



THE COURT ORDERED that no one shall publish or reveal the name or address of the Appellant who is the subject of these proceedings or publish or reveal any information which would be likely to lead to the identification of the Appellant or of any member of his family in connection with these proceedings.

17 December 2018

PRESS SUMMARY

Welsh Ministers (Respondent) v PJ (Appellant)
[2018] UKSC 66
On appeal from [2017] EWCA Civ 194

JUSTICES: Lady Hale (President), Lord Kerr, Lord Wilson, Lady Black, Lord Lloyd-Jones

BACKGROUND TO THE APPEAL

A patient detained under the Mental Health Act 1983 (MHA) may be released from compulsory detention in hospital subject to a community treatment order (CTO). The question arising on this appeal is whether a patient's responsible clinician (RC) may impose conditions in a CTO which amount to the deprivation of his liberty within the meaning of article 5 of the European Convention on Human Rights.

The appellant, PJ, is 47. He has a mild learning disability and difficulties falling within the autistic spectrum. This has been accompanied by aggressive and irresponsible behaviour consisting of violent and sexual offending. He was convicted in 1999 of assault occasioning actual bodily harm and threats to kill, and the court imposed a hospital order on him under s 37 MHA. He was discharged from a medium secure unit to a unit which later became a hospital, where he remained voluntarily as an informal patient before, in May 2009, he was compulsorily detained for treatment under the civil power in s 3 MHA. In September 2011 he was discharged from hospital subject to a CTO, which required him to reside in a care home subject to close supervision, from which his absences were either escorted or subject to strict limits as to time, purpose and place.

Before the Mental Health Review Tribunal (MHRT), PJ argued that the arrangements under the CTO amounted to an unlawful deprivation of his liberty and he should therefore be discharged from it. The MHRT held that they did not but, even if they had, the need for a CTO took precedence over any human rights issues. The Upper Tribunal held that this approach was wrong, but the Court of Appeal concluded that by necessary implication the MHA permitted such conditions in a CTO. It also held that the MHRT had no power to discharge the CTO even if its terms meant that the patient was unlawfully deprived of his liberty.

JUDGMENT

The Supreme Court unanimously allows the appeal and declares that there is no power to impose conditions in a CTO which have the effect of depriving a patient of his liberty. Lady Hale, with whom all the other justices agree, gives the only reasoned judgment.

REASONS FOR THE JUDGMENT

CTOs were introduced into the MHA by amendment in 2007, as a new form of order which permitted patients to be released into the community subject to conditions which would support their continuing treatment [1]. The statutory regime is set out in ss 17A to 17F. The conditions in a CTO are imposed by a patient's RC without judicial input. None of the elaborate provisions in the MHA authorising the detention of patients and their recapture if they escape or go absent apply to a community patient. There is no power to impose medical treatment on a community patient who has the capacity to consent to it and does not consent. There are no sanctions for failing to comply with the conditions in a CTO, but a patient may be recalled to hospital if he breaches certain conditions, or if he requires medical treatment and there would otherwise be a risk to his health or safety, or that of others [16].

The Welsh Ministers argued that as any conditions imposed in a CTO cannot be enforced they cannot therefore deprive a patient of his liberty [17]. This is indeed the legal effect of a CTO, but it does not mean that a patient has not in fact been deprived of his liberty. The focus is always on his concrete situation created by the conditions [18]. The fact that the purpose of the deprivation is to enhance rather than curtail the patient's freedom does not affect this assessment [20-22].

There is no express power in s 17B(2) to impose conditions which have the effect of depriving a community patient of his liberty. It is a fundamental principle of statutory construction that a power expressed in general words should not be construed to interfere with fundamental rights such as the right to liberty of the person [24]. The test for a necessary implication is a strict one and there is no reason to suppose that Parliament would have included such a power in the MHA had it been thought of [26]. A strong indication to the contrary is the fact that CTO conditions cannot compel a patient to take his medication [27]; and the lack of detailed rules which the MHA would have provided had detention in a place outside hospital been contemplated [28].

If the MHRT finds on the facts that a community patient is being deprived of his liberty, it has no power to revoke or vary the conditions. The question therefore arises as to whether it should exercise its only power under the MHA to discharge the patient, or whether the patient must challenge his unlawful detention in an action for judicial review [30-32]. This problem is more theoretical than real for two reasons. First, although the MHRT has no jurisdiction over the conditions of treatment and detention in hospital, these can be relevant as to whether the statutory criteria for detention are made out; and the patient's actual situation may well be relevant to whether the criteria for the CTO are made out. If, however, the patient needs to challenge his unlawful detention under a CTO other than by his right to make periodic applications to the MHRT, his remedy is either habeas corpus or judicial review [33]. Second, a conscientious RC can be expected not to impose conditions which this judgment makes clear are not permitted in a CTO, and this is reinforced by the duties to provide information to a patient and (usually) his nearest relative about the effect of a CTO [34].

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>