



30 June 2010

PRESS SUMMARY

R (on the application of Noone) (Appellant) v The Governor of HMP Drake Hall and another (Respondents) [2010] UKSC 30

On appeal from the Court of Appeal [2008] EWCA Civ 1097

JUSTICES: Lord Phillips (President), Lord Saville, Lord Brown, Lord Mance, Lord Judge CJ

BACKGROUND TO THE APPEAL

This appeal concerns the inter-relationship between the sentencing provisions of the Criminal Justice Act 1991 ('the 1991 Act') and the Criminal Justice Act 2003 ('the 2003 Act').

Under the 1991 Act it became mandatory for the Secretary of State to release prisoners part way through the period of their sentence. Home Detention Curfew ('HDC') was introduced by the Crime and Disorder Act 1998, by which prisoners could be released on licence after they had served a requisite period.

The 2003 Act replaced the sentencing regime for sentences over 12 months on 4 April 2005. However, its provisions governing early release for sentences of less than 12 months have never been brought into force. Thus when a prisoner was sentenced to consecutive sentences, including terms both over and under 12 months, it was necessary to have regard to the Criminal Justice Act 2003 (Commencement No 8 and Transitional and Savings Provisions) Order 2005 ('the 2005 Order') to determine which scheme should apply.

The appellant, Rebecca Noone, was sentenced on 23 May 2007 for five offences to (i) a term of 22 months' imprisonment, (ii) three concurrent terms of four months' imprisonment to be served consecutively, and (iii) a one month, also to be served consecutively. The policy of the Secretary of State was that her release on HDC should be calculated by treating the longest sentence as subject to the 2003 Act and as commencing first (because it was pronounced first by the sentencing judge), and the shorter sentences as subject to the 1991 Act. This produced an HDC date over three months later than the approach urged by the appellant, which combined all the sentences and took the half way point of the combined term as the conditional release date from which HDC was calculated.

The High Court held that the policy of the Secretary of State was unlawful, but on appeal the Court of Appeal held that, although the matter could not be determined by policy, the policy had in fact correctly reflected the position in law.

JUDGMENT

The Supreme Court unanimously allowed the appeal. The substantive judgments were given by Lord Phillips (President) and Lord Mance, with whose approaches the other Justices agreed.

REASONS FOR THE JUDGMENT

Lord Phillips stated that the interpretation of Paragraph 14 of the 2005 Order lay at the heart of the appeal. It raised the question, where sentences of under and over 12 months were ordered to be served consecutively, of how they were to be linked together and how the provisions as to early release on HDC and licence were to operate in relation to each sentence [para 22].

The approach of the Court of Appeal opened the door to the possibility of capricious results, placed a near intolerable burden on the sentencer and did not readily cater for the position where a series of sentences was imposed of which some were over and some were under 12 months (‘a mixed sentences case’) [29]. The words in brackets in Paragraph 14 were drafted too economically to reflect the clear intention that a mixed sentences case was to receive different treatment from sentences of less than 12 months, namely that the 2003 Act should apply to it [para 33].

Consecutive sentences were subject to s 244(3)(d) of the 2003 Act, and it was necessary to refer to s 262(2) to identify the requisite custodial period. Although this did not define ‘custodial period’ for sentences under 12 months, it was obvious that this was half the sentence that the prisoner would have had to serve before release, had his sentence not been imposed consecutively with an over 12 month sentence. The relevant custodial period was the amalgam of all the individual custodial periods [para 35] and from that eligibility for HDC could be determined [para 36].

Lord Mance observed that the Secretary of State’s approach meant that the transitional provisions, bringing the 2003 Act into force in many respects, but keeping the 1991 Act in force in some others, achieved a result which Parliament did not intend by either Act [para 60]. He did not agree that the wording of Paragraph 14 compelled it.

In his view Paragraph 14 was clearly drafted to be limited to cases where the only sentences in the arena had a term of less than 12 months [para 70]. The draftsman must have overlooked the fact that it left a gap in the definition of the custodial period in a mixed sentences case, but it was clear what was intended to happen (by reference to the continued application of s 33(1)(a) of the 1991 Act to all cases with sentences under 12 months) namely that the provisions of s 263(3) and s 264(2) and (3) should apply [para 71].

Lord Judge deplored the fact that ‘so much intellectual effort, as well as public time and resources, have had to be expended in order to discover a route through the legislative morass to what should be, both for the prisoner herself, and for those responsible for her custody, the prison authorities, the simplest and most certain of questions – the prisoner’s release date’ [para 87].

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. Judgements are public documents and are available at:

www.supremecourt.gov.uk/decided-cases/index.html