

Neutral Citation No: [2017] NIQB 114

Ref: McC10488

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

Delivered: 14/11/17

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)

**IN THE MATTER OF AN APPLICATION BY MARK PATRICK TOAL
FOR LEAVE TO APPLY FOR JUDICIAL REVIEW**

-v-

PAROLE COMMISSIONERS FOR NORTHERN IRELAND

LEAVE DECISION

[ex tempore & edited]

McCloskey J

[1] This application for leave to apply for judicial review has been processed with considerable expedition as it involves the liberty of the citizen and has materialised at a stage when a further decision making process and decision of the Parole Commissioners are pending.

[2] Having considered the oral and written submissions of the parties' respective counsel, I am satisfied that the grounds of challenge resolve to two central complaints. The first concerns the overall fairness of the Commissioner's decision making process, the main aspect whereof is the approach which was taken to the question of witnesses being called at the hearing giving rise to the impugned decision, namely a decision made in the wake of a hearing conducted on 18 August 2017 that the Applicant would not be released on licence. The panel dealt with this issue at [18] of its decision dated 25 August 2017, stating "..... the panel do not have the power to require witnesses to attend oral hearings". I am satisfied to the level required at this stage of the proceedings that in thus determining the Commissioners erred in law and/or that their decision making process is tainted by procedural unfairness. Leave is granted on this ground.

[3] The second main ground challenges the adequacy of the reasons provided by the Commissioners for the impugned decision. It is trite law that where there is a duty to give reasons they must be couched in adequate and intelligible terms and convey to the affected parties how the decision maker has grappled with the principal controversial issues and, fundamentally, why the outcome under scrutiny has been reached. In considering whether the legal standard has been observed, the decision must be evaluated as a whole and in its full surrounding context, which includes all of the evidence assembled.

[4] The core of the Applicant's complaint concerns how the Commissioners dealt with his progression, in the Probation Report assessment, from the level of "significant risk of serious harm to the public" to "risk of serious harm to the public". While the Applicant seeks to contrast this assessment with that of the various professionals with input into the preceding risk management review, the outcome whereof was an evaluation that the Applicant does not present a "significant risk of serious harm to the public", this does not lie at the centre of this ground.

[5] In its "Reasons", at [20] - [24] of its decision, the panel highlighted the very serious nature of both the index offences and previous offences committed by the Applicant; the limited evidence of any significant change in the Applicant since the last review one year previously; the need for the Applicant to continue to pursue specified programmes; the necessity that he demonstrate his ability to implement what he has learned; and the importance of pre-release testing. The panel stated *inter alia*:

"By spending increasing periods of time unaccompanied, and avoiding alcohol, drugs and trouble, confidence will grow that he is ready for release. This will take some time."

The panel further explained that it did not consider possible licence conditions to provide the public with sufficient protection. It explicitly agreed with the substance of the PDP co-ordinator's report. It also highlighted the possibility of medication assisting the Applicant to engage in psychotherapeutic work, given the possible diagnosis of adult ADHD and the desirability of an assessment of his cognitive difficulties to this end. The panel resolved that the Applicant's case should be reviewed in 8 months time.

[6] I am of the opinion that the exercise of considering the panel's report as a whole and in its full context, including in particular the PDP report and the PBNI report, yields the conclusion the decision conveys with sufficient clarity why the panel concluded that the release of the Applicant on licence was not appropriate. The PBNI assessment is explicitly mentioned in their decision, at [9, 14, 15, 18 & 20]. The Applicant cannot realistically be labouring under any

misapprehension that the panel adopted the substance of the assessment, analysis, opinions and recommendations in the PBNI report. The multiplicity of references to the report, in tandem with the expressed reasoning of the panel, impels to this conclusion.

[7] I have considered whether the Applicant's real complaint in this respect is that the panel left out of account the revised "ROSH" assessment. However, as appears from the above, I consider this unsustainable.

[8] Accordingly, leave to apply for judicial review is confined to the first ground.

[9] The case management directions, including the expedited substantive hearing date of 30 November 2017, are as articulated at the conclusion of the hearing and to be included in the formal order of the Court.