

Judgment 18/2006 Irvine v Chairman of the Parole Review Committee – Royal Court (Civil Action File 998) – 27th March, 2006

Parole Review Committee (Guernsey) Law, 1989 – refusal of application for release on licence – application for Judicial Review – considered on the papers – test to be applied – held that no arguable case had been disclosed that the Committee’s decision was Wednesbury unreasonable or perverse – leave granted for the applicant to apply for oral hearing

The 27th day of March, 2006 before Richard John Collas Esquire, Deputy Bailiff; sitting alone

In the matter of:

JOHN CHARLES IRVINE

(Applicant)

v.

PAROLE REVIEW COMMITTEE

(Respondent)

The Deputy Bailiff having considered on the papers alone an application for permission to seek Judicial Review of a decision of the Parole Review Committee dated 11th January, 2006, this day handed down judgment in the terms attached hereto and found there to be no arguable case that the said decision can be successfully challenged on the grounds of Wednesbury unreasonableness or perversion and the Deputy Bailiff gave leave to the applicant to apply for an oral hearing of the application.

S. M. D. Ross
Her Majesty’s Deputy Greffier

unreasonable or perverse. I had intended to deliver my reasons orally in court on 24 March, but as Advocate Roland was unable to be present on that day, I am giving my reasons in writing.

4. I had before me:-

- i) The Applicant's application dated 14 March 2006;
- ii) The PRC's decision dated 16 January 2006;
- iii) The Parole dossier containing the papers that were before the PRC when it reached its decision; and
- iv) Some additional pieces of correspondence at tab 5, pages 143 – 145 inclusive of the Applicant's bundle.

5. In approaching this review, on paper, of the application the test that I have applied is whether the Applicant has shown an arguable case that this decision was *Wednesbury* reasonable or perverse. In doing so, I have adopted what I understand would be the test at a similar stage in Judicial Review proceedings in England, see para 161 of volume 1 (1) of Halsburys Laws of England Fourth Edition 2001 Reissue.

6. I also reminded myself of my recent decision in *Bradley -v- Chairman of the PRC* 30 January 2006, in which I refused permission for leave to seek Judicial Review of a decision of the PRC, in that case after hearing full argument on the application for leave and also on the substantive application. I also had in mind the very helpful judgment of the former Bailiff, Sir de Vic Carey, in *Webster -v- Chairman of the PRC and Singleton -v- Chairman of the PRC* Royal Court 15 December 2004, in which the history of parole and the way that it is implemented in Guernsey was comprehensively considered.

The PRC's Reasons

7. The duty of the PRC is to consider the release on licence of persons serving sentences of imprisonment in this Island (Section 2 of the Parole Review Committee (Guernsey) Law of 1989). A prisoner who is released on licence has to be supervised and if he breaches the conditions attached to his release on licence, he may be recalled by the PRC. The prisoner therefore has to remain in a jurisdiction where he can be supervised. If he were to move to a jurisdiction where there can be no supervision and no recall for breach of the conditions of his licence, he would be in the same position as a prisoner who has been released into the community after completing his full term of imprisonment. That is not the purpose of parole.

8. The Applicant intended to return to his parent's home in Jersey if he was released on parole. In its decision, the PRC noted that the Jersey authorities would accept supervision of the Applicant, if he was released, although there was no statutory basis for inter-island transfer of parole licensees under current legislation. In the PRC's decision, it said:

“The Committee was not persuaded that there was sufficient evidence that Mr Irvine was fully committed to his release plans and/or that his supervision could be adequately managed should Mr Irvine not fully comply with licence conditions, particularly if Mr Irvine attempted to

leave the Island. It was noted that Mr Irvine's links to Thailand appear very strong and he has variously indicated his strong preference for the pace of life in Thailand".

9. I consider it was reasonable for the PRC to consider the strength of the Applicant's connections with Jersey. He was originally from Jersey but had been living with his fiancée in Thailand prior to his arrest. His parents still live in Jersey but the PRC noted that he has had little regular contact with them in recent years. In paragraph C of the report of Sarah Craske, the Course Co-ordinator of the Prison Programme on 'Reason and Rehabilitation' which he had successfully completed, she wrote:

"In terms of interpersonal problems, Mr Irvine has had difficulties in his relationship with his parents, particularly his father. Mr Irvine stated that it was important to him that his relationship with his father should improve and commented that he wanted to win his approval. Mr Irvine's father would not visit him in prison in Japan, although his mother and sister both came".

10. Neither of the Applicant's parents has visited him in the Guernsey prison, although in November 2005 an escorted home visit was arranged to enable the Applicant to see his mother at the home of a mutual friend in Guernsey. That home visit is said to have gone well.

11. Regarding his future employment, the Applicant wrote in the Parole Application Form that:

"I intend to take a course in computer aided jewellery design and to study for qualifications in gemmology. It is my hope that I will be re-establishing my own craft workshop and retail outlet in time".

12. In support of his application, he produced a letter from a friend of his who runs a restaurant in Jersey, the "Thai Beach Café". He wrote:-

"As the owner of my own business, I have to make decisions and sometimes hasty ones. John has been writing to me explaining he has been working in the kitchen for his work duties. We will be closing for Christmas and re-opening in January 2006 when I will start to look for new employees for my kitchen where John will be employed, if possible, before the beginning of our busy season. However, I must point out that this is not a permanent job, but could be if his credentials (sic) are what we are looking for.

He is, and has been a true friend to me and my family and I do wish him the best start for himself, which I am quite happy to make reserves (sic) for him, although his willingness rests upon him".

13. Although that is a welcome offer of employment, it is a carefully worded letter which is non-committal concerning the Applicant's suitability for the job and his commitment to the work and raises questions as to how long he might remain in the job, if the job is offered to him.

14. The PRC had been informed that if the Applicant does not comply with the conditions of his licence, he could be arrested in Jersey and returned to Guernsey for being “unlawfully at large” (see the e-mail from Brian Heath of the Jersey Probation Service to his opposite number in Guernsey dated 3 January 2006 which is at page 152 of the file).
15. It is clear from the decision of the PRC that they were concerned the Applicant might not remain in Jersey and instead might return to Thailand. He had strong connections with Thailand. His fiancée, with whom he had been living prior to his arrest, is in Thailand. He had expressed a preference for the Thai lifestyle and until very recently he had said that he would be going back to Thailand on his release.
16. In my view, it was legitimate for the PRC to be concerned as to whether the Applicant would remain in Jersey or whether the attractions of Thailand would be so strong that he would depart for Thailand, thereby escaping the rigours of his Parole. The PRC concluded that his links to Thailand appear very strong and that they were not persuaded that he was committed to his release plans in Jersey and might attempt to leave the Island. That conclusion is based on the evidence presented to the PRC and cannot, in my view, be set aside as being either *Wednesbury* unreasonable or perverse.

Grounds of Appeal

17. I deal in turn with each of the Applicant’s five grounds of appeal.

First Ground of Appeal - Paragraph 9(i): *“His conviction from 1996 for importation of 1.5 kg of opium into Japan from Thailand for which he received a 5 year prison sentence and a fine of 1,000,000 Yen (approximately £5,875)”*.

18. The PRC noted the conviction (in October 1996) and said:

“that although his incarceration for this earlier importation had a significant impact on him it evidently did not impact on his motivation to remain offending free”.

19. The Applicant’s argument on appeal is that the PRC failed to take account of the abuse he suffered in the Japanese prison that left him with psychological problems that he dealt with by taking Cocaine. However, he had been referred to the psychiatric services in Jersey for treatment and, in my judgment, it was not unreasonable for the PRC to criticise his decision to turn his back on lawful treatment and to resort instead to illegal drugs.

Second Ground of Appeal - Paragraph 9(ii): *“His very strong connections with Thailand having lived there prior to the commission of the index offence and his various indications for his preference for the pace of life in Thailand”*.

20. I have dealt with this ground of appeal above.

Third Ground of Appeal - Paragraph 9(iii): *“The concerns raised by the Jersey Probation Service regarding the Applicant’s willingness to comply with licence*

conditions. These concerns stem from the Applicant's previous period of supervision in Jersey following his release and deportation from Japan".

21. In my view this was a reasonable matter for the PRC to take into consideration. In his supporting written argument, the Applicant also states that the PRC failed to consider or gave insufficient weight to Probation's support for his application and to the willingness of the Jersey Probation Service to supervise him. The PRC's written decision shows they took these facts into account when conducting their balancing exercise.

Fourth Ground of Appeal - Paragraph 9(iv) *"The fact that the Applicant committed the index offence after serving a long sentence for a similar offence. The conclusion being that the Applicant's motivation to re-offend was unaffected by his initial sentence for drug importation".*

22. The Applicant argues that the PRC unreasonably failed to take account of his successful participation in the Reason and Rehabilitation Course and a Drug Concern Course in which he has participated whilst in the Guernsey prison. He also argues that he is willing to participate in drugs tests in Jersey. Again, the PRC's decision shows that these factors were taken into account by the PRC.

Fifth Ground of Appeal - Paragraph 9(v) *"The significant change in the Applicant's proposed plans following release from prison".*

23. The Applicant argues that it had always been his intention in the short-term to remain in Jersey during the period of his Parole. In my view that does not alter the PRC's conclusion as to the strength of his connections with Thailand which, as I have said, give rise to their concerns that he would not remain under supervision in Jersey.

Sixth Ground of Appeal - Paragraph 9(vi) *"The Applicant would not lead a good and useful life, namely remain offending free and drug/alcohol free for the duration of his licence and comply fully with the conditions attached to it".*

24. The PRC noted that the Applicant was willing to submit to regular drug testing and to work with the Jersey Drug Service and that they were aware he had behaved well in Prison and had enjoyed an enhanced status. Nevertheless the PRC was not persuaded that he would lead a good and useful life on release. In deciding whether to allow the Applicant to be released on licence the PRC had to weigh in the balance the various issues that had been considered by them and decide whether the benefits of early release were outweighed by the risk of him re-offending. I believe there was evidence before the PRC on which it could reach its decision and I do not find there to be an arguable case that the decision can be successfully challenged on the grounds of *Wednesbury* unreasonableness or perversion.

Procedure

25. I believe this to be the first time that an application for leave to apply for judicial review has been refused without an oral hearing. In the Interlocutory Court on Friday 24 March there was a discussion as to how the Applicant

might proceed if he does not accept this decision and wishes to take his application further. I am grateful to Advocate McMahon and Advocate Shepherd (who appeared for the Applicant) for their assistance. The Applicant may apply to me for an oral hearing. I would ask that any such application be supported by brief written submissions. I will then decide whether the oral hearing will be *ex parte* or whether it would assist me if Advocate McMahon is present for the PRC. Alternatively the Applicant could seek leave to appeal. If the application for leave is made to me in the first instance I direct that it be supported by written grounds of appeal and I will then decide whether to grant leave straight away, or to direct that there be a further hearing if, for example, the matters disclosed in the appeal notice might alter my conclusion. Or, I might refuse leave in which case the Applicant could then apply to the Court of Appeal or to a single Judge for leave.