

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)

Murphy's (Michael) Application [2011] NIQB 91

IN THE MATTER OF AN APPLICATION BY MICHAEL MURPHY FOR  
JUDICIAL REVIEW

AND IN THE MATTER OF A DECISION OF THE NORTHERN IRELAND  
PRISON SERVICE

Before: Morgan LCJ, Higgins LJ and Treacy J

**MORGAN LCJ**

[1] This is an application to quash a decision of the Northern Ireland Prison Service by which it calculated the applicant's earliest date of release as 23 November 2011. We heard the application on 20 April 2011 as an emergency application by reason of the fact that the applicant claimed that he fell to be released from custody on 8 April 2011. At the hearing we granted the applicant interim relief and ordered his release.

**Background**

[2] On 24 October 2008 the applicant was sentenced to twenty four months imprisonment at Plymouth Crown Court for aggravated burglary and aggravated vehicle taking. On 4 February 2009 he was released on a standard licence with an expiry date of 15 January 2010. On 8 April 2009 he was arrested on suspicion of having committed aggravated burglary in Belfast. He was held in police custody initially and thereafter was committed to Hydebank YOC on 11 April 2009 as a remand prisoner.

[3] On 24 April 2009 the Secretary of State for Justice revoked the applicant's licence on the recommendation of the English Parole Board pursuant to Section 254 of the Criminal Justice Act 2003 (the 2003 Act). By virtue of Section 254(6) of the 2003

Act the effect of the revocation of the licence was that the applicant was liable to be detained and was to be treated as being unlawfully at large. The provisions of the legislation extended only to England and Wales.

[4] On 10 December 2009 the applicant was sentenced to a determinate custodial sentence of two years detention and three years on licence in respect of the offence of aggravated burglary on 8 April 2009. The applicant contended that he was entitled to have taken into account the period from 8 April 2009 until 10 December 2009 when he was on remand in the calculation of his release date for that offence. If correct it is submitted that this results in a release of 8 April 2011. The Northern Ireland Prison Service contend that the period between 24 April 2009 and 10 December 2009 was a period during which the applicant was detained inter alia on foot of the revocation of his licence by the Secretary of State for Justice. If that submission is correct the applicant is not entitled to have the period between 24 April 2009 and 10 December 2009 treated as a relevant period under Section 26(2A) of the Treatment of Offenders Act (Northern Ireland) 1968 because it was not a period when he was in custody by reason only of having been committed to custody by an order of a court made in connection with proceedings relating to the sentence which was passed on him.

[5] It is common case that upon the revocation of his licence on 24 April 2009 the effect of Section 254(6) of the Criminal Justice Act 2003 was that the applicant was to be treated as being unlawfully at large for the purposes of the authorities in England and Wales. By virtue of Section 49(1) of the Prison Act 1952 he was liable to be arrested by a constable without warrant and taken to the place at which he was required to be detained. Paragraph 17(1) of Schedule 1 of the Crime (Sentences) Act 1997 provides that Section 49(1) of the Prison Act 1952 shall extend throughout the United Kingdom in relation to the arrest and return of prisoners and other persons unlawfully at large. By virtue of paragraph 17(2) the reference to a constable includes a reference to any person being a constable under the law of any part of the United Kingdom. It is plain, therefore, that on or after 24 April 2009 the applicant was liable to be arrested by a constable in this jurisdiction pursuant to Section 49(1) of the 1952 Act in order to return him to the place where he was to be detained. It is, however, common case that no such arrest took place at any time between 24 April 2009 and 10 December 2009. We consider, therefore, that prima facie the applicant remained unlawfully at large so far as the authorities in England and Wales were concerned despite the fact that he was detained on remand in the Young Offenders' Centre in relation to offences committed in Northern Ireland.

[6] Upon his sentencing on 10 December 2009 the applicant's detention was affected by paragraph 17(5)(a) of the Crime (Sentences) Act 1997.

“Where a person who, having been sentenced to imprisonment, is unlawfully at large during any period during which he is liable to be

detained in a prison in any part of the United Kingdom is sentenced to imprisonment by a court in another part of the United Kingdom-

(a) the provisions of Part II of this Schedule relating to the treatment of persons transferred under sub-paragraph (1)(b) of paragraph 1 above shall apply to him, while he remains in that other part of the United Kingdom, as if he had been transferred there under that sub-paragraph immediately before he was so sentenced;“

[7] It is apparent that the trigger for the operation of this sub-paragraph is the imposition of a sentence of imprisonment. Upon the imposition of the sentence in this case the effect of this sub-paragraph was that the applicant was serving both the sentence that was imposed on him on 10 December 2009 and the remainder of the licence period which he was required to serve. Paragraph 17(6) of Schedule 1 expressly provides that where the prisoner is serving such a sentence the period during which he is detained counts also towards satisfaction of the period in respect of which he was unlawfully at large.

[8] We do not accept that paragraph 17(5) can be read so as to make any period on remand prior to the imposition of the sentence a period during which the applicant was detained by reason of being unlawfully at large. Unlike Section 26 of Treatment of Offenders Act (Northern Ireland) 1968 which does not allow double counting in relation to remand time the policy of paragraph 17 of Schedule 1 of the Crime (Sentences) Act 1997 is to allow a period of imprisonment to count towards both the satisfaction of any sentence imposed and of any outstanding period during which a person was unlawfully at large. This may seem anomalous but it seems to us that no other conclusion could be drawn from these provisions.

## **Conclusion**

[9] In light of our analysis of the relevant provisions there is no dispute that the period of the custodial sentence and the period during which the applicant was required to be detained by reason of being unlawfully at large has now expired. In those circumstances we quash the determination that the applicant’s earliest date of release is 23 November 2011. If the applicant has any claim by way of damages for false imprisonment he should pursue that by way of action.