

# Judicial Communications Office

Monday 7 March 2011

## COURT UPHOLDS PAROLE BOARD'S DECISION NOT TO HOLD ORAL HEARING

### Summary of Judgment

The Court of Appeal today ruled that the Parole Board's decision not to hold an oral hearing to determine whether a prisoner should be released or transferred to an open prison was fair based on the individual circumstances of the case.

James Clyde Reilly ("the respondent") was sentenced to life imprisonment in 2003 for robbery, attempted robbery and possession of an imitation firearm. The offences took place in London. The court fixed a tariff of six years and eight months. His tariff expiry date was calculated as being 20 September 2009.

The respondent was born in Northern Ireland and on 12 December 2007 he was transferred from prison in England to HMP Maghaberry. The transfer was subject to a condition that he was to be treated for the relevant purposes as if he remained subject to the provisions applicable under the law of the place from which the transfer was made, namely England and Wales.

In December 2006, prior to his transfer to Northern Ireland, the Parole Board carried out a review to determine if the respondent was suitable for a move to open prison conditions. The Board did not recommend this noting that he had exhibited regular problematic behaviour, that there was a long list of unaddressed risk factors and that he had taken part in very little offending behaviour work. His next review by the Parole Board was scheduled for September 2009.

In Spring 2009 the Lifer Management Unit at HMP Maghaberry sent a dossier to the Parole Board which contained reports and documents about the respondent. In May 2009 the respondent indicated that he wished to have an oral hearing before the Parole Board. In June 2009, the Parole Board wrote to the respondent to say that it had decided not to direct his release or recommend his transfer to open conditions. The decision was taken on the papers provided by HMP Maghaberry and included factors such as the serious and violent nature of the respondent's offences, his previous record,

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his poor disciplinary record and inability to remain drug free. Those factors were balanced against his efforts to address his offending behaviour. The Parole Board concluded that the respondent had still a significant amount of programmes to complete which would address his offending behaviour.

The respondent appealed against the refusal to grant him an oral hearing. He claimed that he should have been afforded the opportunity to give some explanation as to why his adjudication record was apt to create a false impression, an explanation as to why the record of drug testing might be misleading and a general submission that an oral hearing was necessary in order to achieve fairness. The Parole Board refused the appeal on the grounds that the respondent had not completed work on tackling his offending behaviour.

The respondent brought a judicial review of the decision. In April 2010 Mr Justice Treacy quashed the decision of the Parole Board on the ground that it violated Article 5(4) of the ECHR and Common Law. The Parole Board and the Secretary of State for Justice appealed this decision.

Lord Justice Coghlin delivered the judgment of the Court. He said that the question is whether the circumstances of a particular case require the Parole Board, as a matter of procedural fairness, to hold an oral hearing in the course of determining whether the continued detention of a prisoner is necessary for the protection of the public. Lord Justice Coghlin said: “Essentially, that is a judgment about risk involving a careful and complex balance between the right of the prisoner to his or her liberty and the right of the public to an acceptable degree of protection. In exercising that judgment the Parole Board must have regard to the individual circumstances of the case.

The Court of Appeal found that, in this case, the Parole Board’s decision not to hold an oral hearing was fair given the failure of the respondent to complete the requisite offending behaviour programmes.

## 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](http://www.courtsni.gov.uk)).

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**ENDS**

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