



1 May 2013

PRESS SUMMARY

R (on the application of Faulkner) (Respondent and Cross-Appellant) v The Secretary of State for Justice and another (Appellants and Cross-Respondents)

R (on the application of Sturnham) (Appellant) v the Parole Board of England and Wales and another (Respondents) [2013] UKSC 23

On appeal from: [2011] EWCA Civ 349; [2012] EWCA Civ 452

JUSTICES: Lord Neuberger (President), Lord Mance, Lord Kerr, Lord Reed and Lord Carnwath

BACKGROUND TO THE APPEALS

These appeals concern the circumstances in which a prisoner serving a life sentence or an indeterminate sentence of imprisonment for public protection (“IPP”), who has served the minimum period specified for the purposes of retribution and deterrence (the “tariff”), and whose further detention is justified only if it is necessary for the protection of the public, should be awarded damages for delay in reviewing the need for further detention following the expiry of the tariff. They are also concerned with the quantum of such damages.

Since 1997, legislation has required judges to impose life sentences on a wider range of offenders than was previously the case. In addition, IPPs were introduced in April 2005. It is for the Parole Board of England and Wales (“the Board”) to decide whether to direct the release of a life or IPP prisoner whose tariff has expired. The prisoner’s case must first be referred to the Board by the Secretary of State for Justice (“the Secretary of State”). The increase in the number of life prisoners and the introduction of IPP sentences resulted in an increase in the Board’s workload, but its resources were not increased. This resulted in delay in the consideration of post-tariff prisoners’ cases. That delay has implications under the Human Rights Act 1998 (“the 1998 Act”), which gives effect to Article 5 of the European Convention on Human Rights (“the Convention”). Article 5(1) requires that detention must throughout its duration remain causally connected to the objectives of the sentencing court. In relation to post-tariff prisoners, that objective is the protection of the public. In order to comply with Article 5(4), the Board has to review the necessity for the continued detention of post-tariff prisoners “speedily” upon the expiry of their tariff and at reasonable intervals thereafter. The 1998 Act also provides that the remedies for a violation of a Convention right include damages.

Mr Faulkner was sentenced in 2001 to life imprisonment for a second offence involving grievous bodily harm. Mr Sturnham was convicted of manslaughter in 2007 and given an IPP sentence. In each case, there was a delay in the holding of a hearing before the Board after the tariff had expired, due to administrative errors for which the Secretary of State was responsible. Both men were eventually released following Board hearings, but Mr Faulkner was twice recalled to prison in respect of allegations of which he was acquitted, and remains in custody.

Each sought judicial review of the failure by the Board and the Secretary of State to conduct a review of his detention “speedily”, as required by Article 5(4). Mr Faulkner was unsuccessful in the High Court, but the Court of Appeal held that the Secretary of State had breached Article 5(4), that Mr Faulkner would have been released 10 months earlier than he was but for that breach, and that the Secretary of State should therefore pay him £10,000 in damages. In Mr Sturnham’s case, the High Court held that there had been a breach of Article 5(4) due to a delay of 6 months, that he had been caused anxiety and distress by the delay, but that there was no prospect that he would have been released any earlier had the hearing taken place speedily. The Secretary of State was ordered to pay him £300, but that award was quashed by the Court of Appeal. In Mr Faulkner’s case, the Board appeals to the Supreme Court on the ground that the award of damages was excessive. Mr Faulkner cross-appeals on the ground that the award was inadequate and that his imprisonment during the period of

delay constituted false imprisonment at common law or a violation of Article 5(1). Mr Sturnham seeks permission to appeal against the Court of Appeal's decision to quash the award of damages to him.

JUDGMENT

The Supreme Court allows the Board's appeal in Mr Faulkner's case, reduces the damages awarded to him to £6,500, and dismisses his cross-appeal. The Court grants Mr Sturnham permission to appeal and allows his appeal. Lord Reed gives the lead judgment, with which Lord Neuberger, Lord Mance and Lord Kerr agree. Lord Carnwath delivers a concurring judgment with which Lord Mance agrees.

REASONS FOR THE JUDGMENT

- Mr Faulkner's argument that the detention of a life prisoner constitutes false imprisonment if it continues beyond the point at which the prisoner would have been released if a hearing had been held in accordance with Article 5(4) must be rejected. That detention is still authorised by statute, and is therefore lawful until the Board directs release [16, 86]. Nor was Mr Faulkner the victim of a violation of Article 5(1). Such a violation requires exceptional circumstances warranting the conclusion that continued detention has become arbitrary, which were not present in Mr Faulkner's case [17-23, 86].
- On the question of the award of damages under the 1998 Act, the courts should be guided primarily by the principles applied by the ECtHR, which may be inferred from any clear and consistent practice of that court. The quantum of such awards should broadly reflect the level of awards made by the ECtHR in comparable cases brought by applicants from the UK or other countries with a similar cost of living [39]. The courts should resolve disputed issues of fact in the usual way even if the ECtHR in similar circumstances, due to the nature of its role, would not do so [39, 82].
- Where it is established on the balance of probabilities that a violation of Article 5(4) has prolonged the detention of a prisoner past the point at which he would otherwise have been released, damages should ordinarily be awarded. The amount of such damages will be a matter of judgment, reflecting the facts of the case and having regard to guidance from the ECtHR and the national courts in comparable cases [75]. Pecuniary losses should be compensated in full [53, 70]. Though relevant in some circumstances, it will not ordinarily be appropriate to take into account as a mitigating factor that a claimant was recalled to prison following his eventual release [83]. Nor should damages be awarded merely for the loss of a chance of earlier release [82], or adjusted according to the degree of probability of release if the violation of Article 5(4) had not occurred [84].
- Appellate courts do not ordinarily interfere with an award of damages simply because they would have awarded a different figure if they had tried the case. However, as the Court is in this case being asked to give guidance on the appropriate level of awards, and having regard to awards made by the ECtHR in other cases and to the fact that the liberty enjoyed by a person released on licence is precarious and conditional, the Court considers that an award of £6500 would adequately compensate Mr Faulkner [87].
- Even where it is not established that an earlier hearing would have resulted in earlier release, there is a strong presumption that delay which violated Article 5(4) has caused the prisoner frustration and anxiety. Where such a presumption is not rebutted, an award of damages should be made, though on a modest scale [53, 67-68]. No such award should be made in cases where the frustration and anxiety were insufficiently severe to warrant an award, although that is unlikely to be the case where the delay was of around three months or more [66]. Following that approach, and having regard to ECtHR authorities, the award of £300 to Mr Sturnham was reasonable in his case [97].
- Lord Carnwath concurs with the reasoning and conclusions in Lord Reed's judgment, but suggests a more selective approach to ECtHR authorities. He suggests focusing on those cases which explicitly decide points of principle, and eschewing those which are simply assessments of the facts [104-127].

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