



**APPEAL COURT, HIGH COURT OF JUSTICIARY**

**[2019] HCJAC 89  
HCA/2018/000157/XC**

Lord Justice General  
Lord Brodie  
Lord Turnbull

**OPINION OF THE COURT**

delivered by LORD CARLOWAY, the LORD JUSTICE GENERAL

in

**NOTE OF APPEAL AGAINST CONVICTION**

by

**WILLIAN MCKENZIE NEWLAND STABLES**

Appellant

against

**HER MAJESTY'S ADVOCATE**

Respondent

**Appellant: CM Mitchell QC; Faculty Appeals Unit (for George Mathers & Co, Aberdeen)**

**Respondent: P Kearney AD (sol adv); the Crown Agent**

21 November 2019

**Statutory provisions**

[1] Section 104 of the Sexual Offences Act 2003 provides that a court may make a Sexual Offences Prevention Order where a person has been convicted of certain sexual offences and the court is satisfied that his behaviour makes it necessary to make such an order for the purpose of protecting the public from serious sexual harm. Section 105 provides that the

Chief Constable may apply for a SOPO by summary application (ie civil process) to the sheriff. In terms of section 107, a SOPO prohibits its subject from doing anything which is described in the order and:

“Has effect for a fixed period (not less than 5 years) specified in the order or until further order”.

Section 108 provides that a person, to whom a SOPO applies, can apply to the sheriff for an order varying, renewing or discharging the SOPO. The application is again by summary application (s 112). A person commits an offence if, without reasonable excuse, he does anything which he is prohibited from doing by the SOPO (s 113).

[2] In January 2002 the appellant, who is now aged 79, was convicted of two charges of contravening sections 5(3) and 6 of the Criminal Law (Consolidation) (Scotland) Act 1995 (sexual intercourse with a girl under 16 and indecent behaviour towards a girl aged between 12 and 16). He was also convicted of rape. He was sentenced to 2 years on the statutory charges and 10 years on the rape.

[3] On 1 October 2008, prior to his anticipated release from custody, an application was made by the Chief Constable to the sheriff at Aberdeen requesting a SOPO, which prohibited the appellant from, amongst other things, entering or loitering in or around any children’s play area. The application, which would have been served on the appellant, asked for it to be applicable until further orders of the court. The order, which was made without opposition, made no mention of duration.

[4] From 2010 to 2017 the appellant was convicted of breaching the SOPO on four occasions and was sentenced to periods of imprisonment. In relation to the present proceedings, he was indicted to a first diet on 3 January 2019 on a further four charges of breaching the SOPO. At a continued first diet on 30 January 2019, a compatibility minute,

which had been lodged by the appellant, was considered by the sheriff. The contention for the appellant was that the SOPO, and hence the prosecution, was invalid, because no duration was specified in the order. Parliament had intended that the SOPO should either be of a defined duration or state that it was until further order (*R v Williamson* [2005] EWCA Crim 2151 at para 21; *R v Harrison* [2009] 2 Cr App R (S) 43 at para 15; *The Queen v CK* [2009] NICA 17 at para 40; *R v R* [2010] EWCA Crim 907 and *Aldridge v R* [2012] EWCA Crim 1456). Without a statement that it was until further order, the SOPO was fundamentally null.

[5] The sheriff repelled the minute. She reasoned that common sense, and the use of plain English, in construing the section, made it clear that there was no requirement to include the words “until further order” in a SOPO. It might be preferable, but it was not compulsory. On the contrary, section 107(1)(b) provided that a SOPO had effect for a fixed period, if specified, or otherwise until further order.

[6] In due course the appellant proceeded to trial. On 20 February 2019 he was convicted of three of the alleged contraventions of the SOPO. He was sentenced to 530 days imprisonment.

### **Submissions**

[7] The appellant argued that the question for the court was whether an order, which was otherwise of indeterminate length, required to specify that it was “until further order”. The Parliamentary Explanatory Notes for the relevant section had stated that the period must be specified in the order, although it could be for an indefinite period. Parliament had intended that all SOPOs should state the period of their duration, even if it was indeterminate. In terms of *Aldridge v R* (*supra*) any defect in a SOPO would render it

unlawful and unenforceable. In *The Queen v CK* (*supra* at para 40), the Court of Appeal in Northern Ireland had stated that it was preferable to specify the period, or alternatively to state that it was to be pending further order, rather than leaving the matter in terms of a default position.

[8] The Crown submitted that there was no requirement for a duration to be specified in the order, other than in those cases where the order was for a fixed period. Section 107 imposed no statutory requirement to include the words “until further order”. The order in *Aldridge* (*supra*) had been unlawful because it had been for only 3 years, and thus incompatible with the section. *The Queen v CK* (*supra*) expressed a preference, but the remarks were *obiter* because the order, which had been made, did contain the desired words. The court did not say that the words were mandatory. It had been clear from the appellant’s police interview that he had been well aware that he was subject to the SOPO at the material time.

### **Decision**

[9] The court agrees with the court in *The Queen v CK* [2009] NICA 17 (Kerr LC), delivering the opinion of the court, at para 40), that it would be preferable if a SOPO expressly stated either that it was for a fixed period or that it was until further order. However, that does not carry with it an implication that a failure to include the words “until further order” renders the order fundamentally null. On the contrary, so far as the principle of certainty is concerned, if a SOPO does not specify a fixed period, the default position, which is readily ascertainable from the legislation, is that it will continue until further order. That was the position in this case. If the appellant had wished to challenge the SOPO being made for an indefinite period, as the Chief Constable had requested, he had the opportunity

to appear before the sheriff court at the hearing on the summary application and oppose the indefinite nature of any order. If dissatisfied with the decision, he could have appealed in the civil process.

[10] For these reasons, this appeal is refused.