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*Judgment: approved by the Court for handing down
(subject to editorial corrections)**

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IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)

Ryan Turley's application

**IN THE MATTER OF AN APPLICATION BY RYAN TURLEY FOR
JUDICIAL REVIEW**

Before: Stephens LJ, McCloskey J and Keegan J

STEPHENS LJ (giving the judgment of the court)

Introduction

[1] On 24 April 2012 at Downpatrick Crown Court Ryan Turley ("the Applicant") pleaded guilty to and was convicted of the offence of sexual activity with a child, contrary to Article 16 of the Sexual Offences (Northern Ireland) Order 2008. On 22 May 2012 a community service order comprising 120 hours was imposed but on 23 November 2012 the Applicant having breached that order, a sentence of 15 months imprisonment was imposed, comprising 3 months in custody and 12 months on licence. In this application, which is proceeding by way of a rolled-up hearing, the Applicant challenges the decision of the Chief Constable of the Police Service of Northern Ireland ("the Chief Constable") that the relevant notification period under Section 82 of the Sexual Offences Act 2003 ("the 2003 Act") is 10 years which is the period applicable to the sentence of imprisonment imposed on 23 November 2012. The Applicant contends that the relevant notification period is 5 years which is the period applicable to the earlier community service order imposed on 22 May 2012.

[2] Stuart Magee appeared on behalf of the Applicant. Ms Best appeared on behalf of the Chief Constable and Mr Henry appeared on behalf of the Public Prosecution Service.

Factual Background

[3] We have set out the fact of the Applicant's conviction and the sequence of events in relation to the sentences which were imposed in relation to that conviction.

[4] At the time of the imposition of the community service order on 22 May 2012 the Applicant was informed that he would be subject to the notification requirements under the 2003 Act for a period of 5 years.

[5] The entry in the Applicant's criminal record for 22 May 2012 records that there was to be "sex offender registration" for a period of 5 years. The entry in the criminal record for 23 November 2012 records the period of imprisonment but does not refer to sex offender registration so that the only reference to the period of registration on the Applicant's criminal record is that made in relation to 22 May 2012 which is for a period of 5 years.

[6] The Applicant has been subjected to a number of prosecutions for failing to notify the police of a change in his address within the time prescribed by Section 84 of the 2003 Act. On each occasion that he has been prosecuted the depositions supplied by the police have referred to the notification period as being 5 years. The most recent of these police statements was made on 30 March 2017.

[7] We accept that after 23 November 2012 the Applicant was not informed that the notification period was 10 years but rather that he continued to be informed that it was 5 years.

[8] On 18 April 2017, nearly 5 years after his conviction on 24 April 2012, the Applicant informed his designated risk manager, Constable Dickson that he believed that the notification period was soon to expire. This led to the police contacting the Public Prosecution Service and the Applicant's case being listed on 24 May 2017 before HHJ Grant at Downpatrick Crown Court sitting at Laganside Courthouse. We have been provided with a transcript of that hearing and, correctly, the learned judge stated that the notification period was a matter of "statutory imposition" so that there was no question of making any order as to the duration of the notification period. We would add that as it is a matter of statutory construction there was no question of any order as to the notification requirements or the notification period having been made on either 22 May 2012, when the community service order was imposed, or on 23 November 2012, when the sentence of imprisonment was imposed.

[9] After the hearing on 24 May 2017 the approach taken by the Chief Constable to the statutory construction of Section 82 of the 2003 Act was that the relevant notification period for the Applicant was 10 years. It is that approach which the Applicant challenges in these proceedings.

The statutory provisions

[10] Section 80(1) of the 2003 Act provides that “a person is subject to the notification requirements ... for the period set out in Section 82 (“the notification period”) if: (a) he is convicted of an offence listed in Schedule 3; (b) ...” The offence of which the Applicant was convicted is listed in Schedule 3. It can be seen that by virtue of Section 82 the *notification requirements* are automatic following a conviction for a qualifying sexual offence so that the requirements are as a result of the operation of the 2003 Act rather than being imposed by an order of the court.

[11] The *notification period* is also a result of the operation of the 2003 Act rather than being imposed by an order of the court. Section 82(1) provides for differing notification periods depending on descriptions of the relevant offender by reference to, for instance, the sentence imposed. There are a number of descriptions but only two are relevant to this case. The first relevant category relates to “a person who, in respect of the offence, is or has been sentenced to imprisonment for a term of more than 6 months but less than 30 months.” The notification period in relation to such a person is 10 years. The second relevant category comes at the end of section 82(1) which relates to “a person of any other description.” This category includes a person who, in respect of the offence, is or has been sentenced to a community service order. The notification period in relation to such a person is 5 years.

Discussion

[12] It was submitted on behalf of the Chief Constable that there has been no decision made by him which would be amenable to judicial review as the notification requirements and the notification period flow automatically from the Applicant’s conviction. We consider that the fact that the consequences are automatic does not prevent a decision having been made by the Chief Constable as it is clear that the Chief Constable has construed Section 82 of the 2003 Act as requiring a notification period of 10 years. The decision of the Chief Constable is as to the construction of Section 82 which is a decision of substance rather than form and is amenable to judicial review; see *R(Minter) v Chief Constable of Hampshire Constabulary* [2013] EWCA Civ 697.

[13] It was submitted on behalf of the Applicant that the original certificate of conviction which records the notification period as 5 years is by virtue of Section 92 of the 2003 Act to be taken as evidence of the facts contained within it for the purposes of notification under Part II of the 2003 Act. It is correct that the certificate of conviction did refer to a 5 year notification period but that certificate under Section 92 is evidence only as to the date of his conviction and that the offence is an offence listed in Schedule 3. It is not by virtue of Section 92 evidence of the notification period. We do not accept the submission on behalf of the Applicant that by virtue of Section 92 the certificate of conviction is evidence of the duration of the notification period, let alone that it is binding evidence of that period.

[14] The two sentences which were imposed on the Applicant resulted in differing notification periods. The community service order results in a period of 5 years and the 15 months' term of imprisonment results in a period of 10 years. However, the Applicant failed to comply with the terms of the community service order and by virtue of paragraph 4(1)(d) of Schedule 2 of the Criminal Justice (Northern Ireland) Order 1996 the Crown Court had power to *revoke* the community service order and to "deal with him, for the offence in respect of which the order was made in any manner in which it could deal with him if he had just been convicted by or before the court of the offence." It is clear that on 23 November 2012 the Crown Court did *revoke* the original community service order and then imposed a 15 month sentence of imprisonment for the offence under Article 16 of the Sexual Offences (Northern Ireland) Order 2008. The impact is that there is no longer any community service order and the Applicant falls squarely within section 82(1) of the 2003 Act as "a person who, in respect of the offence, is or has been sentenced to imprisonment for a term of more than 6 months but less than 30 months." This means that the notification period is 10 years and that the statutory construction adopted by the Chief Constable is plainly correct.

[15] We illustrate the operation of this construction of Section 82 by reference to the position on an appeal against sentence or on a reference to the Court of Appeal in relation to a sentence. In this case the sentence originally imposed on the offender was superseded by the revocation of a community service order and by the imposition of a term of imprisonment. On an appeal a sentence can be varied and the sentence as varied will determine the appropriate notification period. For instance if the Court of Appeal reduced an offender's sentence from say 15 months' imprisonment to a community service order then automatically the notification period would also be reduced from 10 years to 5 years. The same automatic impact would occur if the Court of Appeal increased a sentence under a reference.

Conclusion

[16] We dismiss the application for judicial review. We will hear counsel in relation to costs.