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PRESS SUMMARY

In the matter of an application by Deborah McGuinness for Judicial Review (Northern Ireland)

In the matter of an application by Deborah McGuinness for Judicial Review (No 2) (Northern Ireland)

[2020] UKSC 6

On appeal from [2019] NIQB 10

JUSTICES: Lady Hale, Lord Wilson, Lord Carnwath, Lord Lloyd-Jones, Lord Sales

BACKGROUND TO THE APPEAL

The two appeals before the Court relate to judicial review proceedings concerning the treatment of Mr Michael Stone. In 1988, Mr Stone attacked a group of mourners at Milltown Cemetery, Belfast, killing several. One of them was the brother of the appellant, Mrs McGuinness. In 1989, Mr Stone was convicted and sentenced to life imprisonment and certain concurrent terms of imprisonment, with a recommended tariff of 30 years' imprisonment.

The Belfast Agreement of 1998 between the United Kingdom and Irish governments introduced an early release scheme for certain prisoners convicted of crimes related to sectarian violence in the Troubles. The Northern Ireland (Sentences) Act 1998 ("the 1998 Act") gave effect to that part of the Belfast Agreement. Mr Stone made an application under the 1998 Act to the Sentence Review Commissioners ("the SRC") seeking early release. In 1999, the SRC made a determination that Mr Stone was eligible for early release. Mr Stone was released on licence on 24 July 2000.

In 2006, Mr Stone committed further offences at Parliament Buildings, Stormont. The Secretary of State for Northern Ireland suspended his licence. In 2008, Mr Stone was convicted and received two determinate sentences of 16 years' imprisonment and other determinate sentences of between one and ten years' imprisonment, all to run concurrently. In 2011, the SRC revoked Mr Stone's licence.

In 2017, the Northern Ireland Prison Service referred Mr Stone's case to the Parole Commissioners, notifying them that his tariff expiry date would be 21 March 2018, on the basis that the period during which Mr Stone had been released on licence should count towards his 30-year tariff period. In the event, the Parole Commissioners made a formal determination in 2018 that Mr Stone should not be released upon expiry of his tariff.

Mrs McGuinness issued these judicial review proceedings to challenge the Prison Service's notification of a tariff expiry date of 21 March 2018, on the ground that the Prison Service erred in law in including the period of release on licence in Mr Stone's tariff.

The Divisional Court of the High Court heard the case, deciding to treat it as "a criminal cause or matter" on a pragmatic basis, and certified a question of law of general public importance suitable for appeal to the Supreme Court under section 41 of the Judicature (Northern Ireland) Act 1978 ("the 1978 Act").

The Attorney General for Northern Ireland intervened in the appeal to dispute the assumption that Mrs McGuinness’s application for judicial review constituted “a criminal cause or matter” and to challenge the Supreme Court’s jurisdiction to hear the appeals.

JUDGMENT

The Supreme Court unanimously holds that the present proceedings do not constitute “a criminal cause or matter”, with the result that the Court does not have jurisdiction to consider the appeals. Lord Sales gives the judgment, with which all the members of the Court agree.

REASONS FOR THE JUDGMENT

Section 41 of the 1978 Act provides for an appeal to the Supreme Court “from any decision of the High Court in a criminal cause or matter” [21]. The phrase “a criminal cause or matter” has been used in two different statutory contexts: first in provisions governing rights of appeal; and second in section 6 of the Justice and Security Act 2013 (“the JSA 2013”) in relation to a special closed procedure for secret intelligence material in court proceedings. As accepted by the Supreme Court in *R (Belhaj) v Director of Public Prosecutions (No 1)* [2018] UKSC 33; [2019] AC 593, the statutory context of section 6 of the JSA 2013 is different from that of section 41(1) of the 1978 Act [24].

The Supreme Court reviews the history of the phrase from its first use in section 47 of the Supreme Court of Judicature Act 1873 to the 1978 Act, which replicated in Northern Ireland the appeal system of England and Wales [25]-[56]. Two basic features of the regime of appeal rights are important. First, the appeal rights in relation to a High Court decision in a criminal cause or matter are directed primarily to maintaining the coherence of the legal system rather than rectifying specific errors. An appeal to the Supreme Court is only possible if a point of law of general public importance is certified [66]. Second, in contrast, in all other cases appeal rights from the High Court to the Court of Appeal are directed to ensuring that errors at first instance in individual cases can be rectified. No showing of public importance is required [67].

The leading case on the meaning of the phrase “a criminal cause or matter” is that of the House of Lords in *Amand v Home Secretary* [1943] AC 147. The approach set out in that decision requires consideration of the proceedings which underlie those in the High Court. A criminal cause or matter will be: (a) one that puts the applicant in jeopardy of criminal punishment; and (b) where that punishment is “the direct outcome” of the proceeding [66], [77].

The issue raised in the present case does not relate to the commencement or conduct of any underlying criminal process involving Mr Stone. He is not subject to any outstanding undetermined criminal charge on which he will be tried and may be subjected to sentence. The present proceedings are concerned with whether his past criminal sentence has been correctly understood and implemented. The High Court decision was therefore not in “a criminal cause or matter” and the relevant right of appeal is to the Court of Appeal, not the Supreme Court [78]. As a result, and because the Supreme Court is likely to be assisted by consideration by the Northern Ireland Court of Appeal on the operation of the 1998 Act, should the case return for consideration, the Supreme Court does not think it appropriate to say anything about the merits of the appeals [96].

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:

<http://supremecourt.uk/decided-cases/index.html>