



Press Summary

7 February 2024

In the matter of an application by Stephen Hilland for Judicial Review (Appellant) (Northern Ireland)

[2024] UKSC 4

On appeal from [2021] NICA 68

Justices: Lord Lloyd-Jones, Lord Briggs, Lord Sales, Lord Burrows, Lord Stephens

Background to the Appeal

This appeal concerns the practice adopted by the Offender Recall Unit (“**the ORU**”) of the Department of Justice relating to the revocation of a prisoner’s licence and their recall to prison. The appellant had been sentenced to two consecutive 12-month determinate custodial sentences (each a “**DCS**”). Shortly after his automatic release on licence the appellant was arrested and, following the recommendation of a Parole Commissioner, the Department of Justice revoked the appellant’s licence and recalled him to prison. The different categories of sentences and their corresponding licencing and recall regimes are established by the Criminal Justice (Northern Ireland) Order 2008 (“**the 2008 Order**”).

The appellant brought judicial review proceedings in the High Court challenging the decision to revoke his licence and recall him to prison. He argued that there was unjustifiable discrimination between DCS prisoners on the one hand and two other categories of prisoners – those serving indeterminate custodial sentences (“**ICS**”) and those serving extended custodial sentences (“**ECS**”) – on the other, because a significant element of the ORU’s practice (as informed by the Parole Commissioner’s guidance and the recall provisions set out in section 28 of the 2008 Order) is to recall DCS prisoners if considered necessary for the protection of the public from *harm* whereas the practice in

respect of ICS and ECS prisoners is to recall if considered necessary for the protection of the public from *serious harm*. He argued that this constituted a breach of article 14 (concerning discrimination) of the European Convention on Human Rights (the “**Convention**”), taken together with article 5 (concerning the right to liberty). The High Court dismissed the claim on the basis that DCS prisoners on the one hand and ICS and ECS prisoners on the other are not in an analogous (i.e. comparable) situation (a necessary element of any article 14 claim) and in any event any difference in treatment was objectively justified. The Court of Appeal dismissed the appellant’s appeal.

Judgment

The Supreme Court unanimously dismisses the appeal. It holds that the ORU’s practice in relation to revocation and recall does not breach article 14 of the Convention. Lord Stephens gives the leading judgment, with which Lord Lloyd-Jones, Lord Briggs, Lord Sales and Lord Burrows agree.

Reasons for the Judgment

For the appellant to succeed in arguing that the practice relating to recall and revocation unjustifiably discriminates against him, he would need to establish the four elements identified by Lady Black in *R (Stott) v Secretary of State for Justice* [2018] UKSC 59, [2020] AC 51 [11]. The appellant satisfied the first and second of those elements: first, that the circumstances must fall within the ambit of a Convention right and second, that the difference in treatment was on the basis of one of the recognised characteristics required to bring an article 14 claim. This appeal was concerned with the third and fourth elements of that test: that the claimant and the person who has been treated differently are in analogous situations (the third element) and that there is no objective justification for the different treatment (the fourth element).

The appellant argued that the lower courts in this case were wrong not to address the fourth element before the third element. The Supreme Court held that although some cases suggested that it may be best to look at justification before addressing analogous situations, it remains a matter for the court’s discretion to decide which of those elements to look at first [111]-[115]. This ground of appeal was therefore dismissed.

The Supreme Court held that in considering whether the other prisoners are in an analogous situation to DCS prisoners, the sentencing regimes must be viewed as whole entities, each with its own particular, different, mix of ingredients, designed for a particular set of circumstances [137]. Based on a review of the statutory provisions concerning DCS, ICS, ECS, mandatory and discretionary life sentences [59-108], the Supreme Court concluded that each

sentence has its own detailed set of rules, dictating when it can be imposed and how it operates in practice, the revocation of the prisoner's licence and recall to prison being part and parcel of the rules [137]. Accordingly, the Supreme Court concluded that the regimes applying to DCS prisoners are not analogous to the regimes applying to ECS and ICS prisoners and it dismissed this ground of appeal. The difference in relation to revocation and recall simply represents another facet of the overall different regimes [140]. On the appellant's proposed approach of recalling only where there is a risk of *serious harm*, DCS prisoners would ordinarily never be recalled because they tend not to present a risk of serious harm [140].

In relation to the fourth element, the Supreme Court observed that objective justification is to be judged in the wider context of considering each of the sentencing regimes holistically [142]. The aim being pursued by the different sentencing regimes is to cater for different combinations of offending and risk in appropriate ways. The Supreme Court found that this is a legitimate aim and that the means are proportionate because: (1) the revocation and recall practice reflects the characteristic of a DCS prisoner as ordinarily not presenting a risk of serious harm [145]; (2) the overall arrangements in respect of the different prisoners correspond to the scale of seriousness of each sentence [146]; and (3) the ORU and the Parole Commissioners are well within the discretion afforded to them to strike a balance between the interests of public protection and the interests of the individual prisoner [147]. Accordingly, this ground of appeal was dismissed.

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: [Decided cases - The Supreme Court](#)