



Press Summary

22 September 2026

R (on the application of Quaye) (Appellant) v Secretary of State for Justice (Respondent)

[2026] UKSC 34

On appeal from: [2025] EWCA Civ 226

Justices: Lord Sales (Deputy President), Lord Briggs, Lord Hamblen, Lord Stephens and Lady Simler

Background to the Appeal

This appeal concerns the sentencing of individuals who commit murder when they are children. Those who commit murder whilst under the age of 18 are sentenced to detention at His Majesty’s pleasure (“**DHMP**”). A sentence of DHMP is a sentence of detention for an indeterminate period and lifelong licence subject to recall thereafter. As part of the sentence, the trial judge determines the minimum term that the person must serve before they may apply to the Parole Board to be released on licence.

On 10 May 2014 the appellant, Mr Quaye, together with a friend, went uninvited to a party in Norfolk and stabbed and killed Connor Barrett. At the time Mr Quaye was 17 and nine months. He was convicted of murder and sentenced to DHMP with a minimum term of 15 years. At the time he was sentenced, Mr Quaye was aged 18 years and five months.

The Secretary of State operated a policy by which any person sentenced to DHMP could apply for a review of the minimum term once they had served one half of that term. The purpose of the review was to determine whether the minimum term should be reduced as an act of clemency to reflect the detainee’s exceptional progress in custody. In February 2021, the Secretary of State adopted a revised policy under which offenders who were over 18 when sentenced were no longer eligible to apply for a review. This revised policy was put on a statutory footing by section 128 of the Police, Crime, Sentencing and Courts Act 2022, which inserted sections 27A and 27B into the Crime (Sentences) Act 1997 (the “**1997 Act**”). These new provisions, which took effect on 28 June 2022, provide that only persons who were under 18 at the time the sentence of DHMP was imposed can apply for a minimum term review.

As a result of these changes, Mr Quaye was no longer entitled to apply for a review when he reached the halfway point of his minimum term on 15 March 2022.

Mr Quaye applied for judicial review of sections 27A and 27B of the 1997 Act seeking declarations pursuant to section 4 of the Human Rights Act 1998 that those provisions were incompatible with article 5 (the right to liberty and security), article 7 (no punishment without law) and article 14 (prohibition of discrimination) (read with article 5) of the European Convention on Human Rights (“ECHR”). The Divisional Court upheld the claim and granted declarations that the legislation was incompatible with article 5 and article 14 (read with article 5) ECHR. The Court of Appeal allowed the Secretary of State’s appeal and quashed the Divisional Court’s declarations of incompatibility. Mr Quaye now appeals to the Supreme Court.

Judgment

The Supreme Court unanimously dismisses the appeal. It holds that sections 27A and 27B of the 1997 Act are compatible with articles 5, 7 and 14 ECHR. Lord Stephens and Lady Simler give the sole judgment, with which the other Justices agree.

Reasons for the Judgment

Before addressing the ECHR issues, the judgment considers how the sentence of DHMP has evolved over the past century. The sentence was initially introduced by the Children Act 1908 to replace the death penalty for persons who committed murder when they were children [24]. The duration of a person’s detention was wholly within the discretion of the Secretary of State. It was an important and distinctive feature of the sentence that the Secretary of State kept the detainee under continuous review to determine when release was appropriate. Subsequent legislation removed the Secretary of State’s discretion altogether and replaced it with (i) a duty on the court to fix a minimum term to be served in custody and (ii) a requirement to direct that the “early release provisions” contained in the 1997 Act shall apply to the offender [41]-[46]. The Secretary of State became bound to refer the case to the Parole Board at the end of the minimum term to assess the offender’s risk on release and, if the Board so directs, release the person on licence. When fixing the minimum term, there are well-established factors that the court must consider. They include the offender’s culpability, including having regard to his or her age and maturity, the harm which the offence caused and the welfare of the child offender. These sentencing principles ensure that sentencing is structured, consistent, and transparent [47].

Article 5 ECHR

The material provision is article 5(1) ECHR which provides that:

“Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

(a) the lawful detention of a person following conviction by a competent court.”

Mr Quaye claimed that the absence of a right of review of the minimum term means that his detention was arbitrary and in breach of article 5 ECHR.

The Court explains that the correct starting point is to recognise that the legislative interventions referred to above have fundamentally changed the sentence of DHMP [58]-[61]. There is no longer any inherent requirement on the Secretary of State to carry out a continuing review of the minimum term fixed by the court in relation to sentences of DHMP. The sentencing regime is now entirely governed by statute.

Mr Quaye's sentence was fixed in accordance with domestic law. The judge applied the sentencing principles, correctly assessing the seriousness of the offence and Mr Quaye's maturity and understanding at the time [68]. Article 5 ECHR does not require all indeterminate sentences imposed on children to be subject to periodic review [63]-[67]. There is a sufficient causal connection between the conviction and the imposition of DHMP with a determinate minimum term passed on Mr Quaye. There is no basis for suggesting that continued detention is inconsistent with the objectives of the sentencing decision taken by the sentencing court.

The Court concludes that removal of the opportunity to apply to the Secretary of State and seek, as an act of clemency, a reduction in the minimum term by reference to events occurring after sentence does not render detention arbitrary or unlawful [69].

Article 14 (read with article 5) ECHR

Article 14 requires ECHR rights to be secured without unlawful discrimination on any ground "such as sex, race... or other status". It is common ground that Mr Quaye's age constitutes an "other status" and that section 27A falls within the ambit of article 5 so that article 14 is engaged [72], [73]. Section 27A gives rise to differential treatment on the ground of age at the time of sentencing [75]. This treatment is only unlawfully discriminatory if it has no objective and reasonable justification. The Court is required to determine the question of proportionality for itself without deferring to the lower court's decision [76].

It is appropriate to apply a low intensity of review in the circumstances of this case. First, age is not a "suspect" ground and does not justify heightened review [81]-[87]. Second, section 27A is a provision of primary legislation enacted by Parliament [88]. It reflects a recent and conscious decision by the legislature to amend the DHMP regime. Third, the provision concerns an aspect of prison and penal policy, an area that raises questions of political and moral judgment and lies within the province of the legislature [89]-[92]. Fourth, there is no consensus on this issue within the member states of the Council of Europe [93]. Fifth, the legislation reflects Parliament's views as to where the balance should lie as between the interests of offenders and victims' families [94].

The legislation pursued the legitimate aim of alleviating distress for victims' families [97]-[101]. Families are contacted every time an offender applies for a review and are given the opportunity to provide a new Victim Personal Statement. The existence of a review process is liable to be extremely distressing to victims' families.

There is a rational connection between this aim and the means adopted, which involved enacting legislation drawing a bright line distinction based on age at the date of sentencing [102]-[115]. Drawing a distinction based on age is a recognised feature of sentencing in the criminal justice system. The change introduced by section 27A is consistent with the underlying rationale for DHMP, as there is no longer anything intrinsic in DHMP requiring a continuing review of the minimum term [110]. Section 27A does not undermine the wide range of legislative protections for child offenders.

The Court concludes that Parliament struck a fair balance between the rights of Mr Quaye, and the rights and freedoms of others and the interest of the general community. Section 27A falls well within the appropriate margin of appreciation [125].

Article 7

Article 7 ECHR prohibits the retrospective imposition of a heavier penalty for an offence than the one that was applicable at the time the criminal offence was committed. Mr Quaye argued that depriving him of the opportunity to apply for a minimum term review amounts to the imposition of a harsher penalty than was originally imposed [128].

The Court rejects that argument. Established Strasbourg jurisprudence draws a clear distinction between a measure that constitutes in substance a “penalty” and a measure that concerns the “execution” or “enforcement” of the penalty. Article 7 applies only to the former [130]-[141]. The penalty for article 7(1) purposes in Mr Quaye’s case is indefinite detention with a minimum term determined by the court and the possibility of early release once that term has been served [142]. The changes made by section 27A did not alter the original sentence imposed by the sentencing court but rather the execution or enforcement of that sentence. The removal of the opportunity for Mr Quaye to request a review did not therefore involve the imposition of a heavier penalty [143].

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: [Decided cases - The Supreme Court](#)