JUDICIARY OF
ENGLAND AND WALES

David Oakes and Others v R

Court of Appeal (Criminal Division)

21 November 2012

SUMMARY TO ASSIST THE MEDIA

The issue of whole life terms will shortly come before the Grand Chamber of the European Court of Human Rights. This Court of Appeal (Lord Chief Justice, Lady Justice Hallett, Lord Justice Hughes, Lord Justice Leveson and Lady Justice Rafferty) judgment sets out the principal reasons why such an order is not incompatible with Article 3 of the European Convention of Human Rights.

Introduction

The Lord Chief Justice, on behalf of the Court, sets out the background to the issues before the Court and the legislative context in paragraphs 1 – 30.

The Lord Chief Justice, Lord Judge, said:

"Whatever the judicial views about the whole life minimum term, it was incorporated in express legislative terms in the 2003 Act. This statutory provision reflects the settled will of Parliament. Simultaneously, the legislation removed the possibility of imposing it from the executive and placed it full square in the hands of the judiciary, we emphasise, as a discretionary element of sentencing. The issue of the whole life order, in the context of Article 3, has been reflected in a number of decisions in the courts both domestically and in Europe." (para 12)

The Court analysis the case law from the European Court before the Lord Chief Justice concludes:

"In short, it is open to the individual state, to make statutory provision for the imposition of a whole life minimum term, and in an appropriate case, as a matter of judicial discretion, for the court to make such an order." (para 22)

The Lord Chief Justice went on to conclude:

"The result is that the whole life order, the product of primary legislation, is reserved for the few exceptionally serious offences in which, after reflecting on all the features of aggravation and mitigation, the judge is satisfied that the element of just punishment and retribution requires the imposition of a whole life order. If that conclusion is justified, the whole life order is appropriate: but only then. It is not a mandatory or automatic or minimum sentence.

"In these circumstances the provisions of Schedule 21 of the 2003 Act, and paragraph 4 in particular, which enabled the court to make a whole life order in a case of exceptional seriousness are not incompatible with and do not contravene Article 3 of the Convention." (paras 29 – 30)

David Oakes

David Oakes was convicted of the murder of his former partner and their daughter. He was sentenced to life imprisonment with a whole life term.

The Court considers David Oakes' case in paragraphs 31 – 46.

The Lord Chief Justice, on behalf of the Court, dismissing David Oakes' appeal against his sentence said:

"We have reflected on these submissions. It seems to us clear that [David Oakes] did not simply explode into violence as a result of the stresses and strains of the breakdown of his relationship. Rather, he decided to revenge himself on Christine Chambers. He did not merely plan to kill her and their daughter, but he planned and then carried out his deliberate intention to make the death of his former partner as the most terrifying and agonising ordeal that he could envisage, and this was exactly what he did. He was utterly merciless, and took pleasure at her prolonged suffering. Thereafter, quite deliberately, and in cold blood, he deliberately executed their daughter, as she was screaming with fear at witnessing what he had been doing to her mother. Although two people were killed, one after the other in the same place, this was not to be regarded as a double murder which arose from a single incident: it was a pre-meditated double murder, with two intended victims, when there was ample opportunity after the murder of the first, for this appellant to allow a moment of compassion for his child to divert him from his plan.

"We agree with the judge that there was not a shred of mitigation. The analysis made by the highly respected judge is not open to criticism. There is no reason to interfere with this sentence." (paras 45 – 36)

Kieran Mark Stapleton

Kieran Mark Stapleton was convicted of the murder of student on Boxing Day 2011. He was sentenced to life imprisonment with a minimum term of 30 years.

The Court considers Kieran Mark Stapleton's case in paragraphs 47 – 60.

The Lord Chief Justice, on behalf of the Court, said:

"Although the choice of victim was entirely random, there was a significant degree of pre-meditation and he was sure that [Kieran Stapleton's] intention was to kill and that at all material times he was fully in control of his actions. This was cold-blooded controlled aggression." (para 57)

In dismissing Kieran Stapleton's appeal against his sentence, the Lord Chief Justice, on behalf of the Court, said:

"It is clear from his sentencing remarks that the judge was acutely aware of [Kieran Stapleton's] age and his personality disorder, and he was also aware that he had only recently been bailed in

connection with another offence. It takes very little imagination to reflect on the impact that this offence would have had in the locality; a young man, utterly blameless, simply gunned down as he walked down the street, and perhaps the most chilling feature of all was the sheer randomness with which he was chosen to be the victim. [Kieran Stapleton] had decided that he was going to kill someone, and he organised a loaded firearm, carried it, and executed his plan. His attitude to the offence is chilling. He has revelled in it. That adds significantly to the seriousness of this crime.

"There is no reason to interfere with this sentence." (paras 59 – 60)

Danilo Restivo

Danilo Restivo was convicted in 2011 of the murder of Heather Barnett in 2002. He was sentenced to life imprisonment with a whole life tariff.

The Court considers Danilo Restivo's case in paragraphs 61 – 86.

The Lord Chief Justice, on behalf of the Court, said:

"When the judge summed the case up to the jury, he directed them, quite correctly, that the only court with jurisdiction to try [Danilo Restivo] for the murder of Elisa Clap and to convict him of the offence was an Italian court. … In short, therefore, [Danilo Restivo] was not tried for or convicted of the murder of Elisa Clap (a murder which he denied), and the verdict did not and could not carry with it the inevitable conclusion that the jury must have been sure that he had murdered her. " (para 78)

The Court went on to consider whether the trial judge was entitled to take into account his own assessment, made during the trial that the appellant has committed another earlier murder with which he was not charged and of which he had not been considered. (para 78)

The Lord Chief Justice concluded:

"…. it is equally axiomatic that, situations such as these apart, a defendant cannot simply be sentenced for offences of which he has not been convicted, or on the basis that he has in fact committed them. The ability of the judge to make findings that other offences have been committed does not extend to reaching a non-jury verdict about allegations put before the jury by way of similar fact evidence, at least unless the jury must have been satisfied that they were proved, or unless the defendant has been convicted of them in the past." (para 79)

He went on to say:

"In the present case [Danilo Restivo] could not be charged in this jurisdiction with the murder of Elisa Clap. It was justiceable in Italy, not here. …" (para 84)

"… Quite apart from the question whether in accordance with the law of Italy, the recent conviction, reached in the absence of the appellant, is to be regarded as a final conviction, when the sentence imposed in the Crown Court is based on a misapplication of principle, it should be corrected. We must take the principled approach and proceed on the basis that it may at some future unspecified date be for the judicial authorities in Italy to decide what the appropriate sentence on the appellant should be for the murder of Elisa Clap. …. Moreover although a whole life term must be quashed, the minimum term, to which we now turn, must be very substantial indeed." (para 85)

Given the date of the offence, the Court had to determine the minimum term in accordance with the transitional provisions in Schedule 22 of the 2003 Act. (para 86)

However, in deciding the minimum term, the Lord Chief Justice concluded:

"We note in particular the extensive preparation for the killing (which included careful measures to avoid detection) and the display of sexual perversions and sadism, not least the appalling mutilation of the body, when the appellant knew perfectly well that it would be found by the victim's children. Thereafter, he was capable of brutal hypocrisy in his purported expressions of concern and assistance offered to them. A combination of all these factors leads us to the conclusion that the minimum term should be fixed at 40 years. This will replace the whole life term." (para 86)

<u>Michael John Roberts</u>

Michael John Roberts was convicted in December 2011 of a number of historic burglaries, rapes and other serious offences. He was already serving a discretionary life sentence at the time of his trial and conviction. Following his subsequent convictions in 2011 he was sentence to a discretionary life sentence with a whole life term.

The Court considers Michael John Roberts' case in paragraphs 87 – 103.

In giving judgment on behalf of the Court, the Lord Chief Justice said:

"The essential argument advanced in this appeal is that although this was an extremely serious series of offences, in which the interests of public safety amply justified the imposition of a discretionary life sentence, the whole life order was inappropriate and wrong in principle. In summary, among the cases where whole life orders had been imposed, none could be found in the context of sexual crime where one or more of the victims had not been murdered. Without in any way seeking to trivialise the ordeals of the victims, it was submitted that the whole life order should be reserved for cases where the criminal went even further than MR had gone on any of these occasions." (para 101)

He went on to conclude:

"Like the Crown, which accepted that notwithstanding the seriousness of the offences a whole life order was inappropriate, we agree that there is force in this submission. It is regrettably possible to envisage, and there have been cases, where dreadful sexual assaults have been followed by murderous violence. The whole life order is reserved for the most exceptional cases. Without suggesting that the court is prohibited from making a whole life order unless the defendant is convicted of at least one murder, such an order will, inevitably be a very rare event indeed.

"The whole life order must be quashed. In its place, to allow for [Michael Roberts'] criminality and his previous convictions, we shall substitute a minimum term of 25 years. In doing so we are not to be taken as implying that [Michael Roberts] is anything less than highly dangerous, and on the evidence before us at the moment it seems highly improbable that he will, after the expiry of 25 or 30 or more years, or indeed ever be safe for release." (para 102 – 103)

David Martin Simmons

David Martin Simmons was given two discretionary life imprisonment sentences for rape and false imprisonment committed in 2004. The trial judge did not specify a specific term but on his transfer from Broadmoor Hospital back to HMP Bristol in 2010 he was told, for the first time, that in the absence of any tariff sentence, he was regarded as a whole-life prisoner. (para 104)

The Court considers David Martin Simmons case in paragraphs 104 - 112.

Having considered his case, the Lord Chief Justice, on behalf of the Court concluded:

"The criticism is that the judge, concerned with the element of public protection, failed sufficiently to appreciate that the assessment of the minimum term represented a separate and distinct element of the sentencing decision, designed to reflect the appropriate level of punishment. The Crown agrees that the whole life order was inappropriate.

"As it seems to us, profoundly disturbing as this offence certainly was, it was not an offence of the extreme level of seriousness to justify a whole life order. It was submitted that the appropriate minimum term would be between 10-12 years. The appropriate minimum term, which will replace the whole life order, is 10 years, the equivalent of a 20 year determinate sentence. As the offence took place before the introduction of s.240 of the 2003 Act, we have taken account of s.67 of the Criminal Justice Act 1967 in assessing the minimum term. As with MR, in quashing the whole life order, we emphasise that we are not suggesting for one moment that DS will be safe to be released at the conclusion of the 10 year period. We note that it has been necessary for him to spend time in Broadmoor Hospital, and we suspect that his release is most unlikely." (para 111 – 112)

In summary:

The Court upheld all five sentences of life imprisonment but amended the minimum terms in three of the cases (Danilo Restivo, Michael John Roberts and David Martin Simmons). The sentences are:

David Oakes – two mandatory life sentences with two whole life terms.

Kieran Mark Stapleton – mandatory life sentence with minimum term of 30 years.

Danilo Restivo – mandatory life sentence with a minimum term of 40 years.

Michael John Roberts – discretionary life sentence with a minimum term of 25 years.

David Martin Simmons - discretionary life sentence with a minimum term of 10 years.

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