JUDICIARY OF
ENGLAND AND WALES

R

-v-

Ian McLoughlin

and

R

-v-

Lee William Newell

Court of Appeal (Criminal Division)

18 February 2014

SUMMARY TO ASSIST THE MEDIA

The Court of Appeal (Lord Chief Justice, Sir Brian Leveson, Lady Justice Hallett, Lord Justice Treacy and Mr Justice Burnett) has today ruled that judges can continue to impose whole life orders in accordance with Schedule 21 of the Criminal Justice Act 2003.

On the facts of two individual cases, the Court increased the sentence of Ian McLaughlin to one of a whole life term for the murder of Graham Buck. The Court dismissed an appeal by Lee Newell against his whole life order for the murder of Subhan Anwar.

Introduction

In the introduction the Lord Chief Justice (Lord Thomas) explains that, as a result of the decision of the European Court of Human Rights in *Vinter v UK,* a specially constituted court was set up to hear three applications for permission to appeal their whole life terms (Mark Bridger, Matthew Thomas and Lee Newell) and a reference by the Attorney General under s36 of the Criminal Justice Act (CJA) 1986 in the case of Ian McLoughlin. Mark Bridger abandoned his application prior to the hearing and at the start of the hearing it was confirmed that Matthew Thomas had not received a whole life term. The hearing therefore proceeded as an appeal by Newell and a reference by the Attorney General in the case of McLoughlin. (paras 1– 4)

The development of the legislative scheme

The Court sets out the development of the legislative scheme established by Parliament for sentencing in cases of murder at paragraphs 5 – 11, including the Home Secretaries' polices of reviewing whole life terms in exceptional cases. It also sets out the statutory power of release by the Secretary of State under s30 of the Crime (Sentences) Act 1997 if there are exceptional circumstances which justify the release of a prisoner on compassionate grounds.

The contentions of the parties

The submissions made on behalf of the Attorney General and the Crown are summarised in paragraph 12 and the submission made on behalf of Newell is set out in paragraph 13.

Is the statutory regime established by Parliament compatible with Article 3?

The Court discusses this in paragraphs 14 – 36 by reference to three questions:

a) Can a court impose a whole life order as just punishment?

The answer was yes.

Lord Thomas, on behalf of the Court, said:

> "Although there may be debate in a democratic society as to whether a judge should have the power to make a whole life order, in our view, it is evident, as reflected in Schedule 21, that there are some crimes that are so heinous that Parliament was entitled to proscribe, compatibly with the Convention, that the requirements of just punishment encompass passing a sentence which includes a whole life order." (para 15)

He went on to say:

> **"We do not read the judgment of the Grand Chamber in *Vinter* as in any way casting doubt on the fact that there are crimes that are so heinous that just punishment may require imprisonment for life. …. In *Vinter* the Grand Chamber accepted that, because what constitutes a just and proportionate punishment is the subject of debate and disagreement, States have a margin of appreciation. Under our constitution it is for Parliament to decide whether there are such crimes and to set the framework under which the judge decides in an individual case whether a whole life order is the just punishment.**
>
> **"We therefore conclude that no specific passage in the judgment nor the judgment read as a whole in any way seek to impugn the provisions of the CJA 2003 (as enacted by Parliament) which entitle a judge to make at the time of sentence a whole life order as a sentence reflecting just punishment." (paras 17 – 18)**

b) Does the regime which provides for reducibility have to be in place at the time the whole life order is imposed?

The European Court of Human Rights had decided in 2008 and again in *Vinter* that a sentence of life imprisonment which was irreducible – that is to say gave the offender no possibility or hope or prospect of release - was incompatible with Article 3.

The Court of Appeal proceeded on the assumption that it should adopt that interpretation as if the law of England and Wales provided for reducibility, the question could be dealt with in this way. (paras 19 – 24)

c) Does the regime established by Parliament provide for reducibility?

The answer to the question was: Yes

The Court went on to consider whether s. 30 of the Crime (Sentences) Act 1997 is a regime for reducibility which is in fact compliant with Article 3 (paras 25 – 36).

The Grand Chamber had reached a conclusion in *Vinter* that the law of England and Wales did not clearly provide for reducibility as the conditions set out in the lifer manual was too restrictive. The court held that the Grand Chamber was wrong on this point. The law of England and Wales clearly provided for such a regime through s.30 of the Crime (Sentences) Act 1997 and the lifer manual could not restrict the power under s.30 given to the Secretary of State by Parliament. Lord Thomas said:

> "In our view, the domestic law of England and Wales is clear as to "possible exceptional release of whole life prisoners". As is set out in *R v Bieber* the Secretary of State is bound to exercise his power under s.30 of the 1997 Act in a manner compatible with principles of domestic administrative law and with Article 3." (para 29)

Lord Thomas went on to conclude:

> **"In our judgment the law of England and Wales therefore does provide to an offender "hope" or the "possibility" of release in exceptional circumstances which render the just punishment originally imposed no longer justifiable.**
>
> **"It is entirely consistent with the rule of law that such requests are considered on an individual basis against the criteria that circumstances have exceptionally changed so as to render the original punishment which was justifiable no longer justifiable. We find it difficult to specify in advance what such circumstances might be, given that the heinous nature of the original crime justly required punishment by imprisonment for life. But circumstances can and do change in exceptional cases. The interpretation of s.30 we have set out provides for that possibility and hence gives to each such prisoner the possibility of exceptional release." (paras 35 – 36)**

<u>Conclusion</u>

Lord Thomas, on behalf of the Court, concluded:

> **"Judges should therefore continue to apply the statutory scheme in the CJA 2003 and in exceptional cases, likely to be rare, impose whole life orders in accordance with Schedule 21. Although we were told by Mr Eadie QC that it might be many years before the applications might be made under s.30 and the three applicants in *Vinter* (Vinter, Bamber and Moore) did not seek to contend that there were no longer justifiable penological grounds for their continued detention, we would observe that we would not discount the possibility of such applications arising very much sooner. They will be determined in accordance with the legal principles we have set out." (para 37)**

<u>The reference by the Attorney General in the case of Ian McLoughlin</u>

The Court considers this case in paragraphs 39 – 50.

On 21 October 2013 McLoughlin pleaded guilty to murder and to robbery committed whilst he was on day release from prison. He had a previous history of serious offending, including previous convictions for manslaughter and murder. McLoughlin was sentenced by Mr Justice Sweeney at the Central Criminal Court to life imprisonment for the offence of murder. A sentence of eight years imprisonment concurrent with that sentence was passed for the robbery. The judge fixed a minimum period of 40 years under s.269 (2) of the CJA 2003. (para 39 - 42)

"In the course of his sentencing remarks the judge said he had to decide whether there should be a whole life order or whether there should be a determinate minimum term. In deciding whether to impose a whole life order the judge referred to the decision in *Vinter* and said:

> "Given that there is a duty upon the court imposed by the Human Rights Act to act in compliance with the Convention and to take into account at the least of it the decisions of the Court. And given that the 2003 Act does not require me to pass a whole life order, even though that is necessarily my starting point, I have reached the conclusion against the background that is incumbent upon me to pass a sentence which is compliant with the Convention if I can. But it is not appropriate to impose a whole life term. However, even for a man of 55 years of age the minimum term of years must be a very long one indeed."" (para 45)

Lord Thomas, on behalf of the Court, concluded:

> "It is clear that the judge did not think he had the power to make a whole life order. He was, for the reasons we have given [earlier in this judgment], in error. His reasoning as to whether he should impose a whole life order or a minimum term of a fixed number of years, had therefore proceeded on the assumption he had no such power.
>
> "We must consider the matter afresh. The judge proceeded on the basis of a misunderstanding of the law. It is our duty to exercise our judgment free from that misunderstanding. ….
>
> **"In our judgment this was a case where the seriousness was exceptionally high and just punishment required a whole life order. A fixed minimum term of 40 years was for that reason unduly lenient. We therefore quash the minimum term of 40 years and make a whole life order." (47 – 50)**

<u>The appeal by Lee Newell</u>

The Court considers this case in paragraphs 51 – 58.

On 19 September 2013 Mr Justice Jeremy Baker, sitting at the Crown Court at Leamington Spa, sentenced Lee Newell, to imprisonment for life with a whole life order following his conviction for the murder of Subhan Anwar at HMP Long Lartin. Newell was already serving a life sentence for murder at the time of Anwar's murder. (para 51 -52)

Lord Thomas on behalf of the Court, concluded:

> **"Because this was a second murder, the starting point would normally be a whole life order. The murder was premeditated and involved the use of an improvised weapon. It occurred in prison whilst Newell continued to serve a life sentence. The deceased took a significant time to die. There was no mitigation. This was a murder where the seriousness of the offence was exceptionally high. The judge was right in making a whole life order. This appeal is accordingly dismissed." (para 58)**

<u>Conclusion:</u>

Lord Thomas, on behalf of Court, concluded:

> **"These two cases are exceptional and rare cases of second murders committed by persons serving the custodial part of a life sentence. The making of a whole life order requires**

detailed consideration of the individual circumstances of each case. It is likely to be rare that the circumstances will be such that a whole life order is required. Our decision on each case turns on its specific facts and cannot be seen as a guide to any similar case." (para 59)

-ends-

This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document.