



4 December 2013

PRESS SUMMARY

In the matter of an application by Martin Corey (AP) for Judicial Review (Northern Ireland) [2013] UKSC 76

JUSTICES: Lord Mance, Lord Kerr, Lord Clarke, Lord Hughes, and Lord Toulson

BACKGROUND TO THE APPEALS

This appeal is about the jurisdiction of the High Court to grant bail. In 1973 Martin Corey was sentenced to life imprisonment for murdering two police officers. The respondent, the Secretary of State for Northern Ireland, released him on licence in 1992. The Secretary of State referred Mr Corey's case to the parole commissioners on 13 April 2010 to ask whether his licence should be revoked. The next day a single parole commissioner recommended that it should be. That recommendation was based on material the Secretary of State supplied, including confidential information from the security services. The Secretary of State accordingly revoked Mr Cory's licence on 15 April 2010. Mr Corey was taken into custody the next day and has been in prison since then.

Mr Corey's case was then referred, as required, to the commissioners. The Secretary of State provided information including a gist of material he had certified as confidential. The single commissioner who initially considered the case read these and the confidential material itself. In accordance with her recommendation, a full panel of commissioners considered Mr Corey's case at a closed hearing on 25 January 2011. His interests were represented by a special advocate, who, like the panel, was entitled to see a statement of all open and closed material relevant to the case, including anything undermining the Secretary of State's case. Mr Cory and his own legal representatives were allowed to see a similar statement in respect of the open material, but not of the closed material.

On 15 August 2011 the panel gave both closed and open judgments. In the open judgment, they stated that Mr Corey had become involved in the Continuity Irish Republican Army from early 2005 and was in a position of leadership in it from 2008 until his recall to prison. Since the panel were satisfied that Mr Corey posed a risk of serious harm to the public, they were required to refuse to direct his release.

Mr Cory sought judicial review of the commissioners' decision on the grounds (among others) (1) that the gist disclosed inadequate information and (2) that the refusal to direct his release had been based solely or to a decisive degree on the closed material and so breached article 5(4) of the European Convention on Human Rights. Article 5(4) provides, 'Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.'

Mr Justice Treacy held on 9 July 2012 that the commissioners' decision was indeed based solely or decisively on the closed material. He further found that the allegations in the open material were not specific enough to allow Mr Corey, through his lawyers and the special advocate, to refute them. The commissioners' hearing therefore breached his 'right to procedural fairness' under article 5(4). Instead of quashing the commissioners' decision, however, Mr Justice Treacy directed them to reconsider the case in accordance with his ruling. He also gave Mr Corey bail pending their decision, since his detention would be in the meantime unlawful. The Secretary of State immediately applied for a stay of that order and appealed it.

On 11 July 2012 the Court of Appeal decided that the judge did not have power to grant bail, and so stayed that grant. This Court granted Mr Corey permission to appeal on the bail issue. Meanwhile, the Court of Appeal allowed the Secretary of State's appeal on the article 5(4) issue, which had been heard separately. The Court of Appeal concluded that the material which had been provided allowed Mr Corey to instruct his advisers effectively, and so article 5(4) was complied with. This Court refused Mr Corey permission to appeal on that issue. Whether the High Court could grant him bail is therefore academic, but important enough that this Court allowed the appeal to proceed on that issue.

JUDGMENT

The Supreme Court unanimously dismisses Mr Corey's appeal.

REASONS FOR THE JUDGMENT

Lord Kerr, with whom the other Justices agree, concludes that the High Court in Northern Ireland has an inherent jurisdiction to grant bail [18–19], provided certain conditions are met. The question is whether those conditions are met in this case. They are that it is (a) necessary for the effective disposal of Mr Corey's claim and (b) not contrary to the purpose or spirit of the legislation in question that the court should have power to order his release pending reconsideration of his case by the commissioners [21–22].

The judge's order that the review of Mr Corey's detention had not been conducted lawfully and that it should be reconsidered was, on its own terms, a full vindication of the right which the appellant had asserted. On that ground alone, the judge did not have power to order Mr Corey's release [27]. It is important to bear in mind that in the present case the lawfulness of Mr Corey's detention on foot of his recall to prison was not directly in issue. The focus of his challenge was to the commissioners' failure to direct his immediate release and the manner in which their determination was made [25].

In any event, an inherent jurisdiction to order release in the circumstances of this case would run directly counter to the operation of the legislation in question in this case: the Life Sentences (Northern Ireland) Order 2001. One of the principal philosophies underlying the Order is expressed in article 6(4) which provides that the commissioners shall not direct a prisoner's release unless satisfied that his confinement is no longer necessary to protect the public from serious harm. And article 3(2) requires that the commissioners have expertise from a variety of fields: one must hold or have held judicial office; one must be a psychiatrist; one must be a chartered psychologist; one must have experience of working with victims of crime; and must have expertise in the causes of delinquency or the treatment of offenders. This requirement reflects the need to have available a range of specialists who can contribute to what must often be a difficult debate as to whether the rigorous test set out in article 6(4) is satisfied. Put simply, the legislature has placed in the hands of a panel of experts the difficult decision as to when a life sentence prisoner should be released. Their role should not be supplanted by a judge who does not have access to the range of information and skills available to the commissioners [31–33].

Lord Kerr notes in passing the European Court of Human Rights' recent judgment in *James v United Kingdom* (2012) 56 EHRR 399, which appeared to suggest that, if a prisoner has not had a chance to take the steps necessary to meet the conditions for release, his detention would breach article 5(1) of the European Convention during those periods. Article 5(1) allows states to imprison people only when justified by law, and requires prisoners not lawfully detained to be released. Since it is unnecessary to decide the question in this case, Lord Kerr would defer decision on it until necessary. Lord Mance, with whom the remaining Justices agree, suggests that *James* should be interpreted as arising only from a secondary obligation, implied by article 5(1), to progress prisoners through the prison system. Such a breach would not require a prisoner to be released, but would entitle him to damages. These observations do not form part of the reasoning on which the judgment in this case was based.

References in square brackets are to paragraphs in the judgment.

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.