



**IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER**

Case No: UI-2024-000141
UI-2024-000317

First-tier Tribunal No:
HU/19943/2019

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On 11 July 2024**

Before

**UPPER TRIBUNAL JUDGE SHERIDAN
DEPUTY UPPER TRIBUNAL JUDGE WILDING**

Between

**GNY
(ANONYMITY DIRECTION MADE)**

Appellant

and

**SECRETARY OF STATE FOR THE
HOME DEPARTMENT**

Respondent

Representation:

For the Appellant: Ms J Norman, Counsel, instructed by Sterling & Law Associates LLP

For the Respondent: Mr E Banham, Senior Home Office Presenting Officer

Heard at Field House on 19 April 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. This is an appeal brought by the Secretary of State for the Home Department against the decision of First-tier Tribunal Davison ('the Judge') who allowed the appellant's appeal against the Secretary of State's decision refusing his human rights claim made in response to the respondent's intention to deport him. For ease we refer to the parties as they were before the First-tier Tribunal.

Background

2. The appellant is a national of Sierra Leone, he is currently 44 years old. He arrived in the UK aged 9 in 1989, as a dependent on his mother's student visa. His mother applied for refugee status due to the civil war in Sierra Leone, whilst this application was refused they were granted periods of exceptional leave to remain. The family ultimately were granted indefinite leave to remain on 24 August 2005. The appellant by this time was 25 years old.
3. The appellant has a lengthy criminal record:
 - i. 14 September 2009 he was convicted of theft and sentenced to 12 months imprisonment.
 - ii. 13 March 2017 he was convicted of theft. His sentence was a drug rehabilitation and unpaid work requirement.
 - iii. On 18 May 2017 he was found to have breached his condition discharge conditions following a further conviction for theft. He was sentenced to a community order extended to 15 August 2019.
 - iv. On 17 July 2017 following a further conviction he was sentenced to another community order.
 - v. On 4 August 2017 he was convicted for theft.
 - vi. On 16 August 2017 he was convicted.
 - vii. On 22 August 2017 he was sentenced to 24 weeks imprisonment and given a restraining order for 2 counts of battery.
 - viii. On 19 December 2017 he was convicted of harassment in breach of a restraining order and given an 8 week prison sentence suspended for 12 months.
 - ix. On 16 January 2018 he was convicted of 3 counts of harassment in breach of a restraining order and commission of a further offence during a suspended sentence. He was sentenced to 24 weeks in prison.
 - x. On 24 March 2018 he was convicted of harassment and fined.
 - xi. On 27 November 2018 he was convicted of destroying property and fined.
 - xii. On 13 December 2018 he was convicted of various offences and sentenced to 8 weeks in prison.
 - xiii. On 10 June 2019 he was convicted of various offences and sentenced to 24 weeks imprisonment.

- xiv. On 20 January 2020 he was convicted for failing to surrender to custody.
 - xv. On 16 October 2020 he was convicted of theft and order to pay a fine, costs and a victim surcharge.
 - xvi. On 30 December 2020 he was sentenced to 2 weeks imprisonment and made the subject of a restraining order for.
 - xvii. On 14 April 2021 he was sentenced to 2 weeks imprisonment.
 - xviii. On 13 September 2021 he was convicted for causing grievous bodily harm with intent. He was sentenced to 5 years imprisonment, with an extension to his licence period of a further 2 years due to the necessity for the protection of the public, specifically women.
4. Following the 14 September 2009 conviction the respondent sought his deportation. He was however successful on appeal on 7 October 2010. This was upheld by the Upper Tribunal on 5 November 2011.
5. The respondent sought to commence deportation proceedings in 2019. On 8 July 2019 a deportation order was signed, various representations were made on human rights grounds. They were refused ultimately on 19 November 2019 with a right of appeal.
6. The appeal eventually came before the Judge on 20 October 2023. In a decision promulgated on 17 November 2023 the Judge allowed the appeal. His reasons for doing so, having taken the 2011 decision as his starting point, were:

40. Having reviewed all the evidence with the most anxious scrutiny and with the highest standard of fairness in mind I find that the main driving factors behind the appellant's criminal behaviour were twofold. First there was the abuse that he suffered as a child. In order to repress his feelings he turned to drugs. This in no way excuses his criminal behaviour but I find offers some explanation for it. The second factor is his undiagnosed autism. There are various facets to the appellant's mental health he suffers from anxiety, OCD, and has the recent diagnosis of autism. As explained in the expert evidence these mental health issues many undiagnosed the appellant lived with untreated for many years. I again find this to be no excuse for his behaviour but it does put some context to it.

41. The situation the appellant is in and the likely pattern that his life is to follow upon release from prison is neatly summarised by one of the experts:

'If Mr Y obtains the right social care support, however, and has access to talking therapy and education regarding autism, then I believe his situation has a good chance of improving significantly even in the short term. For example, he may find suitable work, be supported in living independently, have greater social opportunities and have overall less reason to abuse drugs.'

'If support is not provided, Mr Y will likely continue in the familiar cycle that he is currently in. In other words, regular periods in prison that are

used as respite from the stress of living with an unsupported disability outside of prison.'

42. The appellant's mother has not visited him in prison, this was her way of punishing her own son. She indicated to the tribunal as and when he is released from prison she would not welcome him back to her own house. She does not want him associating with any people that he knows in the Reading area. I find therefore that the risk that the appellant poses that needs to be addressed and any problems he would face he would be doing without any family support.

43. The issues in tension in this appeal can be summarised as follows. The appellant has been in the United Kingdom since he was 9 years old, as a victim of childhood abuse he turned to drugs. Whilst using/abusing drugs he has been a menace to society and various partners that he has had. He has quite properly been sentenced to lengthy prison sentences as a result. He has been seen as a danger to society. If he were to leave prison and not receive the support that he needs there is every chance this circle would continue. However, since he has been in prison he has started to address the trauma caused by the abuse and his use of drugs. He asserts that should he be released from prison and be allowed to remain in the UK he would continue to address the underlying causes of his offending behaviour. This tension in the situation needs to be addressed by applying the facts in his case to the appropriate legal thresholds and carrying out the necessary balancing exercises.

...

45. Regarding Article 3 and situation the appellant is likely to find himself in if he were to be deported to Sierra Leone. I find the appellant has no family connections in Sierra Leone, he does not speak Krio, he would not receive the support that he clearly needs to address the mental health issues. Whilst the respondent is correct to highlight that over the years he has resided in the United Kingdom the appellant has resided independently and at times had lawful employment. However, the picture of his work history and offending behaviour shows that he has been unable to maintain work for a reasonable period of time. I find this was down to the chaotic nature of his lifestyle and relationships. Again, whilst emphasising that this in no way excuses his criminal behaviour his undiagnosed and untreated mental health issues together with his own reluctance to address and seek assistance and help with the mental health issues caused by the abuse he suffered as a child led to this situation. As noted he is now in the process of seeking assistance but I find his mental health issues are not fully addressed. As noted in the skeleton argument:

'The CPWD-SL reported considerable discrimination against persons with mental disabilities. Most persons with mental disabilities received no treatment or public services. At the Sierra Leone Psychiatric Hospital in Kissy, the only inpatient psychiatric institution that served persons with mental disabilities, authorities reported only one consulting psychiatrist was available, patients were not provided sufficient food or sanitation facilities, and restraints were primitive and dehumanizing.'

46. *As with the expert evidence summarised above I find without specialist input and support the appellant's prospects are dire. It is clear from the various reports including those from Kent County Council that he requires and receives lots of supervision. I find the evidence on Sierra Leone is that this would not be provided. Without contacts, treatment and support, a basic grasp of the language and an inability to support himself, I find the appellant's likely to find himself destitute, socially ostracised and highly vulnerable. Page 185 of the appellant's bundle describes the situation that the appellant may well find himself in:*

As I note above, he would face an absence of treatment, awareness, and resources. He will be very vulnerable to exploitation, possibly becoming involved in petty crime and being arrested and sent to prison.

He will be alone, in what is now to him basically a foreign country. I do not know how he will support himself.

"If, like many in the diaspora, he has lost his ability to speak Krio, then the consequences would be that he would struggle to converse with those amongst whom he will live. This may jeopardise him, as he will be unable to explain the complexity of his illness and the possible consequences.

The International Labour Organisation report as follows: 'In Sierra Leone, basic infrastructure has been affected by various calamities, from natural disasters to war. With a majority of citizens living in poverty and under severe deficits in terms of access to infrastructure and public services, there is a need to improve social protection systems, especially to cater for basic needs and social services such as health care and education.'

47. *I accept, having reviewed the evidence, that this is an accurate assessment. I find in this vulnerable position the appellant is highly likely to relapse into taking drugs and associated criminal behaviour. As a vulnerable person living on the margins of society it is highly likely he would be arrested and detained. The US State Department report on prisons paints a bleak picture:*

Prison and detention center conditions were harsh and sometimes life threatening due to gross overcrowding, an inefficient justice system, lack of sufficient correctional facilities and personnel, inadequate sanitary conditions, and a lack of proper medical care in prison facilities.

48. *It has to be acknowledged that the appellant's problems are of his own making. He came to the United Kingdom age 9 and was granted status and an opportunity. The previous tribunal granted him yet another opportunity. He has taken neither of these and continued to commit offences. However, considering all these factors together with those set out above and acknowledging the high threshold that exists in these cases are I find the inescapable conclusion is that should the appellant be returned to Sierra Leone the individual facts of his appeal mean that Article 3 would be breached. His appeal is therefore allowed on Article 3 grounds.*

7. The Judge allowed the appeal on Article 3 grounds. He then considered the alternative proposition through the lens of Article 8 and found:

49. If I were wrong in this conclusion I consider the other aspects raised by the representatives. In considering the very compelling circumstances over and above the exceptions (13.2.2). Given my findings as set out above I find this elevated threshold is met the appellant would face more than very significant obstacle should he return. He would have no support, no treatment, no language skills, no means to support himself and given the nature of his mental health issues he would be in an extremely vulnerable position. I find that these circumstances could be described as very compelling over and above the exceptions and so his appeal would stand to be allowed on this ground.

50. Finally, I find that removal would be a disproportionate interference to his Article 8 rights. The appellant has been in the United Kingdom since the age of 9. His criminal record can only be described as appalling, I again remind myself that the previous Tribunal in 2010 saw his appeal being allowed as a last opportunity. He has been here for the majority of his life I find in accordance with the previous Judge that he has socially and culturally integrated into the United Kingdom. I note the points made in the refusal about his racially abusive behaviour in part of his criminal convictions and obviously this would suggest a lack of integration and tolerance. But on balance I find him to be integrated. Again, I do not find that his medical conditions offer an excuse for this behaviour but I do find the lack of treatment he was receiving for his medical needs and the illegal drugs that he was taking at the time do offer an explanation to this behaviour and considering all matters I do find he is socially and culturally integrated,

51. The third part of the test is to balance the factors. The negative factors against him are obvious they are his extensive criminal record which quite rightly was referred to by the respondent as appalling. One offence included a gratuitous attack on a vulnerable female. The positive factors I have outlined above although his family have said again they will support him I place minimal weight on this as that that is the same promise they made to the last Tribunal and they could not uphold this. His mother stated that she has not visited him in prison as she is still seeking to punish him. She stated if he is let out of prison and allowed to remain in the UK she does not want him living in the Reading area where she does. I find she is therefore likely to be of limited assistance in supporting him I accept she will stay in touch on the phone and try and supported financially as much as possible, but it is clear from the reports that the appellant requires a great deal of support. With the counselling that he is to be provided with, the one-to-one support in supported accommodation that has been recommended I am satisfied that the appellant would not be a threat to the public.

52. If he did not get access to the services and receive the relevant treatment that he needs he may well again become a public menace. However, I find I cannot assess this appeal on the basis that the services that have been indicated as necessary to the appellant would not be provided to him. If the services are not provided to him this cannot be seen as the appellant's fault. It is clear from the expert and medical evidence

that has been provided that he requires access to the services to obtain the necessary treatment.

53. The appellant must be under no illusion the Tribunal on the last occasion stated he had this last chance to resolve his issues. I have only resolved this matter in his favour due to the explanations that are now possibly better understood that underlie his criminal behaviour and addiction to drugs. He is now receiving and will hopefully continue to receive ongoing treatment and care for these complex conditions. He has stated that he will engage with the same and confirmed that any courses or any treatment or any therapy that he is offered he will adhere to and observe if and when he is released from prison. As stated, he must be under no illusion that if he doesn't do this and he returns to acts of crime and violence, as he has in the past, he will almost certainly be deported. I accept in those circumstances he would be deported to a country that he knows little about, that he does not speak the language and he has little/ no family or cultural ties. Those factors alone would be insufficient. If he were to leave prison and turn away from the support network that has been placed around him, to try and address the issues that have now been unearthed, that would be his decision and he would bear the consequences of that. He has now, in my finding, taken responsibility for the issues that he has. Whilst of course he was a victim of childhood abuse, he has now confronted this and is seeking to address the same with the help of experts. He has remained drug free in prison for a substantial period of time. Whilst of course minimal weight attaches to this as he is in a controlled environment he stated that drugs were readily available and I find some credit attaches to his avoidance of the same. Off drugs and receiving treatment the outlook for the appellant is positive. Given the time he has resided in the United Kingdom the fact that the abuse he suffered, which I find to be the main cause of all of his issues, happened in the United Kingdom and in balancing all matters as set out above I find for these reasons the appeal is allowed. The public interest in deporting a foreign criminal (117C) is outweighed by the individual factors of this appeal.

8. The respondent was dissatisfied and appealed. In her grounds of appeal she submitted:
 - i. The Judge gave inadequate reasons for finding that the appellant's autism was one of the factors in his offending in relation to his Article 8 analysis.
 - ii. In relation to the Article 8 assessment, the Judge gave inadequate reasons for finding that the abuse he suffered as a child was another driving force behind his offending.
 - iii. In allowing the appeal on Article 3 grounds, the Judge materially erred by failing "to consider and apply the specific standard of proof established by caselaw in appeals involving claimed material deprivation and health issues". The respondent cited Ainte (material deprivation - Art 3 - AM (Zimbabwe)) [2021] UKUT 203 (IAC) and AM (Article 3, health cases) [2022] UKUT 00131 (IAC) to submit that the Judge had failed to apply the correct test to the issues of material deprivation and health on the Appellant's deportation to Sierra Leone.

- iv. In relation to the Article 3 conclusion the Judge failed to take account of the appellant's ability to speak and understand English, one of the official languages of Sierra Leone. Further the Judge's finding on his ability to support himself financially failed to take into account the respondent's facilitated returns scheme, and that he could rely on some financial support from his mother, in addition to his own educational and employment history in the UK.
 - v. The four grounds identified above infected the Judge's assessment of the 'very compelling circumstances' test set out in s117C(6) of the 2002 Act. Further the Judge failed to consider whether there were very compelling circumstances 'over and above' those exceptions found in Exceptions 1 and 2.
 - vi. Finally the Judge materially erred in allowing the appeal outside the rules, in particular the Judge failed to take into account the offender manager's assessment that "*the Appellant represented a high probability of proven reoffending, a high probability of proven non-violent reoffending, a medium probability of proven violent-type reoffending and that - within the community - he represented a high risk of serious harm to the public and known adults and a medium risk to children and staff.*" This was material because the Judge found that the appellant would not be a threat to the public. Secondly, the Judge erred in finding that the appellant had taken responsibility for the issues he has because the appellant pleaded not guilty to the 2021 conviction for which the offender manager described that the appellant had a "*lack of responsibility*" for the offence.
9. Permission to appeal was granted on grounds 1, 2, 5 and 6 initially by First-tier Tribunal Buchanen. The respondent renewed his application to the Upper Tribunal, and Upper Tribunal Judge Kopieczek granted permission to appeal on the remaining two grounds, such that all grounds were before us.

The hearing

10. At the outset of the hearing we outlined our concerns at the challenge of the Secretary of State because it appeared to us that there was no challenge to the Judge's finding as to the appellant's likely incarceration on return, and that that finding seemed to us to lead the Judge to conclude that if the appellant was imprisoned in Sierra Leone then conditions would likely breach his Article 3 rights.
11. Mr Banham relied on the grounds and expanded upon them. We do not set them out here other than to summarise:
- i. There was a challenge to the objectivity of the expert evidence in relation to the diagnosis of autism given the lateness of the diagnosis and as a consequence the Judge failed to apply the principles from HA (expert evidence, mental health) Sri Lanka [2022] UKUT 111 (IAC) in his assessment of the expert evidence.

- ii. There was a failure to apply the AM (Zimbabwe) test to the Article 3 assessment.
 - iii. The Judge failed to factor the public interest into the Article 8 analysis and as such the decision was inadequate.
12. In response Ms Norman relied on her rule 24 submission. Again, we do not capture all the submissions made, but in summary:
 - i. There was no challenge to the diagnosis of autism in any of the case management hearings running up to the final hearing, the review made no submissions as to the diagnosis of autism. The challenge to the report came in submissions, without having previously been raised. In any event the challenge was not on the substance of the diagnosis of his autism.
 - ii. There is no substance to the challenge to the Article 3 challenge because the unchallenged conclusion is that the appellant's deportation would likely lead to him being imprisoned which would breach his Article 3 rights due to prison conditions.
 - iii. The Article 3 case was not a medical case, but one where, given the support needs he has, that he faced a real risk of finding himself in prison in Sierra Leone, on the respondent's own case, and conditions there would breach his Article 3 rights.
13. At the hearing we reserved our decision.

Findings and reasons

14. We have considered the grounds of appeal with care, and in particular have considered the submissions made in relation to the Article 3. We note in particular that the respondent did not seek to amend the grounds of appeal either before the hearing, or at the hearing itself, when we raised with Mr Banham that there did not appear to be any challenge to the conclusion on the findings in relation to the appellant's likelihood of reoffending in Sierra Leone without a support network around him rendering him at risk of being imprisoned.
15. In particular the Judge's finding in relation to the likelihood of the appellant reoffending was not only in keeping with the expert evidence (see paragraph 41) but is in essence the case the respondent advanced as to why he should be deported, i.e. that he is at real risk of recidivism.
16. The Judge expressly finds that:

46...Without contacts, treatment and support, a basic grasp of the language and an inability to support himself, I find the appellant's likely to find himself destitute, socially ostracised and highly vulnerable....

47... I find in this vulnerable position the appellant is highly likely to relapse into taking drugs and associated criminal behaviour. As a vulnerable person living on the margins of society it is highly likely he would be arrested and detained. The US State Department report on prisons paints a bleak picture:

Prison and detention centre conditions were harsh and sometimes life threatening due to gross overcrowding, an inefficient justice system, lack of sufficient correctional facilities and personnel, inadequate sanitary conditions, and a lack of proper medical care in prison facilities.

17. As we set out, there is no challenge to these findings. Nor is there any challenge to the conclusion at paragraph 48:

48. It has to be acknowledged that the appellant's problems are of his own making. He came to the United Kingdom age 9 and was granted status and an opportunity. The previous tribunal granted him yet another opportunity. He has taken neither of these and continued to commit offences. However, considering all these factors together with those set out above and acknowledging the high threshold that exists in these cases I find the inescapable conclusion is that should the appellant be returned to Sierra Leone the individual facts of his appeal mean that Article 3 would be breached. His appeal is therefore allowed on Article 3 grounds.

18. The above is in our view determinative of the appeal before us. The respondent's various challenges are of no material bearing. The challenge in particular in relation to the Article 3 findings misconstrue the basis upon which the Judge allowed the appeal. He did not find this to be a case of material deprivation, or that his medical condition would lead to a breach of his Article 3 rights.
19. The only ground which is capable of getting close to the findings that the Judge came to is how he treated the expert evidence in relation to the appellant's diagnosis of autism. However we are not persuaded that the Judge did anything materially wrong for three central reasons.
20. Firstly, we consider that the ground of appeal is misconceived as to what exactly the respondent's position was. As Ms Norman identifies there is nothing in the materials we have been provided which identifies this as being an issue in the run up to the appeal hearing. Of significance is the order as to the appellant's vulnerability which was not opposed by the respondent, as is the failure to outline in any of the written materials that the expert report diagnosing his autism as being not within the scope, or expertise of the expert. The challenge is just one that the expert was not objective.
21. This is significant because as Ms Norman identified in her written submissions, had the respondent properly raised these issues before the hearing at one of four case management hearings, the appellant could have made arrangements either for the expert(s) to attend the hearing to give live evidence, or request them to comment on the respondent's criticisms. This approach would have been in keeping with that identified in HA, where the Upper Tribunal expressly outline:

(7) Leaving aside the possibility of the parties jointly instructing an expert witness, the filing of an expert report by the appellant in good time before a hearing means that the Secretary of State will be expected to decide, in

each case, whether the contents of the report are agreed. This will require the respondent to examine the report in detail, making any investigation that she may think necessary concerning the author of the report, such as by interrogating the GMC's website for matters pertaining to registration.

22. The Judge's summary of the respondent's submission was not challenged by Mr Banham as being inaccurate or incorrect. We note that the submission of the respondent in relation to the expert as summarised by the Judge is:

33... The extent of the appellant's autism was also questioned. The appellant's educational and work background was highlighted. It was noted he had lived independently for many years holding down jobs and his school reports refer to him as a team player with no developmental issues. The impartiality of the expert evidence provided was also questioned as it was said to be written in a manner that supported the appellant and did not provide balance. Whilst it was accepted that there would be difficulties that possibly amounted to very significant obstacles if the appellant were to be returned to Sierra Leone the facts of the case were said not to amount to "very compelling circumstances over and above the exceptions".

23. The above submission appears to criticise the expert for a lack of objectivity, however there is no obvious challenge to the diagnosis of autism. Indeed, the respondent appears to accept that there would be difficulties which may even amount to a very significant obstacle stemming from what was said about his learning difficulties.

24. Secondly, this expert's report is not the only report in the material before the Judge as to his autism and support needs. In the appellant's bundle were documents from Kent County Council. The first, a MADE Care and Support Plan identifies:

- i. He falls into the service user group "Autism High Functioning"
- ii. That whilst he can meet his own personal hygiene, appropriate clothing, use home safely, managing and maintaining his own nutrition, maintaining a habitable home environment, developing and maintaining family and other relationships, and accessing and engaging in work, training, education or volunteering, he does so without assistance but in doing so "*causes adult significant pain, distress or anxiety*". The same assessment notes that he is "*unable to achieve without assistance*" making use of necessary facilities in the local community.

25. There is then a MADE Care Needs Assessment by Kent County Council which notes that he has a recent diagnosis of autistic spectrum disorder.

26. The Judge places weight on this material at paragraph 46 of his decision.

27. Thirdly, the respondent's positive case is that the appellant is not a reformed character and represents a risk of recidivism. That proposition, factored into the material the appellant was relying on, creates the ultimate factual backdrop that the Judge was assessing.

28. The findings he came to were plainly open for him and, in our judgment there is nothing materially wrong with his approach to the evidence as to the support needs of the appellant, or as to the diagnosis of the appellant's autism. The diagnosis features throughout the documentation relied on by the appellant, and it is not simply the one expert who has raised it.
29. In any event, the ultimate finding which led to the appeal being allowed was the likelihood of the appellant finding himself relapsing into drug taking and criminal behaviour were he to be returned to Sierra Leone. As a result it would be highly likely he would be arrested and detained, the consequences of which would breach his Article 3 rights due to prison conditions.
30. The respondent's lack of any challenge to this conclusion is fatal to her appeal. The Judge did not misapply the Article 3 test in relation to destitution because that was not the case the Judge was answering.
31. We do not need to go on to consider the Article 8 challenge because even if there were any error in that, and we make no observations either way in that regard, it would not be material to the Article 3 conclusions.
32. The appeal is dismissed.

Notice of Decision

The Judge's decision did not contain a material error of law.

The Secretary of State's appeal is dismissed.

Judge T.S. Wilding

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

Date: 9th July 2024