 Order where the former provides that the Secretary of State may make the order and the latter provides that the order may be signed by a Secretary of State, Minister of State or Under Secretary of State. The Court said that a distinction had clearly been drawn between the making of the order and the signing of the order:

> "Clearly the making of the order is the more significant decision. The signing of the order is the authority on which officials act to detain the person subject to the order. The distinction indicates that the appropriate person who might act on behalf of the specified Minister may be more confined under Article 4(1) than under Article 4(2). It does not lead to the necessary implication that only the Secretary of State may make the order."

The appellant also relied on the gravity of an ICO which involved the loss of liberty of the subject. The Court of Appeal agreed that the factors to be considered in determining whether the *Carltona* principle has been displaced in a particular case include the importance of the subject matter but said it was not satisfied that a decision that results in loss of liberty was in itself sufficient to displace it.

The appellant further relied on the reasons advanced in the 1974 legal opinion. The Court of Appeal was not satisfied that there is material or information available that displaces the *Carltona* principle and accordingly it was satisfied that the decision to make the ICO could have been made by an appropriate person on behalf of the Secretary of State. The Court added that the Minister of State was an appropriate person, being a Minister appointed by the Crown and answerable to parliament.

Conclusion

The Court of Appeal was satisfied that the ICO was valid having been made by the Minister on behalf of the Secretary of State. The Court was accordingly satisfied that the appellant's convictions are safe and dismissed the appeal.

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 the Judiciary NI website (www.judiciary-ni.gov.uk).

ENDS

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