

Judicial Communications Office

Tuesday 14 June 2011

COURT DISMISSES APPEAL AGAINST DECISION OF LIFE SENTENCE REVIEW COMMISSIONERS

Summary of Judgment

The Court of Appeal today dismissed an appeal against a decision of the Life Sentence Review Commissioners (now known as the Parole Commissioners) not to release a life sentence prisoner who had been recalled to prison for an alleged breach of his licence conditions.

The appellant, referred to in court as CD, was convicted of murder in 1982 and sentenced to life imprisonment. He was released on licence in 1996 but was later arrested for alleged sexual offences. His licence was revoked by the Secretary of State. In 1998, the Director of Public Prosecutions directed that no prosecution be pursued in relation to the alleged sexual offences but the appellant's licence remained revoked.

In 2001 the Secretary of State made a reference to the Life Sentence Review Commissioners to review the correctness of the revocation of the appellant's licence and the lawfulness of his detention. A panel of Commissioners determined that the sexual abuse had been proved and the risk was such that the appellant should remain in prison. The appellant challenged this decision, initially by judicial review and then to the Court of Appeal. The Court of Appeal upheld his appeal and quashed the determination of the Commissioners on the basis that they had misdirected themselves on the standard of proof regarding the allegations of sexual offences. The Commissioners appealed this decision to the House of Lords. In June 2008 the House of Lords allowed the appeal and reinstated the Commissioner's determination. The appellant was subsequently released by a panel of Commissioners after a hearing in October 2008.

In the period between the decision of the Court of Appeal and the House of Lords a fresh panel of Commissioners reviewed the appellant's case in order to avoid any delay which could be caused by the ongoing legal proceedings. Evidence was given by three witnesses on the basis of two hypotheses: the first being that the allegations of sexual offences which led to the appellant's recall were true ("the recall offences") and the second being that they were

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not true. Evidence given at the hearing on 4 January 2008 by a prison Governor attached to the Lifer Management Unit and a senior psychologist at Maghaberry concluded that the appellant could be safely managed in the community but recommended a further period of 6 months supervision in the Prisoner Assessment Unit to protect his long term rehabilitation. The third witness, a probation officer, gave evidence on 12 March 2008. He assessed the appellant as medium risk of re-offending because he continued to deny his involvement in the recall offences and had breached an alcohol condition while staying in hostel accommodation as part of his preparation for release. The probation officer accepted that his risk assessment was highly dependent on the accuracy of the complaint which led to the appellant's recall.

In its decision of 20 March 2008 the Commissioners stated that the prisoner could not be released as they had not received all relevant evidence. The appellant challenged this decision by way of judicial review. He contended that the Commissioners had erred in law in applying a risk of serious harm test contained in Article 9 of the Life Sentences (NI) Order 2001 that did not come into effect until 2005 even though it was dealing with a referral made in 2001. The appellant also claimed that his release was being unreasonably delayed by the need to put in place licence conditions which should already have been prepared. He claimed he had therefore been unlawfully detained for the period between March 2008 and his release in October 2008.

The Lord Chief Justice, delivering the judgment of the Court, concluded that Article 9 of the 2001 Order was designed to secure the safety of the public and can only operate prospectively. He concluded that it is therefore not retrospective. The Lord Chief Justice said the approach the Court must therefore take is to look at the degree of unfairness in the application of the provision in order to assess the strength of the objection to its application. The Lord Chief Justice concluded that in light of the prospective application of Article 9 and its public safety purpose, the Court could detect no such unfairness and consequently no objection to its use in this case.

The Lord Chief Justice then considered whether the appellant had been unlawfully detained between March and October 2008. The Lord Chief Justice said this would depend on whether the Commissioners' considered that the evidence presented to them could justify his continued detention for the protection of the public. He said that it was clear from their letter of 20 March 2008 that the Commissioners wanted to hear further evidence to enable them to reach a decision on this point. The Lord Chief Justice concluded that in light of the concerns expressed by the probation officer that the Commissioners were perfectly entitled to take this course.

The Court of Appeal dismissed the appellant's appeal on both grounds.

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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 Court Service website (www.courtsni.gov.uk).

ENDS

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