



Neutral Citation Number: [2024] EWHC 645 (Admin)

Case No. AC-2024-LON-000172

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London WC2A 2LL

Date: 21 March 2024

Before :

THE HONOURABLE MR JUSTICE PEPPERALL

Between :

THE KING
on the application of **BUMJU KIM**

Claimant

- and -

THE GOVERNOR OF
HIS MAJESTY'S PRISON WANDSWORTH

Defendant

Kate O'Raghallaigh (instructed by **Hickman & Rose**) for the **Claimant**
Arianna Kelly (instructed by **The Government Legal Department**) for the **Defendant**

Hearing date: 17 January 2024
Further submissions lodged: 1 and 2 February 2024

Approved Judgment

This judgment was handed down remotely on 21 March 2024
by circulation to the parties and by release to the National Archives.

THE HONOURABLE MR JUSTICE PEPPERALL:

1. There are few rights more important in a free and civilised democracy than that no one should be unlawfully detained by the state. The right not to be falsely imprisoned can be vindicated by the issue of the ancient writ of habeas corpus which requires the detained person to be produced before the court. The law clearly places the onus on the state to justify the prisoner's continued detention and, absent proof of lawful authority, the prisoner must be released.
2. This case is the second occasion in little over a year upon which a High Court Judge has been moved to criticise His Majesty's Prison Wandsworth for unlawfully detaining prisoners. R (Niagui) v. Governor of HM Prison Wandsworth [2022] EWHC 2911 (Admin), [2023] 4 W.L.R. 2 concerned a prisoner who was acquitted at a trial that concluded after normal court hours on a Friday. Upon his acquittal, there was no lawful basis for Mr Niagui's continued detention but yet he was not released from Wandsworth Prison until shortly before a hearing of his claim for the issue of a writ of habeas corpus at 2 p.m. on the following Monday. The explanation was essentially that the prison was not able to authorise Mr Niagui's release until it had completed its checks and satisfied itself that there was no other authority for his detention. Such checks, it was asserted, could not be properly made until the Monday.
3. Chamberlain J was troubled about a number of aspects of the case and, at [34], rightly criticised the prison's approach of assuming that further detention was lawful until the contrary was established. As he observed, the question should have been "Can we show that there is a legal authority to detain him?", and not "Can we show that someone has authorised his release?" See also Rahmatullah v. Defence Secretary [2012] UKSC 48, [2013] 1 A.C. 614, at [41].
4. Chamberlain J accepted that checks had to be made but stressed that the need to comply with Prison Service instructions and policies was not a lawful ground for continued detention overnight, let alone over a weekend. He said, at [35]:

"When remand prisoners are taken to court, prison staff must ensure either that checks to see whether there are other authorities to detain are carried out beforehand ... or, at the very least, that staff are available by telephone and have the records they need to carry out the necessary checks immediately upon acquittal."
5. Chamberlain J was also critical of the offhand way in which the solicitor's enquiries were dealt with. He added, at [36]:

"I understand the resource pressures on prisons, but a complaint by a solicitor that a prisoner is being unlawfully detained demands a substantive response as a matter of urgency, even over the weekend."

6. Finally and prophetically, Chamberlain J said, at [37], that the evidence before him provided little reassurance that the events would not be repeated.
7. On 16 January 2024, Bumju Kim pleaded guilty at the Westminster Magistrates' Court to an offence of battery contrary to s.39 of the Criminal Justice Act 1988. He was sentenced at 11.41 a.m. that day to ten weeks' imprisonment. Taking into account the time that Mr Kim had spent on remand, it is common ground that he should then have been released. Instead, Mr Kim was put on a prison bus and taken back to Wandsworth Prison.
8. That evening, Mr Kim was told that it might take until 18 January for the paperwork to be sorted out. His solicitor, Bartholomew Dalton, formally complained that his client's continued detention was unlawful:
 - 8.1 At 6.28 p.m., Mr Dalton spoke to an employee at the prison who refused to put him through to, or even provide the name of, the duty governor. He was told to email the Offender Management Unit (the "OMU") but the employee could not confirm whether they would respond that day.
 - 8.2 Mr Dalton duly emailed the OMU at 7.16 p.m. and put them on notice that, should Mr Kim not be released, he would be seeking an out-of-hours hearing before a High Court Judge for the issue of a writ of habeas corpus. The email included the word "URGENT" in capital letters in the subject line and was marked as being of high importance. Nevertheless there was no response.
 - 8.3 Mr Dalton called the prison again at 8.15 p.m.. He describes the call in his second statement:

"The officer ... initially refused to provide any details for the duty governor, but when it was explained that we would be making an application to the High Court should I not be able to speak to the duty governor and resolve the issue he said he would try and speak to them. I was then put on hold so that he could speak to a duty governor. On his return I was told that the duty governor was not able to speak to me and nothing could be done by the prison until the morning of 17 January 2024, as the OMU had finished work at 17:00 and they process all releases. I reiterated that Mr Kim's ongoing detention [was unlawful] and we would have no choice but to make [an application for the issue of the writ of habeas corpus] should we not be able to resolve the release with the prison, the officer said that the duty governor had said that we would need to do what we have to do, but that they would not be able to do anything until tomorrow without a court order. I eventually persuaded the officer to provide a name and email address for the duty governor. I then forwarded my earlier email to the OMU to the duty governor [Stacey James] at 20:30 and invited [her] to reconsider her decision to avoid any unnecessary hearings."
 - 8.4 In one final attempt to get the prison to engage with him, Mr Dalton emailed Governor James at 8.30 p.m.. Again, he included the word "URGENT" in capital letters in the subject line and marked the email as being of high importance. Again, there was no response.

9. I was the duty judge that evening. At 2.23 a.m. on 17 January 2024, I gave leave for the issue of a writ of habeas corpus and ordered the Governor of Wandsworth Prison to produce Mr Kim before me at the Royal Courts of Justice at 11 a.m. unless he had been released from custody before that time.
10. Mr Dalton called the prison again at 9.14 a.m. but the member of staff answering his call refused to put him through to either the duty governor or the OMU.
11. Mr Kim was released on 17 January but not until after the 11 a.m. deadline. In breach of my order, the Governor failed to produce Mr Kim before the court. Indeed, the Governor neither appeared nor was represented before me. Instead, lawyers from the Government Legal Department attended court and took a noting brief having first communicated their instructions to Kate O’Raghallaigh, who appeared for Mr Kim and was able to relay the Governor’s position to the court. I then ordered the Governor to file and serve evidence by affidavit by 4 p.m. on 25 January 2024 explaining, first, the grounds, if any, for Mr Kim’s detention between the sentencing hearing on 16 January and his release; and, secondly, the reasons why the Governor had failed either to release Mr Kim or produce him before the court by 11 a.m. as ordered and as commanded by the writ of habeas corpus.
12. The Governor failed either to comply with that order or seek a prospective extension of time. Accordingly, on 26 January 2024 I made a further order requiring the Governor to provide the required affidavit evidence by 4 p.m. on 2 February 2024. On this occasion, my order was specifically directed to the Governor, Katie Price, and endorsed with a penal notice. That should not have been necessary since the court is entitled to expect prison governors to comply with court orders.
13. Finally, on 29 January 2024, Governor Price made a witness statement. Even then she was in breach of my orders which clearly required her to file evidence by affidavit. She explains that an administrator within the OMU made an initial calculation at 12.10 p.m. on 16 January and correctly identified that Mr Kim should be released. Prison procedure requires a second check to be conducted by another member of staff. In error, the secondary checker did not review the calculation until after 5 p.m.. The governor then explains:

“Upon review of the file, the secondary checker was unsure of the release date because of the discrepancies in the offences and dates between the Remand Warrant and the Custodial Sentence Warrant. The secondary checker escalated this to one of the local hub managers who advised that, given the time, and that the original calculator was no longer available on that day, clarification should be sought from the court the next morning.”
14. Governor Price rightly concedes that this should not have happened and that urgent clarification should have been sought from the court that afternoon. She says that all staff working in the sentence calculation team should understand this and that she intends to commission a formal investigation to establish what went wrong.

15. The governor acknowledges that the OMU functional mailbox was not staffed after 5 p.m. and that emails to the duty governor were not read until the following morning. The duty governor has clarified that she was aware that a solicitor was trying to contact the prison on the evening of 16 January but that she was busy dealing with a medical emergency and unable to take the call. She therefore informed the control room that she would deal with the solicitor's query the next morning.
16. Governor Price confirms that the prison received my order and the writ of habeas corpus at 3.11 a.m.. The email was read by the duty governor at approximately 7.30 a.m.. The governor then explains:

“My understanding is that the OMU advised Governor James that they would deal with the matter and that there was no need for her to respond to the email.”
17. Governor Price says that the OMU attempted to arrange transport to take Mr Kim to court for 11 a.m. but no vehicle was available. Meanwhile, the OMU sought to clarify the lawfulness of his continued detention. Checks were completed by 10.15 a.m.. Mr Kim was then taken to prison reception by 10.50 a.m. but further checks, including those relating to healthcare, money and property, needed to be undertaken. While there is a dispute as to the precise time, Mr Kim was finally released between 11.23 and 11.45 a.m. on 17 January 2024.
18. Governor Price concludes her statement by accepting that Mr Kim should have been released on 16 January. She adds:

“I am aware of the criticisms made by the Court in the case of Niagui in regards to HMP Wandsworth's processes for dealing with out-of-hours detention issues and staff appreciation of the burden on the prison to demonstrate that there is lawful authority to detain. Following the Court's judgment in that case, an out-of-hours support line was set up by [His Majesty's Prison & Probation Service] which can be utilised for out-of-hours habeas corpus applications. The line is manned by the Operational Implementation & Support Group within HMPPS. The purpose of this line is to facilitate instructions on the application and to ensure that the relevant establishment can take action as soon as possible. The support line is open Monday-Sunday 09:00-22:00, including public and bank holidays. These opening hours should allow most cases to be responded to but, in this case, the GLD lawyer on duty was only notified of the claim around 23:00 on 16 January, meaning that the line was already shut at that point until 09:00 on 17 January. I am also aware that, in response to the Niagui judgment, training sessions were delivered to OMUs across the prison estate, including HMP Wandsworth, to explain the service and point out the importance of prompt action with suspected or confirmed habeas corpus cases.”
19. Notwithstanding Governor Price's claim that lessons were learnt from the Niagui case, this case again reveals a lamentable series of failings in the way in which the prison service deal with the release of prisoners and its apparent contempt for court orders. As to the first issue:

- 19.1 This was not a case, like Niagui, in which a hearing only ended after usual court hours on a Friday night. Mr Kim was sentenced at 11.41 a.m. on a Tuesday morning in a normal working week. His release should have been processed shortly after the hearing concluded and this case should never have had to involve the engagement of out-of-hours procedures.
- 19.2 The claim to have learnt the lesson that it is for the prison service to justify continued detention rather than the prisoner to prove a right to release rings hollow. Indeed, Governor Price's evidence demonstrates that this prisoner was detained for over 23 hours after the initial decision-maker correctly identified that he should be released immediately not because the prison was aware of any ground for his continued detention but because staff needed to check matters.
- 19.3 As in Niagui, it is worrying to see the dismissive way in which a solicitor's representations were dealt with by the officers and duty governor at the prison. Neither Governor James nor any other staff afforded him the courtesy of a reply and it was clear from their attitude that the prison would do nothing until the OMU staff started work the next morning.
- 19.4 It is no good setting up a dedicated unit to deal with urgent out-of-hours habeas corpus applications and not also troubling to train staff to refer cases or lawyers to that unit. Either the two different members of prison staff who took Mr Dalton's calls at 6.28 p.m. and 8.15 p.m. were ignorant of the specialist unit or they were entirely unwilling to share that information with a solicitor calling in the very situation for which the unit had apparently been set up. Furthermore, it appears that no systems have even been put in place to identify emails received by the prison containing the keywords "habeas corpus" in order to ensure that such emails are immediately (and perhaps automatically) referred to the out-of-hours specialist unit.
- 19.5 Further, it is extraordinary that a solicitor's insistence that a prisoner was being unlawfully detained and that, absent his immediate release, an out-of-hours habeas corpus application would be made to a High Court Judge does not appear to have met the threshold of seriousness to trouble the duty governor. Instead the complaint appears to have been met with institutional indifference.
- 19.6 On the evidence before me I am, in any event, sceptical that the unit would have done anything more than advise that the case would have to be reviewed by OMU staff at the beginning of their next shift.
- 19.7 Even after receipt of the court's order at 3.11 a.m., it took over 8 hours to release Mr Kim. There is no evidence that the prison regarded it as an urgent matter. For the avoidance of doubt, my order requiring Mr Kim to be produced before the court at 11 a.m. if he had not already been released was not authority for his further detention until the time of the hearing.
- 19.8 While I am sorry to hear that there was a medical emergency in the prison during the night of 16/17 January 2024, there is no evidence before me that such emergency fully occupied Governor James between 8.30 p.m., when she was personally emailed about Mr Kim's case, and 7.30 a.m. the next morning when she first read the court's order.

20. As to the second issue, there has been a wholesale failure to regard court orders as anything more than a target:
- 20.1 I am told that Governor James read my original order at 7.30 a.m. and then left the matter with the OMU. My order and the writ were addressed to the Governor of Wandsworth Prison and not the OMU. It was for Governor James and the duty governor who then came on duty later that morning at the end of her night shift to ensure that the order and writ were complied with. There is, however, no evidence that Governor James or any other governor did anything more than pass the matter on to the OMU. That is not acceptable.
- 20.2 While I am told that there were difficulties in arranging transport, there was a formal court order and a writ commanding the Governor personally to produce Mr Kim before the court at 11 a.m.. Nevertheless, Mr Kim was neither released by 11 a.m. nor produced at court. Nor did the Governor seek any extension of time for complying with my order or the writ. Rather it appears to have been assumed that the court would simply tolerate some delay beyond 11 a.m. provided it was not too long.
- 20.3 My second order of 17 January was not complied with either in that no evidence was served by 4 p.m. on 25 January 2024. Further, no application for an extension of time was lodged by that deadline. Again, it appears to have been assumed that an application issued shortly after the expiry of that deadline was acceptable.
- 20.4 Furthermore, there has never been compliance with my order to file evidence by affidavit.
21. The Governor's default in producing Mr Kim before the court led Ms O'Raghallaigh to raise with the court whether contempt proceedings should be initiated. I concluded that, given that Mr Kim had by then been released - albeit not in compliance with either my order or the writ - it was neither necessary nor proportionate to deal with the Governor's default by contempt proceedings. I take the same view about the failure to comply with the further directions that I gave on 17 and 26 January, albeit taken together these matters evidence an unacceptably lax and disrespectful attitude to compliance with court orders.
22. For the avoidance of doubt:
- 22.1 It is neither lawful nor acceptable to detain prisoners for a further 24 hours after there ceases to be any lawful basis for their continued detention.
- 22.2 It is incumbent on the prison service to ensure that pre-release checks are completed speedily. The onus is always on the prison service to establish that there are grounds for further detention, and not upon the prisoner to establish his or her entitlement to release.
- 22.3 Prisons must be able to respond urgently to lawyers properly raising questions as to the lawfulness of continued detention. Governors are responsible for the management of their prisons and it is not acceptable to ignore habeas corpus applications or to regard them as an inconvenience that can be addressed during office hours or delegated to the OMU.

- 22.4 Court orders and writs of habeas corpus must be strictly complied with and treated with greater seriousness than has been evident in this case.
23. In her helpful submissions, Ms O’Raghallaigh invites the court to conclude that Mr Kim’s detention was unlawful and to award him costs on the indemnity basis. Arianna Kelly, who appears for the Governor, sensibly concedes that the detention was unlawful and that the Governor should pay costs. Ms Kelly argues, however, that the Governor’s conduct has not been highly unreasonable and that costs should be awarded on the standard basis.
24. I can deal with both matters shortly:
- 24.1 First, the Governor having conceded the point, I formally declare that Mr Kim’s continued detention following the sentencing hearing on 16 January 2024 was unlawful.
- 24.2 Secondly, in view of the serious failures in this case both in respect of the proper and timely processing of Mr Kim’s release and in compliance with the court’s orders and the writ of habeas corpus, I am in no doubt that the Governor should pay Mr Kim’s costs on the indemnity basis.
25. Upon handing down this judgment, I shall give further directions for the assessment of damages and costs.
26. Finally, I commend Mr Dalton and Ms O’Raghallaigh for their energetic pursuit of Mr Kim’s release right through the night and early hours of 16/17 January 2024. It is critically important to the rule of law that those who are unlawfully detained should have the benefit of such dedicated professional representation and of emergency access to the court.