



COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

THIRD SECTION

DECISION

Application no. 54942/00
by Edward KELLY
against the United Kingdom

The European Court of Human Rights (Third Section), sitting on
24 October 2002 as a Chamber composed of

Mr G. RESS, *President*,

Sir Nicolas BRATZA,

Mr L. CAFLISCH,

Mr R. TÜRMEN,

Mr B. ZUPANČIČ,

Mrs H.S. GREVE,

Mr K. TRAJA, *judges*,

and Mr V. BERGER, *Section Registrar*,

Having regard to the above application lodged on 8 October 1999,

Having regard to the observations submitted by the respondent
Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

The applicant is a British national, born in 1960 and he is currently in detention in HMP Brixton. He is represented before the Court by Ms R. Hubbard, a solicitor practising in London.

A. The circumstances of the case

The facts of the case, as submitted by the applicant, may be summarised as follows.

On 26 March 1980 the applicant pleaded guilty to three counts of robbery and one of attempted robbery. The relevant offences were committed in 1979 when the applicant was 18 years of age, his co-defendants being 28 and 38 years of age. During the robbery, the applicant discharged a firearm wounding two members of the public. He was sentenced to a total of 14 years' imprisonment and he was released in 1988.

On 19 March 1998 the applicant was found guilty of wounding with intent to cause grievous bodily harm contrary to section 18 of the Offences Against the Person Act 1861. On 1 May 1998 he was sentenced. The trial judge found that the conditions of section 2 of the Crimes (Sentences) Act 1997 ("the 1997 Act") had been satisfied and that he was required to sentence the applicant to a life sentence. In so doing the trial judge rejected six factors which the applicant argued made his case one where exceptional circumstances existed. The trial judge fixed his tariff at four years. On 15 December 1998 the Court of Appeal rejected his appeal against the imposition of a life sentence. Having found the applicant's circumstances neither singly nor cumulatively "exceptional" for the purposes of section 2 of the 1997 Act, the Lord Chief Justice (Lord Bingham) noted that:

"We readily accept that, but for the enactment of section 2, a court would not on the present facts have given serious consideration to the imposition of a life sentence, and we would have expected such a sentence, if imposed, to have been varied on appeal. We must, however, accept, for reasons already given that the object of section 2 was to alter the existing law by extending the power and imposing a duty to impose a life sentence."

The Court of Appeal allowed his appeal against the length of the tariff, reducing it to two and a half years. The House of Lords refused the applicant leave to appeal on 16 June 1999.

On 31 October 2000 the applicant applied to the Criminal Cases Review Commission ("CCRC") for a review of his sentence and for its referral back to the Court of Appeal. On 1 February 2001 the CCRC referred his case back to the Court of Appeal. In its judgment of 16 July 2001 the Court of Appeal reviewed the applicant's case in light of the case of *Regina v. Offen* ([2001] 1 WLR 253 as described below), allowed his appeal, quashed his life sentence and imposed a determinate sentence of 5 years' imprisonment.

B. Relevant domestic law and practice

1. Section 2 of the Crime (Sentences) Act 1997 (“the 1997 Act”)

The 1997 Act came into force on 1 October 1997. Section 2(1) and (2) provide as follows:

“(1) This section applies where –

(a) a person is convicted of a serious offence committed after the commencement of this section; and

(b) at the time when that offence was committed, he was 18 or over and had been convicted in any part of the United Kingdom of another serious offences.

(2) The court shall impose a life sentence, that is to say –

(a) where the person is 21 or over, a sentence of imprisonment for life;

(b) where he is under 21, a sentence of custody for life under section 8(2) of the Criminal Justice Act 1982,

unless the court is of the opinion that there are exceptional circumstances relating to either of the offences or to the offender which justify its not doing so.

(3) Where the court does not impose a life sentence, it shall state in open court that it is of that opinion and what the exceptional circumstances are.”

Section 2(5) listed the offences considered “serious” for the purposes of the section. The offences listed in section 2(5) were already punishable by a maximum of life imprisonment and they include an offence under section 18 of the Offences Against the Person Act 1861 and robbery where, at some time during the commission of the offence, the offender had in his possession a firearm or imitation firearm within the meaning of the Firearms Act 1968.

2. Regina v. Offen ([2001] 1 WLR 253)

The judgment in this case was delivered by the Court of Appeal on 9 November 2000. The appellants had contended that section 2 was incompatible with, *inter alia*, Articles 3 and 5 of the Convention.

The Court of Appeal agreed that the manner of interpreting section 2 in the past meant that that section could clearly operate in a disproportionate manner, it not being difficult to find examples of situations where it would be wholly disproportionate to impose a life sentence even for a second serious offence. If, however, the words “exceptional circumstances” in section 2 were construed in a manner which accorded with the policy of Parliament in adopting the section, that section would no longer operate

arbitrarily. That policy was to protect the public. Accordingly, a finding that an offender does not constitute a significant risk to the public should be considered to constitute “exceptional circumstances” which approach would accord, not only with parliamentary intent, but with the provisions of the Convention.

COMPLAINTS

The applicant complained under Articles 3 and 5 §§ 1 and 5 of the Convention about the life sentence imposed on him pursuant to section 2 of the 1997 Act.

THE LAW

On 7 February 2001 the Court decided to invite the parties to submit observations on the admissibility and merits of the complaints about section 2 of the 1997 Act under Article 5 §§ 1 and 5 of the Convention. By letters dated 31 August and 5 November 2001 the Government’s and applicant’s observations were respectively submitted.

By their letter of 29 November 2001 to the applicant, the Government indicated that they were disposed to exploring a friendly settlement of the case. They offered, in full and final settlement of the application, to reimburse the applicant’s legal costs and an *ex gratia* payment of 5,000 pounds sterling (GBP).

The applicant replied to the Government, by letter of 10 January 2002, claiming compensation based on domestic awards for wrongful imprisonment. In their response of 29 January 2002, the Government maintained their offer.

By letter dated 19 February 2002 the applicant indicated his willingness to settle the matter on the basis of an *ex gratia* payment in the sum of GBP 12,000. The Government responded by letter dated 11 March 2002 offering an *ex gratia* payment in the sum of GBP 7,000.

By letter dated 13 March 2002 the applicant agreed to a full and final settlement of his application on the basis of an *ex gratia* payment of GBP 7,000 and reimbursement of his legal costs. On receipt of the settlement monies, the applicant would request the Court to strike the case out of its list of cases. The Government confirmed their agreement by letter of 8 April 2002. By letter to the Court dated 9 April 2002 the applicant, noting the above-described settlement, requested the Court to strike his case out of the list of cases. On 15 April 2002 the Court requested the applicant to inform it of the agreed amount of legal costs to be reimbursed, on receipt

of which information it would consider striking the case out of its list of cases.

By letter dated 27 June 2002 the Government indicated that they had received the applicant's representatives' bill of costs. By letter dated 1 October 2002 the Government confirmed that they had paid the applicant's representatives GBP 13,667.60 in respect of their legal costs.

The Court notes that the Court of Appeal has now replaced the life sentence imposed on the applicant pursuant to section 2 of the 1997 Act with a determinate sentence. It further notes the settlement reached and that the applicant does not therefore intend to pursue his application within the meaning of Article 37 § 1(a) of the Convention. The Court is also satisfied that the applicant's request to withdraw is based on respect for human rights as defined in the Convention and its Protocols (Article 37, § 1 *in fine*). Accordingly, the case should be struck out of the Court's list of cases.

For these reasons, the Court unanimously

Decides to strike the application out of its list of cases.

Vincent BERGER
Registrar

Georg RESS
President