



9 October 2013

PRESS SUMMARY

Osborn (Appellant) v The Parole Board (Respondent); Booth (Appellant) v The Parole Board (Respondent) *On appeal from the Court of Appeal [2010] EWCA Civ 1409*

In the matter of an application of James Clyde Reilly for Judicial Review (Northern Ireland) *On appeal from the Northern Ireland Court of Appeal [2011] NICA 6*

[2013] UKSC 61

JUSTICES: Lord Neuberger (President), Lady Hale (Deputy President), Lord Kerr, Lord Clarke, Lord Reed

BACKGROUND TO THE APPEALS

Three prisoners brought appeals concerning the circumstances in which the Parole Board is required to hold an oral hearing.

Osborn was convicted in 2006 following an incident in which he was said to have brandished an imitation firearm at the home of his estranged wife. He was given a six-year prison sentence and was released on licence in February 2009, the halfway point. He was recalled to prison later that day for breach of his licence conditions [18-29]. Booth and Reilly are indeterminate sentence prisoners who have served their minimum terms. In 1981, Booth [30-42] received a discretionary life sentence for attempted murder, with a minimum term of six and a half years. Reilly [43-53] was convicted in 2002 of robbery, attempted robbery and possession of an imitation firearm. He received an automatic life sentence with a minimum term of six years and eight months, which expired in September 2009. Both remain in custody.

Each case was considered on paper by the board's single-member panel. It decided not to direct the prisoners' release or recommend their transfer to open prison conditions. Their solicitors made written representations to the board, disputing its findings and requesting an oral hearing in each case, but those requests were refused.

All three sought judicial reviews of the decisions not to offer oral hearings. Only Reilly succeeded in the High Court, which found that the board had breached its common law duty of fairness, and had acted incompatibly with the appellant's rights under article 5(4) of the European Convention on Human Rights¹ by failing to offer him an oral hearing. This was overturned by the Northern Ireland Court of Appeal.

JUDGMENT

The Supreme Court unanimously allows the appeals and declares that the board breached its common law duty of procedural fairness to the appellants, and article 5(4) of the European Convention, by failing to offer them oral hearings [116].

¹ "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."

REASONS FOR THE JUDGMENT

The judgment, delivered by Lord Reed, emphasises that human rights protection is not a distinct area of the law based on the case law of the European Court, but permeates our legal system. Compliance with article 5(4) requires compliance with the relevant rules of domestic law [54-56]. The legal analysis of the problem does not begin and end with the Strasbourg case law [63].

Lord Reed sets out guidance (summarised at [2]) on complying with common law standards in this context. The board should hold an oral hearing whenever fairness to the prisoner requires one in the light of the facts of the case and the importance of what is at stake [81]. By doing so, it will act compatibly with article 5(4) [103].

It is impossible to define exhaustively the circumstances in which an oral hearing will be necessary, but these will often include: (a) where important facts are in dispute, or where a significant explanation or mitigation is advanced which needs to be heard orally in order fairly to determine its credibility [73-78; 85]; (b) where the board cannot otherwise properly or fairly make an independent assessment of risk, or of how it should be managed and addressed [79; 81; 86]; (c) where it is tenably maintained that a face to face encounter, or questioning of those who have dealt with the prisoner, is necessary to enable his case to be put effectively or to test the views of those who have dealt with him [82]; and (d) where, in the light of the prisoner’s representations, it would be unfair for a “paper” decision taken by a single-member panel to become final without an oral hearing [96].

The purpose of the oral hearing is not only to assist in the board’s decision-making, but also to reflect the prisoner’s legitimate interest in being able to participate in a procedure with important implications for him, where he has something useful to contribute [82]. The likelihood of release or transfer is separate from the question of whether fairness requires an oral hearing [88-89]. When dealing with recalled prisoners’ cases, the board should bear in mind that they have been deprived of their freedom [83]. For indeterminate sentence prisoners, increased scrutiny should be afforded by the board in assessing whether the risk they present is unacceptable the longer they have spent in prison post-tariff [83]. The board must be, and appear to be, independent and impartial [90-91] and guard against any temptation to refuse an oral hearing to save time, trouble and expense [91].

Lord Reed stresses that “paper” decisions are provisional; the right to request an oral hearing is not an “appeal”, and the prisoner need only persuade the board that an oral hearing is appropriate [94-95]. The common law duty to act fairly is influenced by the requirements of article 5(4); compliance with the former should ensure compliance with the latter [101-113]. Breach of article 5(4) will not normally result in an award of damages under the Human Rights Act unless the breach has resulted in the prisoner suffering a deprivation of liberty [114-115].

An oral hearing ought to have been offered to the appellants. Osborn and Reilly had advanced various explanations and mitigations [98] and their requests for an oral hearing were mistakenly characterised as appeals [99-100]. In Booth’s case, input from his psychiatrist at an oral hearing would have been helpful and it was relevant that he had spent so long in custody post-tariff [99]. Reilly’s claim for damages failed – it had not been argued that he had suffered any deprivation of liberty as a result of the article 5(4) breach [115].

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