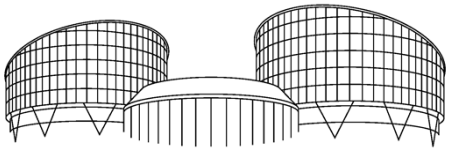

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF DILLON v. THE UNITED KINGDOM

(Application no. 32621/11)

JUDGMENT

STRASBOURG

4 November 2014

FINAL

04/02/2015

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Dillon v. the United Kingdom,

The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:

Ineta Ziemele, *President,*
Päivi Hirvelä,
George Nicolaou,
Nona Tsotsoria,
Paul Mahoney,
Krzysztof Wojtyczek,
Faris Vehabović, *judges,*

and Françoise Elens-Passos, *Section Registrar,*

Having deliberated in private on 14 October 2014,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 32621/11) against the United Kingdom of Great Britain and Northern Ireland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a British national, Mr John Dillon ("the applicant"), on 16 May 2011.

2. The United Kingdom Government ("the Government") were represented by their Agent, Ms M. Addis, of the Foreign and Commonwealth Office.

3. The applicant alleged, in particular, that his detention following the expiry of his tariff was unlawful in light of the failure of the authorities to put in place the necessary resources to enable him to demonstrate to the Parole Board that his risk had reduced, and that his Parole Board Review was a meaningless exercise.

4. On 23 September 2013 the complaint under Article 5 § 1 was communicated to the Government. A number of other complaints were declared inadmissible.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1955 and is currently detained in HMP Whatton.

6. On 25 April 2007 he received an indeterminate sentence for public protection ("IPP sentence") following his conviction of the sexual assault of a fifteen-year old girl. The offence had been committed while the applicant was on licence in the community following his release from a sentence for indecent assault against girls under the age of sixteen and while he was undertaking the Sex Offender Treatment Programme ("SOTP") in the community. A minimum term ("tariff") of four years was fixed.

7. The applicant was initially detained in HMP Armley. It was recommended in 2007 that he complete the SOTP.

8. In June 2008 he was transferred to HMP Rye Hill. He completed an Enhanced Thinking Skills ("ETS") course in 2008 and the core SOTP on 8 March 2009. On an unknown date, he completed an Alcohol Awareness course.

9. In August 2009 a Structured Assessment of Risk and Need ("SARN") report identified that further work was required to reduce the applicant's risk of reoffending. It was recommended that he complete the extended SOTP and, possibly, a Better Lives Booster ("BLB") programme. The extended SOTP consisted of seventy-four interactive sessions plus some individual work and generally lasted for around six months.

10. At a Parole Board review on 7 September 2009 the Panel said that much offending work still had to be done in order to reduce the applicant's risk and that he should therefore remain in closed conditions.

11. In September 2009 the applicant was transferred to HMP Acklington. He claims that he had been informed that the extended SOTP was available at that prison.

12. A memo dated 24 August 2010 from the Programmes Department of HMP Acklington confirmed that the applicant had been assessed as suitable to attend the extended SOTP and that he would have to be transferred to another establishment to complete the course as it was not offered at HMP Acklington.

13. On 27 August 2010 the applicant completed the Thinking Skills Programme ("TSP") at HMP Acklington.

14. In January 2011 a pre-tariff-expiry paper Parole Board review took place. By letter dated 24 February 2011 the applicant was informed that the Parole Board had not recommended his release. His request for an oral hearing was refused.

15. The letter explained:

> "... The [Intensive Case Management] decision provides a detailed account of the index offence and your previous offending record ... You are given credit for the offence related work you have undertaken but further work in the form of an Extended SOTP (and possible a BLB programme thereafter) is considered necessary to further address your risk factors ... It is clear that significant risk reducing work is required in closed conditions before you can progress further."

16. By letter dated 6 April 2011 the National Offender Management Service informed the applicant that the Secretary of State agreed with the Parole Board recommendation. She considered that a number of risk factors were outstanding, namely sexual offending, feelings of grievance, distorted thinking, alcohol misuse and outbursts of anger. She was of the view that the extended SOTP was necessary to reduce the applicant's risk level. She also indicated that an assessment for the BLB programme was necessary following completion of the extended SOTP and recommended that the applicant continue addressing his alcohol misuse. The letter expressed the expectation that the relevant interventions, or other equivalent risk reduction work, would be completed prior to the next Parole Board review. It clarified, however, that the Secretary of State could not guarantee to place the applicant on the courses identified as there were limits on the availability of resources.

17. The review period was set at twenty-one months and was made up the following: transfer to an establishment to undertake the extended SOTP; participation in the extended SOTP; participation in post-course reviews; consolidate and test the skills learned; continued development and practice of appropriate risk strategies; assessment for the BLB programme; continued monitoring of alcohol misuse and relapse prevention work if necessary. The review was scheduled to commence in March 2012 and conclude in November 2012, with an oral hearing in September.

18. On 26 April 2011 the applicant's tariff period expired.

19. The applicant sought advice on possible judicial review proceedings in respect of the delay in providing access to the extended SOTP. A letter was sent to HMP Acklington by his solicitors. On 22 September 2011 he was transferred to HMP Whatton.

20. On 10 October 2011 the applicant requested information from HMP Whatton as to when he would begin the extended SOTP. He was informed in reply that he would be contacted to arrange an assessment as soon as possible.

21. Meanwhile, the applicant's solicitors wrote to HMP Whatton seeking information on when he would be allowed to participate in the extended SOTP. By reply dated 28 October 2011, the deputy extended SOTP treatment manager explained:

> "In order that we can be responsive to the needs of Mr Dillon, it is essential that we allow him a period of settling in at HMP Whatton before an assessment for the Extended SOTP can take place.
>
> Assessments and placements are prioritised on a number of factors including tariff expiry, risk level and treatment readiness. However, please be assured that an assessment will take place as soon as practically possible.
>
> We anticipate delivering 4 Extended Programmes in 2012 and Mr Dillon will be considered for one of these programmes, if he is found suitable. The extended programme lasts 5 months. A SARN report will then have to be completed within

> 26 weeks of treatment being completed. The SARN report will identify any further treatment that is necessary."

22. On 12 November 2011 the applicant indicated to HMP Whatton his concern that he might not be adequately prioritised for the extended SOTP, referring to the expectation that the course would be completed by his next Parole Board review. He requested confirmation that he would be prioritised for the extended SOTP.

23. By reply dated 18 November 2011 he was informed that HMP Whatton made "every attempt to ensure prisoners are treated fairly and have access to offending behaviour programmes". However, the letter noted that there were limited resources and that there was a large number of IPP prisoners and life sentence prisoners at HMP Whatton whose tariffs had expired.

24. On 6 January 2012 the applicant's solicitors wrote to the Governor of HMP Whatton to notify him of the fact that judicial review proceedings were being contemplated. They sought an undertaking that the applicant would be given access to an extended SOTP scheduled to begin in April 2012.

25. On 19 January and 6 February 2012 the applicant was reassessed for participation in the extended SOTP. In a report dated 6 February 2012 he was found not to be sufficiently motivated to undertake the course. The report noted that the second meeting had had to be terminated on account of the applicant's use of abusive and disrespectful language and his loud and aggressive tone. It explained that while, given the applicant's tariff expiry date, he would have been prioritised for the April 2012 extended SOTP course, it was considered that he was not ready for secondary treatment at that time. It was recommended that the applicant complete individual work with his offender supervisor to consider, *inter alia*, the costs and benefits of engaging in the extended SOTP and to address his outstanding treatment needs. Further assessment would take place in June/July 2012.

26. The applicant subsequently pursued a request for a place on an extended SOTP scheduled to commence in August 2012.

27. On 13 June 2012 the Parole Board notified the applicant of its decision on the papers not to direct his release or to recommend his transfer to open conditions. The Parole Board set out the details of the index offence and noted that the applicant had committed the offence while on a three-year extended licence following another conviction for sexual offences (see paragraph 6 above). It considered that he had breached the trust placed in him and expressed concern that this might not bode well for the applicant's likely compliance with licence conditions. The Parole Board reiterated the applicant's risk factors and turned to examine the evidence of any change during sentence. It explained:

> "You completed the Core SOTP in 2009 and the Thinking Skills Programme in 2010. It was then recommended that you complete the Extended SOTP. Once this has

> been completed you will be assessed for other programmes such as the Better Lives Booster Programme and the Healthy Sexual Functioning Programme. You are reported to have attended for a programme assessment for the ESOTP at HMP Whatton but prison records state that this was a challenging meeting and that you were not sufficiently motivated to commence the group. You do not agree with this assessment. You will be offered the opportunity to attend for suitability assessment in the future. You have also been put forward for the CALM programme due to the violent offences on your record and difficulties in managing your emotions."

28. The Parole Board agreed that the applicant posed a high risk of harm to children. It commended the applicant on his completion of the ETS and core SOTP. However, it concluded:

> "... [T]here is a considerable amount of accredited offending behaviour work still recommended for you to complete to reduce your risks to a level that can be safely managed in less secure conditions. In the first instance it is recommended that you complete the Extended SOTP and CALM and that following the SARN you may need to be assessed for the Better Lives Booster Programme and Health Sexual Functioning Programme. Clearly this will take some considerable time and whilst core areas of risk remain unaddressed there is no merit in an oral hearing being held ..."

29. The applicant was reassessed for the extended SOTP in July 2012. He was found to be suitable to participate.

30. In late July 2012 the applicant was informed that he was being considered for a place on an extended SOTP commencing in October 2012.

31. The applicant completed the extended SOTP in March 2013. He was advised that a SARN report would be completed within the next six months to identify any further work that needed to be done. The SARN report was completed in March 2014.

II. RELEVANT DOMESTIC LAW AND PRACTICE

32. The relevant domestic law and practice is set out in the Court's judgment in *James, Wells and Lee v. the United Kingdom*, nos. 25119/09, 57715/09 and 57877/09, 18 September 2012.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

33. The applicant complained of a breach of Article 5 § 1 of the Convention because of an alleged failure of the authorities to put in place the necessary resources to enable him to demonstrate to the Parole Board that his risk had reduced and a breach of Article 5 § 4 on the ground that his

Parole Board review in 2011 was, in these circumstances, a meaningless exercise. Article 5 §§ 1 and 4 read as follows:

> "1. 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 after conviction by a competent court ....
>
> ...
>
> 4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

34. The Court considers that the applicant's complaint essentially concerns adequate access to courses and that it is appropriate to examine it from the angle of Article 5 § 1 of the Convention only (see *James, Wells and Lee*, cited above).

35. The Government contested the argument that there had been a violation of Article 5 § 1 in the case.

A. Admissibility

36. The Government argued that the applicant had failed to exhaust domestic remedies since he had not commenced judicial review proceedings alleging a breach of Article 5 § 1 of the Convention. In the alternative, they invited the Court to declare the applicant's complaint inadmissible as manifestly ill-founded. Citing *Hall v. the United Kingdom* (dec.), no. 24712/12, § 32, 12 November 2013, they argued that the applicant had been given access to numerous courses and assessments both pre- and post-tariff and that his post-tariff detention could therefore not be considered "arbitrary".

37. The applicant maintained that he had satisfied Article 35 § 1, since any judicial review claim would have failed on account of the House of Lords' refusal to find a violation of Article 5 § 1 in *James, Wells and Lee*. He also insisted that his complaint was well-founded.

38. The Court is satisfied that at the point at which the applicant lodged his application, the possibility of judicial review proceedings offered no prospect of success as regards systemic delay in access to rehabilitative courses (see *Black v. the United Kingdom* (dec.), no. 23543/11, § 52, 1 July 2014). The Government's objection is accordingly dismissed.

39. The Court further considers that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

40. The applicant pointed to the poor organisation and management of access to rehabilitative courses at the relevant time. He claimed that he had initially been informed that he could undertake the extended SOTP at HMP Acklington, and was transferred there in 2009 for that reason. After transfer, he had been told that the course was not available at that establishment. He had only finally been moved to HMP Whatton to undertake the course after he had threatened judicial review proceedings (see paragraph 19 above). He further contends that despite being told upon his arrival at HMP Acklington that the TSP was not necessary for him since he had already completed the ETS, he was later required to undertake it because he had spent so long at HMP Acklington that he had to do something.

41. In respect of the assessment at HMP Whatton which led to the conclusion that he was insufficiently motivated to undertake the extended SOTP, he alleged that he had been harassed and pressured at the meeting to participate in the Healthy Relationships Programme. He criticised the attitude of the interviewer. He disputed the conclusion that he was not motivated to do the extended SOTP, pointing to the fact that he had begun judicial review proceedings to get access to the course and had pressed for a prison transfer precisely for that reason (see paragraph 19 above).

42. The Government argued that the Court should not apply *James, Wells and Lee* in the present case since, in their submission, the case had been wrongly decided.

43. In the alternative, they contended that even if the principles in *James, Wells and Lee* were applied here there had been no violation of Article 5 § 1 in this case. They pointed out that before tariff expiry in April 2011, the applicant had enjoyed access to a wide range of courses and other activities to assist him to address his offending behaviour and demonstrate to the satisfaction of the Parole Board a reduction in risk. He had completed the core SOTP in March 2009 and had been assessed as suitable for the extended SOTP in 2010. Following the expiry of his tariff, he had had access to educational and work opportunities. He had been transferred to a prison offering the extended SOTP in September 2011, five months after tariff expiry. The prison had reasonably decided that the applicant needed a settling-in period before commencing further courses. The applicant had been swiftly informed of this, and could therefore not argue that he was uncertain as to when he would make progress. He had been assessed for the extended SOTP in February 2012, eleven months after tariff expiry. According to the Government, the process for assessing prisoners for courses was an important part of managing prisoner progression.

Assessment was itself a step to progress the applicant through the prison system.

44. In the Government's submission, the subsequent delay in commencing the extended SOTP was the applicant's own fault, since he had shown himself to be insufficiently motivated at the February assessment. In any event, rehabilitative courses were not the only means for progressing in the eyes of the Parole Board.

45. In conclusion, the Government invited the Court to find that the applicant's detention had not at any stage been arbitrary since he had enjoyed access to rehabilitative courses prior to tariff expiry and proportionate steps had been taken to make suitable provision for necessary courses.

2. The Court's assessment

46. The Court sees no reason not to apply the principles set out in *James, Wells and Lee*, cited above, to the facts of the present case.

47. In *James, Wells and Lee*, cited above, § 209, the Court explained that in cases concerning indeterminate sentences of imprisonment for the protection of the public, a real opportunity for rehabilitation was a necessary element of any part of the detention which was to be justified solely by reference to public protection. This required reasonable opportunities to undertake courses aimed at helping prisoners to address their offending behaviour and the risks they posed. While Article 5 § 1 did not impose any absolute requirement for prisoners to have immediate access to all courses they might require, any restrictions or delays encountered as a result of resource considerations had to be reasonable in all the circumstances of the case, bearing in mind that whether a particular course was made available to a particular prisoner depended entirely on the actions of the authorities (see § 218 of the judgment).

48. In examining whether an applicant's detention post-tariff has been unjustified for the purposes of Article 5 § 1 (a) of the Convention the Court "must have regard to the detention as a whole" (see *James, Wells and Lee*, cited above, § 201). Thus, where, as in the present case, the applicant claims that delay in his access to prison courses resulted in a violation of Article 5 § 1 (a), the applicant's general progression through the prison system must be assessed in light of the particular circumstances of the case (see *Hall*, cited above, § 32; and *Black*, cited above, § 54).

49. It is clear from the papers before the Court that the applicant was able to participate in rehabilitative courses from an early stage of his detention and thus to make progress in demonstrating a reduction in his risk. He completed three courses in 2008-2009, well before tariff expiry (see paragraph 8 above). At his first Parole Board review in September 2009, he was able to present evidence of his risk reduction work but the Parole Board concluded that further work was required (see paragraph 10

above). Shortly prior to that review a SARN report had identified the extended SOTP as a relevant course for the applicant to undertake (see paragraph 9 above).

50. Between his first Parole Board review and his pre-tariff expiry review in January 2011, the applicant was waiting to be given a place on the extended SOTP course. He had been assessed as suitable for the course at some point prior to August 2010 and was thereafter awaiting a further prison transfer to undertake it. In the meantime, he participated in the TSP at HMP Acklington, which he completed in August 2010 (see paragraph 13 above). The applicant has provided no evidence to support his allegation that the TSP was not a suitable course for him to undertake and it is not the role of this Court to second-guess the decisions of the qualified national authorities as regards the appropriate sentence plan.

51. In January 2011 the applicant was again able to present to the Parole Board evidence of coursework undertaken to reduce his risk (see paragraph 14 above). In the Parole Board's February 2011 letter explaining its refusal to recommend release at tariff expiry in April that year, the Panel explained that the extended SOTP (and possibly a BLB programme once that had been completed) was considered necessary to further address his risk factors (see paragraph 15 above). In mid-April 2011 the applicant was informed by letter that the Secretary of State agreed with this assessment. She fixed the applicant's next Parole Board review to begin in March 2012 and to culminate in an oral hearing in September of that year (see paragraphs 16-17 above). The applicant was still, at this stage, pre-tariff expiry and his detention clearly justified under Article 5 § 1 (a) of the Convention.

52. The applicant's tariff expired at the end of April 2011 (see paragraph 18 above). He was transferred to HMP Whatton, a prison offering the extended SOTP, in September 2011, some five months later (see paragraph 19 above). It is true that by this stage he had been waiting for access to the extended SOTP for over two years. However, as noted above, in order to assess whether any delay in access to prison courses constituted a violation of Article 5 § 1 (a), the applicant's general progression through the prison system must be assessed in light of the particular circumstances of the case. In the applicant's case, it must be borne in mind that he had enjoyed prompt, pre-tariff-expiry access to several courses, including the core SOTP, the ETS course and the TSP. The five-month wait for a prison transfer cannot be viewed as unreasonable, having regard to all the opportunities offered to the applicant to progress through the prison system during his sentence and the steps then underway to enable his further progression.

53. Following transfer, it was considered necessary for the applicant to settle in to the new prison establishment before being reassessed for the extended SOTP (see paragraph 21 above). Reference was subsequently made, in response to a complaint by the applicant, to the limited resources

and the high number of prisoners seeking access to offending behaviour programmes (see paragraph 23 above). This tends to support the applicant's allegation that his access to the extended SOTP was at this stage delayed, at least in part, for reasons of resource limitations. However, his reassessment nonetheless commenced in mid-January 2012, less than four months after transfer. It was swiftly completed, with the conclusion notified to the applicant in early February that he was not sufficiently motivated to undertake the course (see paragraph 25 above). The applicant has provided his own account of what happened during the assessment meetings but has not provided any evidence capable of undermining the conclusion reached by the deputy treatment manager of the course (see paragraph 41 above).

54. The Court concludes that unlike in the case of *James, Wells and Lee*, prompt steps were taken to begin the applicant's progression through the prison system even before the expiry of his tariff. The nine-month delay between the expiry of his tariff and his reassessment for the SOTP was not unreasonable having regard to the access to courses which he had enjoyed by that date, the continued efforts to ensure further progress through the prison system and his overall progression throughout the period of his detention.

55. In these circumstances the Court is satisfied that a real opportunity for rehabilitation was provided to the applicant and that there was no unreasonable delay in providing him access to assessments and courses. There has accordingly been no violation of Article 5 § 1 of the Convention.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the remainder of the application admissible;

2. *Holds* that there has been no violation of Article 5 § 1 of the Convention.

Done in English, and notified in writing on 4 November 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos
Registrar

Ineta Ziemele
President