

Neutral Citation Number: [2013] EWCA Civ 1086

Case no: C1/2012/2967

**IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE ADMINISTRATIVE COURT
QUEEN'S BENCH DIVISION
(MR PHILIP MOTT QC)**

Royal Courts of Justice
Strand
London WC2A 2LL
Thursday, 18 July 2013

**B e f o r e:
LORD JUSTICE JACKSON**

**Between:
LUCINDA VOWLES**

Applicant

-and-

SECRETARY OF STATE FOR JUSTICE AND ANOTHER

Respondent

(DAR Transcript of
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**Mr Hugh Southey QC (instructed by Campbell Law Solicitors) appeared on behalf of
the Applicant.**

The Respondent did not appear and was not represented.

J U D G M E N T
(As Approved)

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LORD JUSTICE JACKSON:

1. This is an application for permission to appeal to the Court of Appeal. The facts giving rise to this application are that the applicant is a lady with many previous convictions seemingly related to her mental health. In May 2008 she was convicted of arson and sentenced to Imprisonment for Public Protection with a minimum term specified of 18 months' imprisonment. That minimum term expired in September 2009.

2. On 20 July 2010 the Secretary of State directed that the applicant be transferred to hospital pursuant to sections 47 and 49 of the Mental Health Act 1983. Under these arrangements, the applicant would not be released from detention unless and until both the First-tier Tribunal

(Mental Health) to which I shall refer as "the Tribunal" and the Parole Board deemed it appropriate.

3. On 12 December 2011 the Tribunal decided that the applicant met the criteria for conditional discharge. The Tribunal set out a number of conditions which would need to be satisfied before the applicant was discharged and during any period of discharge. Thereafter, the applicant's case required to be considered by the Parole Board. This involved the preparation and submission to the Parole Board of a dossier. The dossier reached the Parole Board on 29 March 2012. In due course, and after some delays, the Parole Board set up a meeting to consider the applicant's case on 12 March 2013.

4. The factual background of this case is extremely complex, and I do not recite it in this short judgment. Suffice it to say that the applicant commenced proceedings in the Administrative Court against the Secretary of State for Justice and the Parole Board complaining, in essence, about the delays in dealing with her case. The delays which she alleged arose in part from the fact that two different judicial bodies were considering the applicant's position.

5. The claim was brought both against the Secretary of State for Justice and against the Parole Board. The matter was considered by Mr Philip Mott QC, sitting as a Deputy High Court Judge, on 9 July 2012. The deputy judge noted that the Ministry of Justice would set a timetable and that it had fallen behind that timetable. The deputy judge considered that the various delays were not sufficient to establish the applicant's claim. He went on to express the hope that the Parole Board would deal with matters speedily because the applicant was a woman with difficult management problems. She had organic brain injury as well as emotionally unstable personality. He concluded that the delays were not yet of such seriousness as to make out a claim for breach of Article 5(4) of the European Convention on Human Rights, or indeed the other grounds of claim.

6. The applicant now seeks permission to appeal to the Court of Appeal.

7. At this renewed hearing of the application, different counsel represents the applicant, namely Mr Hugh Southey QC. Mr Southey has developed his argument concerning Article 5(4) of the Convention concisely and helpfully. He relies first upon the period between 12 December 2011 and 29 March 2012 when no judicial body was responsible for supervising the progress and the potentiality for release of the applicant. Secondly, he criticises the long period between 29 March 2012 when the dossier reached the Parole Board and 12 March 2013 when the Parole Board met. He contends that there was during both of these periods a breach of Article 5(4) in that the applicant was a person deprived of liberty who was not entitled to challenge the lawfulness of her detention as she should have been under Article 5(4).

8. Mr Southey places reliance on the decision of the European Court of Human Rights in *Mooren v Germany* (Application No 11364/0303); [2010] 50 EHRR 23.

9. I have also been furnished with a helpful note from the Treasury Solicitor on behalf of the Parole Board as to why permission to appeal should not be granted.

10. I have come to the conclusion that formidable arguments are advanced on both sides in this litigation. These issues are not appropriate for resolution in the context of a permission

hearing. In my view, these issues do call for fuller argument than is practicable today when only one side is represented and when only half an hour is available before the Court of Appeal embarks upon its fairly heavy list for today. I am satisfied that the arguments advanced by Mr Southey on behalf of the applicant are of sufficient weight and merit to warrant the grant of permission to appeal. Nevertheless, it is inappropriate for this case to remain in the Court of Appeal. The sensible and efficient way to proceed is for the court to exercise its powers under CPR Rule 52.15. I direct that there be permission to proceed with the application for judicial review.

Order: Application granted, remitted to lower court