

# Judicial Communications Office

25 August 2021

## COURT DELIVERS REASONS FOR QUASHING CONVICTION

### Summary of Judgment

The Court of Appeal<sup>1</sup> today delivered its reasons for quashing Ivor Bell's conviction dating from 1975 for assisting Gerry Adams in his attempt to escape from HMP Maze. It was on the basis of the Supreme Court's decision in 2020 that Mr Adams was not lawfully detained at the time.

#### Background

Ivor Bell ("the appellant") was convicted on 18 April 1975 on a single count that on 26 July 1974 he assisted Gerard Adams in attempting to escape from HMP Maze. He was sentenced to two years imprisonment. Mr Adams was also convicted for the offences of attempting to escape from lawful custody on 24 December 1973 and 27 July 1974 and was sentenced to three years imprisonment.

The scheme for detention by internment established by the Northern Ireland (Emergency Provisions) Act 1973 ("the 1973 Act") operated by the making of an interim custody order ("ICO") in cases where the Secretary of State considered that an individual was involved in terrorism. On foot of the ICO that person was taken into custody. The person detained had to be released within 28 days unless the Chief Constable referred the matter to a commissioner. The detention continued while the commissioner considered the matter. If satisfied that the person was involved in terrorism, the commissioner would make a detention order in accordance with Schedule 1, paragraphs 12 and 24 to the 1973 Act. If not so satisfied, the release of the person detained would be ordered.

#### Supreme Court decision in *R v Adams*

On 13 May 2020, the Supreme Court gave judgment in *R v Adams* [2020] UKSC 19 in which Mr Adams' convictions for attempting to escape lawful custody were quashed because the ICO under which he had been interned was invalid. The Supreme Court held that, as a result, he was not lawfully detained at the time of the offences.

The appellant contended that given that Mr Adams was not lawfully detained at the time of his attempted escape his conviction for assisting Mr Adams' attempt to escape was unsafe and should be quashed. The respondent submitted that the making of the detention order cured the invalidity of an earlier ICO and that the decision of the Supreme Court in *Adams* was of no application. The court rejected this submission which, it said, ignored the basic requirement of the 1973 Act for a valid ICO to exist in order for a subsequent detention order to be valid:

"The making of a detention order did not have the effect of converting an otherwise unlawful detention into a lawful detention. If that had been the effect the Supreme Court would not have quashed Mr Adams' conviction for the attempted escape in July 1974. Mr Adams was not detained on a valid ICO, therefore any referral to or determination of his detention by a commissioner thereafter was unlawful and not in

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<sup>1</sup> The panel was Lord Justice Treacy, Lord Justice McCloskey and Mr Justice Colton. Lord Justice Treacy delivered the judgment of the court.

# Judicial Communications Office

accordance with paragraphs 12 or 24 of the 1973 Act. Any detention order made by a commissioner was, in consequence, also unlawful.

In *R v Adams*, the Supreme Court dealt with the question as to whether the making of an ICO required the personal consideration by the Secretary of State or whether a Minister of the State could be permitted to make the order under the *Carltona*<sup>2</sup> principle (which provides that, normally, the duties and powers given to Ministers may be exercised by other responsible officials of the relevant Government department). The Supreme Court held that it was not necessary in *R v Adams* to reach a final view on whether there was such a presumption as the statutory language was unmistakably clear and had the effect of displacing it. Article 4 of the Detention of Terrorists (NI) Order 1972 provided that “the Secretary of State may make an order for the temporary detention of a person suspected of having been concerned in the commission or attempted commission of any act of terrorism or in the direction, organisation or training of persons for the purpose of terrorism”. The Supreme Court said the language was clear and precise and its apparent effect was unambiguous. It held that it was the Secretary of State who must consider whether the person concerned is suspected of being involved in terrorism etc. The court said that Parliament’s intention was that such a crucial decision should be made by the Secretary of State as this was, after all, a power to detain without trial and potentially for a limitless period.

The Supreme Court concluded that as the ICO made in respect of Mr Adams was not made by the Secretary of State it was invalid with the consequence that he was not lawfully detained and should not, therefore, have been convicted of attempting to escape from lawful custody.

## **Impact of *R v Adams* on the appellant’s conviction**

The appellant’s conviction was for assisting Mr Adams in his attempt to escape from HMP Maze on 27 July 1974. It was argued on his behalf that if Mr Adams was not lawfully detained under a detention order then the appellant’s conviction for an offence of assisting him in attempting to escape was wrong in law.

The respondent submitted that the words “detained under an interim custody order” in Schedule 1, paragraph 38 to the 1973 Act need not mean that the person who was subject to the order was “lawfully” or “validly” detained under an ICO. The court rejected this saying that such a construction was plainly inconsistent with the decision and orders made by the Supreme Court in *R v Adams*. It agreed that the making of a valid ICO was a condition precedent to the referral of the matter to the commissioner and to the determination of the commissioner as to the making of a detention order:

“The gravity of the consequences for a person subjected to internment must inform how strictly the provisions of that legislation should be construed. Against that background and having regard to the clarity of the Supreme Court’s decision in *Adams* we reject the respondent’s contention that the legislation for internment in Northern Ireland permits an interpretation that orders made within that scheme of detention include invalid or unlawful orders.”

## **Conclusion**

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<sup>2</sup> *Carltona Ltd v Commr of Works* [1943] 2 All ER 560

# Judicial Communications Office

The court concluded that the conviction of the appellant was wrong in law given that he could not commit the offence where the person who was the subject of the attempt to escape was not lawfully detained under an ICO or detention order as required. It quashed the conviction.

## 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 (<https://judiciaryni.uk>).

ENDS

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