



3 March 2010

PRESS SUMMARY

Martin v Her Majesty's Advocate (Respondent) (Scotland); Miller v Her Majesty's Advocate (Respondent) (Scotland) [2010] UKSC 10

JUSTICES: Lord Hope (Deputy President), Lord Rodger, Lord Walker, Lord Brown, Lord Kerr

BACKGROUND TO THE APPLICATION

As originally enacted, s.33 and Part 1 of Schedule 2 to the Road Traffic Offenders Act 1988 (“the RTOA”) provided that the maximum sentence that a Sheriff sitting summarily could impose in respect of the offence of driving while disqualified (s.103(1)(b) of the Road Traffic Act 1988 (“the RTA”)) was six months imprisonment or the statutory maximum fine or both. If the offence was prosecuted on indictment, the maximum sentence was 12 months imprisonment or a fine or both.

Following a recommendation by a committee appointed to review the provision of summary justice in Scotland that the criminal jurisdiction of judges sitting summarily should be increased to a maximum of 12 months, the Criminal Proceedings etc (Reform)(Scotland) Act 2007 (“the 2007 Act”) was enacted by the Scottish Parliament. S.45 of that Act increased the maximum sentence that sheriffs sitting summarily could impose for the offence of driving while disqualified to 12 months imprisonment.

On 17 December 2007 and 14 May 2008, respectively, in summary proceedings Sean Martin and Ross Miller were each sentenced by Sheriffs to periods in excess of six months imprisonment for driving while disqualified contrary to s.103(1)(b) of the RTA. They both sought to challenge their sentences on the basis that amending the relevant provisions of the 2007 Act were outside the legislative competence of the Scottish Parliament.

The High Court of Justiciary (“the HCJ”) dismissed the appeals, holding that the increase in the sentencing power of Sheriffs sitting summarily by s.45 of the 2007 Act was within the Scottish Parliament’s legislative competence. The HCJ gave the Appellants permission to appeal to the Supreme Court.

JUDGMENT

The Supreme Court, by a majority of three to two (Lord Rodger and Lord Kerr dissenting), dismisses the appeals. The Court holds that the provision in question was within the Scottish Parliament’s legislative competence. Lord Hope delivered the leading judgment on behalf of the majority.

REASONS FOR THE JUDGMENT

Majority Judgments

The answer to the question raised by this case is to be found by applying the rules laid down in s 29 and Part 1 of Schedule 4 the Scotland Act 1998 which determine whether a provision of an Act is

outside the Scottish Parliament's legislative competence. Three questions arise in this case: (1) whether the purpose of s.45 was to modify Scots criminal law as defined in s.126(5) of the Scotland Act; (2) if so, whether its purpose was to make the law apply consistently to reserved matters and otherwise; and (3) if (1) and (2) are answered in the affirmative, whether the rule that s.45 modified was special to a reserved matter within the meaning of para 2(3) of Schedule 4 [para [22]].

The purpose of s.45 of the Criminal Proceedings etc (Reform)(Scotland) 2007 Act

The available material conclusively demonstrates that the purpose of s.45 was to contribute to the reform of summary justice by reducing pressure on the higher courts. The jurisdiction of a Sheriff is defined by the penalties which he can impose and his powers in this respect are quintessentially matter of Scots criminal law. S.45 was directed to a rule of Scots criminal law, so it does not relate to a reserved matter within the meaning of s.29(2)(b) of the Scotland Act 1998 [para [31]].

Was s.46 concerned to ensure that law applied consistently between reserved and non-reserved matters?

S.45 is one of a group of related provisions contained in the 2007 Act increasing the summary sentencing powers of Sheriffs in respect of a number of common law and statutory offences. If the 2007 Act had increased the sentencing power in respect of common law but not statutory offences the reform would have been incomplete and confusing. This problem would have been exacerbated if the reform had attempted to distinguish between statutory offences related to reserved matters and those which did not. The purpose of s.45 was to ensure that the law relating to the sentencing powers of Sheriffs was consistent as between offences concerning reserved matters and otherwise. Consequently, s.45 is not related to a reserved matter for the purpose of s.29(4) of the Scotland Act 1998 [paras [32]-[33]].

Is the sentencing jurisdiction of a Sheriff in relation to road traffic offences 'special' to the Road Traffic Offenders Act 1988 and the Road Traffic Act 1988?

In identifying the rule of law that is being modified for the purpose of the test established by para 2(3) of Schedule 4, regard may be had to the purpose of the legislative provision effecting the modification [para [34]]. The key to the decision in this case lies in identifying the rule that is being modified. This is achieved by examining the purpose of the legislative provision which is under scrutiny [para [38] and [39]].

S.33 and Part 1 of Schedule 2 to the RTOA and s.103(1)(b) of the RTA contain, in effect, two rules of Scots criminal law. Firstly, that the overall maximum sentence in respect of driving while disqualified is 12 months. Secondly, the route by which the maximum sentence can be imposed. The former provision is plainly a rule that is special to the RTOA and RTA and is a reserved matter that the Scottish Parliament has no power to modify. However, the latter is a rule concerning Scots criminal jurisdiction and procedure which is not reserved. The change in the law effected by s.45 does not alter the maximum period of imprisonment for the offence of driving while disqualified. It relates to the procedure which determines whether the sheriff has power to impose that sentence. The rule of Scots law being modified is the rule of Scots criminal procedure. This rule of procedure is not special to the RTOA or RTA [para [37]].

Had it been necessary to address the point, para 3 of Schedule 4 (which provides that legislation having incidental or minor effects upon reserved matters shall be within competence) could not, contrary to the conclusion reached by the HCJ, render s.45 within the Scottish Parliament's legislative competence. s.45 constituted an important modification to a rule of Scots criminal procedure that could not be regarded as incidental or consequential [para [40]].

Accordingly the court holds that s.45 is within the legislative competence of the Scottish Parliament. The appeals are dismissed and remitted to the HCJ for any further orders that may be required [para [43]].

Dissenting Judgments

Lord Rodger agreed that s.45 did not relate to a reserved matter [para [119]]. But he would have held that the provision of the RTOA prescribing the maximum term of imprisonment for a summary conviction for driving while disqualified is “special” to a reserved matter, in the sense that the United Kingdom Parliament has chosen it specifically for that offence. Lord Rodger did not agree that the purpose of the modifying provision can be a relevant consideration in identifying the rule of Scots law that is being modified for the purpose of para 2(3) of Schedule 4 [para [143]]. He also did not agree that the purpose of a provision which purports to modify a rule of Scots law can be used to determine whether that rule is “special to a reserved matter” [para [145]]. Lord Kerr agreed with Lord Rodger.

NOTE

This summary is provided to assist in understanding the Court’s decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at: www.supremecourt.gov.uk/decided-cases/index.html