CO/3230/2012

Neutral Citation Number: [2012] EWHC 3899 (Admin)
IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
THE ADMINISTRATIVE COURT

Royal Courts of Justice
Strand
London WC2A 2LL

Monday 9 July 2012

B e f o r e:

MR PHILIP MOTT QC
(Sitting a Deputy High Court Judge)
Between:
THE QUEEN ON THE APPLICATION OF VOWLES

Claimant

v

SECRETARY OF STATE FOR JUSTICE

First Defendant

PAROLE BOARD

Second Defendant

Computer-Aided Transcript of the Stenograph Notes of
WordWave International Limited
A Merrill Communications Company
165 Fleet Street London EC4A 2DY
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(Official Shorthand Writers to the Court)

Mr Adam Straw appeared on behalf of the Claimant
Miss Suzanne Lambert appeared on behalf of the First Defendant
Mr James Cornwell appeared on behalf of the Second Defendant

Judgment

As Approved by the Court

1. DEPUTY JUDGE: This is a renewed application for permission to apply for judicial review challenging delay, it is said, on the part of the Secretary of State for Justice and the Parole Board in fixing a hearing of the Parole Board.

2. The background is, in detail, somewhat complicated. The claimant in May 2008 was convicted of arson. She had a number of previous convictions, including two for arson. She had been convicted of attempting to administer poison or a destructive or noxious thing with intent to injure, aggrieve or annoy her father - giving him weed killer - when she was made subject to a hospital order. She also had convictions for offences of violence ranging from assault occasioning actual bodily harm and assault on police to Section 18 (grievous bodily harm with intent) and possession of an offensive weapon.

3. The claimant was in May 2008 made the subject of a sentence of imprisonment for public protection. It may be that if she were convicted today that would not be the result, because the thinking on IPPs has changed. Such an order was made with a minimum term of eighteen months, indicating that a determinate sentence in the absence of dangerousness would have been three years. The minimum term expired in September 2009 but she remained in prison because of the IPP. Thereafter she was dealt with under Section 47 of the Mental Health Act 1983 (which allows the Secretary of State to transfer a serving prisoner to a secure hospital, following which the person will be treated in effect as if subject to a hospital order under Section 37 in many respects) and subject to restrictions under Section 49 (which mirror those imposed under Section 41 of the Mental Health Act 1983).

4. But there is a significant difference between detention under Sections 47 and 49 and detention under Sections 37 and 41. In the latter case a Mental Health Tribunal - now the First Tier Tribunal (Mental Health) - can order the absolute or conditional discharge of a patient having heard evidence in a tribunal hearing. In the case of a patient transferred under Section 47 with Section 49 restrictions, the Tribunal, by virtue of Section 74 of the 1983 Act, is simply invited to undertake a hypothetical consideration and notify the Secretary of State whether, in its opinion, the patient would, if subject to a restriction order (i.e. a normal Section 37/41 order) be entitled to be absolutely or conditionally discharged under Section 73 of the Act.

5. On 12 December 2011 there was a Tribunal which concluded in principle that the claimant here (the patient in that tribunal) did meet the criteria for conditional discharge. But a closer examination of the decision and the reasons given for it indicates that it was a very limited conclusion. What the Tribunal in summary was saying was that it was time for the patient to move on from St Andrew's Hospital in Northampton where she then was, but no place had been identified to which it was suitable for her to move.

6. In paragraph 2.16 of the decision it is clear that a whole series of steps would be required before the Tribunal (even if it were a Section 37/41 case) would order an effective conditional discharge. Firstly, the multi-disciplinary team would have to identify a potentially suitable placement. Then that establishment would have to assess the patient and the level of risk she continued to present, and decide whether it could be

managed in that environment. Next it would be for the Secretary of State to authorise overnight leave to that establishment in order to test out the patient's ability to cope and be satisfactorily managed there. Only then would the case come back to the Tribunal to consider whether the conditions could be satisfied and any conditional discharge (which at best would be deferred until then) could be put into immediate effect. That is a process of considering hypothetically powers which would have been open to the Tribunal had it been a Section 37/41 case, but which are not open to the Parole Board. The Parole Board, by contrast, is simply deciding (effectively in this case) to release on licence or not to release.

7. There is nothing in the decision of the Tribunal to suggest that the patient (the claimant here) was at that date in December 2011 ready for release on licence (to use the Parole Board terminology) or ready for conditional discharge (to use the Mental Health Tribunal terminology). So there was a lot still to be considered.

8. The Secretary of State then had effectively ninety days in which to decide whether to allow the Tribunal to direct the conditional discharge and release of the claimant, or if not the matter could be referred to the Parole Board. The Ministry of Justice had a timetable; it got a bit behind. It might be arguable in some cases that the timetable should be expedited where, for instance, a tribunal in a clear case has said there is somewhere for this patient to go and she should go there immediately. That was not this case.

9. Whilst the Ministry was dealing with the process of producing a dossier to go to the Parole Board the claimant absconded from St Andrew's Hospital (the secure unit where she was being held) on 8 February 2012. She left Northampton and was apprehended at Birmingham Station and returned to St Andrew's.

10. Prior to that, it appears that a possible location for her to move to had been identified in the form of Plas Coch, a small hospital for women with personality disorders in North Wales. She was (according to the dossier, whether that is accurate or not) motivated to go there because it was much closer to her family and would enable further and more regular contact. She is said to have acknowledged the need for a highly structured and supportive residential environment. Whether or not she acknowledged that, quite clearly the Tribunal did because at the least the Tribunal envisaged an appropriately staffed hostel and, no doubt, that would have required 24-hour staffing from experienced staff for the risks to be managed satisfactorily.

11. In fact, as I move on with the history, the claimant has now moved to Plas Coch and nowhere has it been suggested where she could have gone had the events in the Ministry of Justice or the Parole Board proceeded in a different way. There is a generalised submission that the options would have been wider and she could have gone elsewhere. There is nothing specific put forward to show any practical difference.

12. I have been addressed on the law. It is agreed that the test is one of whether the stages towards a Parole Board hearing have been pursued with reasonable dispatch, and that such a test would be fact-specific. For that reason I have gone into some of the facts

because they are difficult in this case. It does not seem to me to be at all surprising that further material was called for from time to time.

13. On 29 March 2012 the dossier prepared by the Ministry of Justice in its full form reached the Parole Board. That was the date on which they took over. The claimant, through her solicitors acting in these proceedings, had already made an application to this court for permission to apply for judicial review which bears the date stamp of the Administrative Court Office of 27 March 2012. That is addressed to the Secretary of State for Justice and to the Parole Board. Yet by that date the Parole Board had not even received the instructions which set the clock ticking as far as they are concerned. That is a procedural problem in relation to the Parole Board.

14. More generally, it seems to me that there is every reason why this should now be dealt with as expeditiously as possible - because delay for anyone is unfair and delay for someone with mental health problems may be potentially damaging and further delay now might well lead to a proper application for judicial review before very much more time has passed. But at this stage it does not seem to me that there is an arguable case that the delay is unreasonable, amounts to a breach of the claimant's rights or gives rise to the need for judicial review or any claim for damages linked to that.

15. This is - the more I look at it - a complicated management case.

16. I test it in this way. If the term of imprisonment for public protection had not been passed but a determinate sentence which had expired, so that the Parole Board was not involved and the Tribunal were looking at the matter under Section 37 and Section 41, it is doubtful whether it would yet be concluded. The identification of a suitable place would be the first stage; trial leave would be the second stage. Only after that would further reports be produced and presented to the Tribunal for review and for them to reconvene and consider the matter. It is likely that in December 2011 they would have set a time to reconvene and that may have been three months. But the probability is that this period would have been extended, either because no place had been found or because (particularly with the claimant's absconsion) it had not been properly tested. So it would only be about now that the stage would be reached for the Tribunal to reconvene and decide whether in fact, the claimant having moved to Plas Coch, that was a proper and suitable place and the conditional discharge should be no longer deferred but rather made effective. That is a test perhaps of whether there has been unreasonable delay in the Parole Board's consideration of matters.

17. I hope it will not be long before the Parole Board does meet. Looking at the indicative timetable set out in their Intensive Case Management system, it suggests a hearing in 26 weeks from referral. Referral having been in March, the hearing should be certainly by the end of September. I hope that can be expedited further because this is clearly a case of a woman with difficult management problems. She has organic brain injury as well as an emotionally unstable personality, and delay cannot make the management any easier. All the indications are that expedition will now be applied to this case. Certainly, both as at the date of the application for permission on 27 March and indeed looking at it now, I see no arguable case for this being unlawful and amenable to review by the Administrative Court.

18. Is there anything else arising?

19. MR CORNWELL: There is one small correction. You suggested the tariff had expired before the claimant was detained pursuant to Section 47.

20. DEPUTY JUDGE: I do not have a date for the Section 47 order. I thought I had said by then she had been transferred under Section 47 but if I did not that is what I meant.

21. MR CORNWELL: The tariff expired on 15 September 2009. She was transferred to the secure unit on 20 July 2010 which was shortly after the first Parole Board review hearing.

22. DEPUTY JUDGE: Her minimum term expired. She was still subject to the indeterminate sentence and in fact the Section 47 transfer came later.

23. MR CORNWELL: Yes.

24. DEPUTY JUDGE: Thank you for that.

25. MR CORNWELL: A few weeks later she was detained.

26. DEPUTY JUDGE: It is not by then but thereafter she was transferred.

27. MR STRAW: The claimant is publicly funded so we ask for the usual order for detailed assessment of her publicly funded costs.

28. DEPUTY JUDGE: Yes. You can have that.

[Note: the correction by counsel has been incorporated into the corrected transcript.

In the High Court of Justice
Queen's Bench Division
Administrative Court

Ref: CO/3230/2012

In the matter of a claim for Judicial Review

The Queen on the application of Lucinda Vowles

Versus Secretary of State for Justice and Parole Board

NOTIFICATION of the Court's decision following an oral hearing on the Renewed application for permission to apply for Judicial Review

IT IS ORDERED by Mr Philip Mott QC sitting as a Deputy High Court Judge that:-

1. Permission be refused
2. Costs of the Claimant to be subject to a detailed Community Legal Service funding assessment

Mr A. Straw of Counsel on behalf of the Claimant, Miss S. Lambert of Counsel on behalf of the 1st Defendant and Mr J. Cornwall of Counsel on behalf of the 2nd Defendant

(Time of the court: 2.35pm to 3.55pm)

Date 9th July 2012

By the Court

Where permission to apply has been granted, claimants and their legal advisers are reminded of their obligation to reconsider the merits of the claim in the light of the defendant's affidavit.

Claimant's Solicitors: Campbell Law Solicitors, 73 High Street, Newport Pagnell, Buckinghamshire, MK16 8AB
Ref: V5.3

1st & 2nd Defendants Solicitors: The Treasury Solicitor
Ref: Z1205292/JYY/B4