

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)

McManus' (Stephen) Application [2014] NIQB 105

IN THE MATTER OF AN APPLICATION BY STEPHEN McMANUS FOR
JUDICIAL REVIEW

STEPHENS J

[1] This is an application for leave to apply for judicial review in respect of a decision by the prison authorities not to grant compassionate temporary release to the applicant to enable him to attend the funeral of his uncle. That funeral is to take place on Monday 11 August 2014. It was to take place today and then it was postponed until tomorrow. It has been further postponed until Monday. The application came into my list as an emergency this afternoon and I now proceed to give this ex tempore judgment.

[2] In my judgment in *Marion McGlinchey's Application* [2013] NIQB 5 at paragraphs [18] to [22] I set out the legal principles in relation to applications of this nature. I incorporate those paragraphs as part of this judgment.

[3] The applicant asserts that he was brought up by his uncle who acted as his father. Accordingly that the applicant should have been granted temporary compassionate release under the policy operated by the Prison Service. That policy recognises the emotional attachment to not only a natural parent but also to a person *in loco parentis*. If that contention fails then in the alternative the applicant contends that the nature of family rights is triangular or multi-faceted. That the Prison Service failed to take into account or give adequate weight to the applicant's family relationship with his father and with his mother. They have suffered a tragic bereavement. They wish to be consoled and accommodated by their son, the applicant, during the course of what is an extremely distressing time for the entire family. The applicant wishes to support his parents. So it is contended and I agree, that when one is thinking in terms of family life and family obligations they must not just be confined to the position as between the applicant and his uncle but rather

they extend to a consideration of the inter relationship between all the family members. Family life is multi-faceted.

[4] The first issue to be addressed involves a number of factual questions as to the relationship between the applicant and his uncle. Was the applicant in effect brought up by his uncle? Did the applicant treat his uncle as his father? Did the applicant's uncle treat the applicant, in effect, as his son? Was there what the Prison Service call an *in loco parentis* relationship as between the applicant and his uncle?

[5] Before addressing those factual questions I would emphasise what Lady Hale of Richmond stated in *Re G (Children)* [2006] 2 FLR 629. In her speech Lady Hale identified three ways in which a person may be or become a natural parent of a child each of which may be a very significant factor in the child's welfare, depending upon the circumstances of the particular case. The first is genetic parenthood: the provision of the gametes which produce the child. The second is gestational parenthood: the conceiving and bearing of the child. The third is what is termed social and psychological parenthood. A social or psychological parent is one who on a continuous day-to-day basis through interaction, companionship, interplay and mutuality fulfils the child's psychological needs for a parent as well as the child's physical needs. The psychological parent may be a biological, adoptive, foster or common law parent. So in this case there is absolutely no doubt that the applicant's uncle could, depending on the facts, be the applicant's social or psychological parent. If he was then that would be a very compelling factor to be taken into account and indeed it is recognised in the prison service's own policy which refers, in somewhat dated language, to *in loco parentis*.

[6] I return to the factual questions. I start by stating that there is in the papers a suggestion that the Prison Service were doubtful about the reliability of the applicant. A comment is recorded that "Staff in wing advise that he knows how to work the system in his favour." The question is, and remains did the Prison Service, and does this court, have sufficient evidence to establish on the balance of probabilities that the applicant's uncle was his social or psychological parent? Unfortunately I consider that there was insufficient evidence and that there still remains insufficient evidence. Unusually for a judicial review application the applicant's father, Mr Michael McManus, gave oral evidence given the urgency of the situation. In assessing his evidence I give latitude to him for the circumstances in which he finds himself. I recognise that it is an extremely difficult time for him but unfortunately despite that latitude I had great difficulty in following his evidence or of making any sense of it. I found it wholly inadequate to establish the proposition that Stephen McManus, the applicant, was the social or psychological son of Daniel McManus, the deceased.

[7] I come to that conclusion not only on the basis of my assessment of Michael McManus but also on the basis that there was a conflict between what Michael McManus told his general practitioner and what he told me. Furthermore the pre-sentence report which was prepared in relation to the applicant states that he had "a

settled and stable upbringing.” It describes a close family network. It states that there is no evidence of significant childhood trauma, except for one unfortunate unconnected incident. The pre-sentence report flies in the face of the proposition that the applicant’s parents were unable to bring him up and that he had to live with and be brought up by, his uncle. If the applicant’s childhood was disrupted in the way that he has alleged then I would have expected that to have been contained in the pre-sentence report. Nothing of that nature comes across from a reading of the pre-sentence report. Accordingly, I determine that issue against the applicant and I rule that there is no evidence of social or psychological parenthood being carried on by the uncle in respect of the applicant.

[8] The next aspect of the case that requires to be considered is the death of an uncle and the need for the applicant to console his close family members at a funeral. I have no doubt whatsoever that that calls for a considerable degree of compassion. Indeed one would wish, insofar as is possible, to facilitate the attendance of the applicant at his uncle’s funeral in such circumstances which affect individuals’ at the most basic level of their humanity. At this stage one should leave out of account any adverse impression formed about the reliability of the applicant’s evidence. However the decision is a decision for the Prison Service and they are obliged to consider the application in context. There are numerous aspects to that context both personal to the applicant and also all the legitimate aims in a democratic society involved in the imposition of a sentence. All the aspects of the context in this case have been taken into account but which I will not set out in this short judgment. One aspect of the context is that the facts of the crime for which the applicant is serving his sentence is that he killed an individual in a road traffic accident. Part of the purpose of the deprivation of liberty is to demonstrate to the close relatives of victims of this *type* of crime that their grief and their enduring loss are taken extremely seriously. That is a demonstration not only to the close relatives of this particular victim but also to the close relatives of the victims of other similar crimes. A balance has to be struck by the Prison Service. My role is limited. There is a degree of latitude and a margin of appreciation given to the balance as struck by the Prison Service. In circumstances where the element of compassion is recognised and taken into account by the Prison Service and it is then balanced against the legitimate aims in a democratic society involved in the imposition of a sentence I consider that there is insufficient to justify leave being granted in this case.

[9] I dismiss the application for leave to apply for judicial review.