IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)

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IN THE MATTER OF AN APPLICATION BY PAUL NICHOLL FOR JUDICIAL REVIEW

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CARSWELL LCJ

[1] This application for judicial review concerns a short but not insignificant point of construction of the Prison and Young Offenders Centre Rules (Northern Ireland) 1995 (the 1995 Rules). The matter might arguably have been classed as a criminal cause or matter, which would under RSC (NI) Order 53, rule 2 have had to be heard before a Divisional Court, but the parties agreed, pursuant to Order 53 rule 2(6), that the jurisdiction be exercised by a single judge.

[2] The material facts are not in dispute and may be stated shortly. The applicant committed a number of motoring offences, for which he was prosecuted in the magistrates' court, which on 25 April 2002 imposed fines totalling a sum in the region of £2500.00. He was given four weeks to pay the fines.

[3] When the fines remained unpaid the court issued money warrants, pursuant to Article 92 of the Magistrates' Courts (Northern Ireland) Order 1981, committing the appellant to prison for seven days on each charge, to run concurrently. On Thursday 13 June 2002 the warrants were executed and the appellant was arrested by police officers and taken to HM Prison Maghaberry, where he arrived about 12.30 pm. He was released on the morning of Monday 17 June, having been detained for a total of four days, calculating the time from the start to the finish of the period, or five days, if one reckons as a day's imprisonment each of the days when he was in prison for the whole or part of the day.

[4] The appellant claims that he was told in the prison that prisoners were not released on a Sunday. When his solicitors wrote to the prison governor

complaining of the length of time that the appellant had been detained, however, the Prison Service replied stating that he had been required to serve a minimum of five days, which it claimed was mandatory under the 1995 Rules.

[5] The governing provision is Rule 30 of the 1995 Rules, of which paragraphs (1), (2), (6) and (7) are material:

> "(1) A prisoner serving a sentence of imprisonment for an actual term of more than 5 days may, on the ground of his conduct, be granted remission in accordance with the provisions of this rule, but this rule shall not permit the reduction of the actual term to less than 5 days.
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> (2) The remission granted shall not exceed half the total of the actual term and any period spent in custody which is taken into account under section 26(2) of the Treatment of Offenders Act (Northern Ireland) 1968 (which relates to the duration of sentences).
>
> (6) A prisoner who would otherwise be discharged on any of the following days, that is to say –
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> (*a*) a Sunday, Christmas Day, Good Friday;
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> (*b*) a public holiday in Northern Ireland;
>
> (*c*) in the case of a person who is serving a term (as pronounced) of more than 7 days, a Saturday;
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> (*d*) a day on which he would be granted temporary release under rule 27;
>
> may be discharged on the next preceding day which is not one of those days.
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> (7) In this rule 'actual term' means the term of a sentence of imprisonment as reduced by section 26(2) of the Treatment of Offenders Act (Northern Ireland) 1968 and, in the case of a sentence pronounced outside Northern Ireland, any reference to the said section 26(2) includes a reference to any

corresponding provision having effect where the
sentence was pronounced."

[6] It appears probable from comparison of Rule 30 of the 1995 Rules with Rule 25 of the Prison Rules (Northern Ireland) 1954 and Rule 5(1) of the equivalent English provision, the Prison Rules 1964, that it was the intention of those who framed the 1995 Rules that all prisoners must remain in prison for a minimum of five days, whatever the length of the term to which they were sentenced. The difficulty which faces the Prison Service in advancing this proposition under the 1995 Rules is the use of the words "actual term" in Rule 30(1), a term which was introduced in the amended version of Rule 25 of the 1954 Rules substituted by the Prison (Amendment) Rules (Northern Ireland) 1969. It seems to me inescapable from the terms of the definition of the phrase contained in Rule 30(7) of the 1995 Rules that it must refer to the "gross" term of the sentence (before giving credit for remand time), not the "net" term after remission. If the words "actual term" had not been so defined, the Prison Service might have been able to argue that they should be construed as meaning the "net" term, but the fact that the phrase is defined in the same rule makes it impossible to construe it in any way other than as defined by Rule 30(7).

[7] Mr Maguire for the respondent urged that I should interpret the phrase in such a way as to avoid absurdity or a futile or pointless result, the familiar rule of construction set out in Bennion, *Statutory Interpretation*, 4th ed, para 316. In the present case, however, the literal meaning is so clear that there is no room for the application of this approach. As the rule stands, accordingly, it is in my opinion impossible to adopt the construction espoused by the Prison Service, and a prisoner sentenced to seven days' imprisonment will be entitled to be released after half that time has elapsed and will not have to remain in prison for five days.

[8] It must follow that the applicant was detained in prison beyond the time at which he should have been released. If a prisoner's due date for release falls on a Sunday, he may under Rule 30(6) be released on the previous day. What is in my opinion clear is that he cannot properly be detained until the Monday.

[9] I propose accordingly to make a declaration that the applicant's detention until Monday 17 June 2002 was unlawful. I shall not grant any other redress at this stage, but I shall adjourn the case for further consideration of this issue in due course if required.