

IN THE SUPREME COURT OF JUDICATURE                      FC3 99/5365/4  
IN THE COURT OF APPEAL (CIVIL DIVISION)  
ON APPEAL FROM THE QUEEN'S BENCH DIVISION (CROWN OFFICE LIST)  
(MR JUSTICE MAURICE KAY)

Royal Courts of Justice  
Strand  
London WC2A 2LL

Monday 22 March 1999

Before:

THE MASTER OF THE ROLLS  
(LORD WOOLF)  
LORD JUSTICE OTTON  
LORD JUSTICE WARD

-----

R E G I N A

- v -

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT  
EX PARTE RONALD LEONARD EASTERBROOK

-----

(Computer Aided Transcript of the Palantype Notes of  
Smith Bernal Reporting Limited, 180 Fleet Street,  
London EC4A 2HD  
Tel: 0171 421 4040  
Official Shorthand Writers to the Court)

-----

MISS P KAUFMANN (Instructed by Messrs Bhatt Murphy, London, N1 6HB) appeared on behalf of  
the Appellant

MISS A FOSTER (Instructed by The Treasury Solicitor, London, SW1H 9JS) appeared on behalf of  
the Respondent

-----

J U D G M E N T  
(As approved by the Court)

-----

©Crown Copyright

JUDGMENT

LORD WOOLF, MR: This is a renewed application for leave to apply for judicial review. Leave was refused after an oral hearing on 11 February 1999 by Maurice Kaye J in a detailed judgment setting out the factual background and the relevant statutory provisions.

We have had the advantage on the renewed application of a most admirable skeleton argument on behalf of Miss Kaufmann which covers almost all the ground which she wished to advance before us in oral submissions, although she has amplified that argument where appropriate. We also have a skeleton argument on behalf of the respondent. I make no criticism of Miss Foster's skeleton argument, which is short, succinct and to the point, but we do not have to rely on the matters advanced on behalf of the respondent because, so far as the factual and legal background is concerned, I am content to approach the case on the assumption that the arguments which Miss Kaufmann puts forward, both orally and in her skeleton, are based upon a correct foundation of fact and law.

The case comes before us, somewhat unusually, because of the position of the applicant, Mr Easterbrook. He was sentenced on 30 November 1988 to a term of life imprisonment when he was approximately 57 years of age. It was not a case which required a mandatory life sentence, but a discretionary life sentence. As he was sentenced in November 1988, it was before the Criminal Justice Act 1991 came into force. As a result, the period which he must serve before he can be considered for parole under section 28 of the Crime (Sentences) Act 1997 falls to be determined by the Secretary of State in accordance with paragraph 9 of schedule 12 of the 1991 Act.

In a letter of 27 November 1998 the applicant was informed that the period certified by the

Secretary of State was 12½ years. That period was in line with the advice of the Lord Chief Justice who had indicated that the period should be between 12 and 13 years (that period being a revised period, so far as the Lord Chief Justice was concerned) as a result of written submissions which were submitted to him on the question of setting the tariff. Miss Kaufmann, before us, described those submissions as being very full and well drafted. I would agree with that description.

Miss Kaufmann makes two submissions on behalf of Mr Easterbrook. The first is that the period of 12½ years is so excessive as to be irrational. Although Miss Kaufmann's submissions are directed to the administrative decision of the Secretary of State, she is criticising the Lord Chief Justice in setting the period as being between 12 and 13 years, because in this case it is apparent that the Secretary of State has acted upon the advice of the Lord Chief Justice. To establish that a tariff is manifestly excessive to a degree which is sufficient to be irrational clearly involves a heavy burden.

Miss Kaufmann has set out in her skeleton argument, and referred in the course of argument, two authorities which support her contention. Her difficulty is that the Lord Chief Justice explained his reasons for coming to that conclusion. His decision was supported by a decision of the Court of Appeal when Mr Easterbrook appealed to the Court of Appeal for leave to appeal against conviction and in relation to sentence in respect of which he had leave to appeal.

Before the Court of Appeal, which was presided over by Watkins LJ with Lincoln and Tucker JJ, Watkins LJ, in dealing with the question of sentence, said:

"There are exceptional cases to which those guidelines have no application. This is just such a case. This is not a case of a man who was anything wrong with his mind in the medical sense -- far from it. This is the case of a man who is a very skilful and dangerous criminal who has not been deterred from committing serious

crimes, no matter how long the sentences which have previously been passed upon him. He comes into a very different category. No medical report was called for, and rightly. The judge plainly put him into the category which does not call for medical reports or anything like that."

Watkins LJ continued:

"It is difficult to imagine how the judge could have explained more fully and clearly why he was imposing these severe sentences upon Easterbrook. If we had come to the conclusion that there should be an alternative to life imprisonment in this case, we would have considered the imposition (in the place of a life sentence) of consecutive sentences, which might very well have had the consequence of a total sentence being substituted by this court of something in excess of 20 - probably 25 years."

As to those comments of Watkins LJ, which I emphasise were in relation to an appeal not in respect of the tariff but in respect of the discretionary life sentence which was imposed, Miss Kaufmann submits that he would not have had in mind the various authorities dealing with determinate sentences for serious offences of the sort committed by Mr Easterbrook. I do not accept that argument.

The court which was hearing the appeal was a very experienced court who would have had the relevant authorities clearly in mind. In my view it is clear that the Court of Appeal (Criminal Division) took the view that this case was an exceptional case where a period of imprisonment, probably as long as 25 years, might be appropriate. Unless Miss Kaufmann can undermine the view of the Court of Appeal (Criminal Division) and can attempt to suggest that the tariff fixed in this case was manifestly unreasonable, her application is doomed to failure. I do not propose in this judgment to go through the reasoning which inevitably leads to that conclusion. In my judgment it is perfectly satisfactorily and admirably set out in the judgment of Maurice Kay J in the court below. If anyone is interested as to the facts and background of the matter they can see those facts and the background from that judgment. In my view it cannot be faulted, apart from

one small passage of the judgment, which was not the subject of argument in the court below, where Maurice Kay J says, in relation to another authority to which he had been referred:

"It is interesting to observe as a matter of legal archaeology that Arif was decided by the Court of Appeal at a time when section 29 in its original form provided that an offence should not be regarded as more serious by reason of any previous convictions of any offender. I do not suggest that that provision was the reason for the decision in Arif. Indeed, the case represented Arif's first conviction for a crime of any seriousness."

With regard to that paragraph, Miss Kaufmann points out that because the law which the Court of Appeal would have had to apply in Arif was the law at the time that Arif was sentenced, it is not correct to say that the Court of Appeal could not consider the previous convictions of an offender in assessing the seriousness of the appropriate punishment.

Miss Kaufmann also draws attention to the fact that, as the Lord Chief Justice was well aware, indeed commented, this was not Arif's first conviction, he had previously been sentenced to nine years' imprisonment. However, those two errors do not detract from the reasoning of the judge in the court below as a whole which I would gratefully adopt.

Turning to the other ground upon which Miss Kaufmann relies, she contends that the Lord Chief Justice was performing an act which was equivalent to an act of sentencing when he fixed the tariff. In general terms I agree with that submission. Accordingly she submits that the appropriate course here was to allow the Mr Easterbrook to make oral submissions before the Lord Chief Justice determined the tariff. She relies, as she did in the court below, on the previous decisions of the European Court on Human Rights. Miss Kaufmann also relies on a passage from a text book, "Law of the European Convention on Human Rights" by Professor Harris, Mr O'Boyle and Mr Warbick, dealing with Article 6(1) of the European Convention on Human Rights.

I take into account the authorities to which she refers, but I am quite satisfied that there is no substance in these submissions. I do so, partly for the reasons set out by Maurice Kay J in his judgment. I also do so on the basis of my own assessment as to whether there is any risk of any unfairness to Mr Easterbrook. I am perfectly satisfied that there is no risk of such unfairness.

In coming to that conclusion I bear in mind that the argument is not based upon any dispute as to the facts which an oral hearing would have helped to clarify. The facts in this case were not in issue. Mr Easterbrook had had an opportunity of advancing oral submissions before the judge as to matters which were relevant to sentence and also on the oral hearing before the Court of Appeal. The Lord Chief Justice had the benefit of the full and well drafted submissions to which I have already made reference. I do not believe that an oral hearing could have provided anything which would have influenced the Lord Chief Justice to come to a different conclusion.

The Lord Chief Justice recognised that in this case the Court of Appeal took the view that a determinate sentence would have been appropriate if they had allowed the appeal from the discretionary life sentence which was in fact imposed. The Lord Chief Justice reduced his original view of the tariff having regard to the submissions made to him. I do not consider anything would have been achieved in this case by an oral hearing.

I do not wish to suggest that in different circumstances, where the factual position was not as I have indicated, oral submissions would not be appropriate. Since the law has now changed, the tariff fixing process takes place as part of the sentencing process in the trial court. It is then subject to an appeal in the ordinary way. That is a more desirable procedure to adopt for this process than that adopted in this case. As I have indicated, so far as this case is concerned, I am satisfied that there is no arguable case which would warrant this court giving leave to apply for

judicial review.

LORD JUSTICE OTTON: I agree.

LORD JUSTICE WARD: I also agree.

Order: Application refused. Legal Aid Taxation of Applicant's costs.